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**INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
FOLLOW-UP ON THE DEMOBILIZATION PROCESS
OF THE AUC IN COLOMBIA**
Digest of published documents (2004-2007)

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REPORT ON THE DEMOBILIZATION PROCESS IN COLOMBIA

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REPORT ON THE DEMOBILIZATION PROCESS IN COLOMBIA

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EXECUTIVE SUMMARY

1. On February 6, 2004, the Member States of the Organization of American States (OAS), meeting in the Permanent Council, unanimously expressed their “unequivocal support for the efforts of the Government of President Álvaro Uribe Vélez to find a firm and lasting peace” in the Republic of Colombia, as well as their interest in the Organization accompanying these efforts (Resolution CP/RES. 859 (1397/04) “Support to the Peace Process in Colombia”). The Permanent Council’s resolution highlights the need to “ensure that the role of the OAS is fully consistent with the obligations of its Member States with respect to the effective exercise of human rights and international humanitarian law” and invites the Inter-American Commission on Human Rights (IACHR) to provide advisory services to the MAPP/OAS Mission. From July 11 to 17, 2004, a delegation of the IACHR headed by Vice-President and Rapporteur for Colombia, Susana Villarán, and the Executive Secretary of the IACHR, Santiago A. Canton, travelled to Colombia to examine the initiatives for the demobilization of illegal armed groups as well as the applicable legal regime and mechanisms aimed at ensuring that the process unfolds in keeping with the State’s international obligations. Subsequent to its visit, the IACHR adopted a report on the question of the negotiations between armed actors and the Government of Colombia and the challenges *vis-à-vis* the State’s international obligations in the area of human rights.

2. The four-decade internal armed conflict in Colombia is extremely complex and involves high incidences of violence. In the last 15 years, the excesses committed by the parties in the internal armed conflict have taken the form of serious violations of human rights and/or international humanitarian law against the civilian population. The IACHR has repeatedly stated its concern over the commission of crimes that continue to exacerbate the humanitarian crisis affecting more than two million persons, and that has caused hundreds of thousands of victims.

3. This is a situation that demands solutions, the search for which cannot be further delayed. Nonetheless, the road to peaceful coexistence is not simple: successive governments have failed in their efforts to eradicate the violence or have had only partial or relative successes. The demobilization mechanisms have not been accompanied by comprehensive measures to provide relief to the victims of the violence nor to clarify the many criminal acts that remain unpunished, and therefore the factors generating the conflict in large measure persist. In addition, many of those who have benefited from past demobilizations have been victims of retaliatory attacks and others have eventually chosen to join other illegal armed groups, re-engaging in the conflict. In any event, the mechanisms for demobilizing armed groups have not had the impact required to break the circle of violence in Colombia. Given this context, the complexity of the situation will no doubt require extraordinary efforts to regain peace and ensure the rule of law for all Colombians.

4. After the election and inauguration of President Álvaro Uribe Vélez in August 2002, some leaders of the *Autodefensas Unidas de Colombia* (AUC) made public their intent to negotiate terms for the demobilization of their forces. One of the main issues discussed by the parties –and in public debate– related to the incentives for demobilization in terms of procedural benefits. The current legal framework established by Law 418 of 1997 (which was extended by Congress by Law 782 in December 2002) provides, *inter alia*, that those who have been involved in conduct constituting atrocious acts of ferocity or barbarism, terrorism, kidnapping, genocide, and homicide cannot benefit from a cessation of procedure (*cesación de procedimiento*), a resolution of preclusion of the investigation (*resolución de preclusión de la instrucción*), or a resolution of dismissal (*resolución inhibitoria*) because of their demobilization. Therefore AUC members either accused, or convicted of, the commission of these sorts of crimes might not be eligible to benefit from the mechanisms to extinguish penalties provided for by the current legal framework for individual and collective demobilizations. In response to this situation there are several legislative proposals advocating alternatives for the demobilization of the AUC, the applicable judicial procedures, and possible ways

of making reparation to the victims of the conflict. However, there are questions on whether these alternative proposals are truly consistent with the framework of the State's international obligations with respect to truth, justice, and reparation.

5. In particular, the international community has identified a series of guidelines with respect to truth, justice, and reparations that draw on the experiences of different societies and the principles of law reflected in the obligation of states to administer justice in keeping with international law. The experiences in this hemisphere in the context of peacemaking efforts have led both the Commission and the Inter-American Court of Human Rights to interpret, among other things, the obligation of the Member States to ensure compatibility of recourse to the granting of amnesties or pardons for persons who have risen up in arms against the State with the State's obligation to clarify, punish, and make reparation for violations of human rights and international humanitarian law.

6. Whenever the conduct of those who participate in the armed conflict results in the commission of crimes against humanity, war crimes and/or human rights violations the States have, in-keeping with customary international law and treaty law, the peremptory obligation to investigate the facts and prosecute and punish the persons responsible. These are imprescriptable crimes of international law, not subject to amnesty, which, as they have not been duly clarified, may give rise to the international responsibility of the State and open the door to universal jurisdiction to establish the individual criminal liability of the persons involved. Whenever amnesty laws or similar legislative measures render ineffective and meaningless the obligation of the States party to ensure judicial clarification of the facts of crimes of international law, they are incompatible with the American Convention, independent of whether the violations in question may be attributed to State agents or private persons. The victims of crimes committed during an armed conflict have the right to adequate reparation for the harm suffered, which should take the form of individual measures of restitution, compensation, and rehabilitation, measures of satisfaction generally, and guarantees of non-repetition, making it possible to re-establish their *status quo ante*, without discrimination.

7. The above-mentioned principles and rules provide the parameters to be taken into account at the moment of judging whether the demobilization process of armed illegal groups satisfies the requirements of truth, justice and reparation for the victims of the armed conflict in Colombia.

8. The process of dialogue between the so-called "negotiating high command" of the AUC and the Government continued to progress considerably in the course of 2004 in terms of the demobilization of several fronts in various regions of the country. However the lack of a legislative definition of the procedural benefits to be obtained by those who decide to join an eventual demobilization, and therefore of guarantees of truth, justice and reparation for the victims of the conflict, persists. This negotiation co-exists with the regime of individual and collective demobilization in force for all the members of illegal armed groups who wish to return to civilian life that is regulated by Decree 128 of 2003. The gaps and ambiguities in the terms of Decree 128 give rise to a lack of clarity as to the scope of the procedural benefits to which the demobilized would have a right, and juridical insecurity for all the parties involved –in particular the victims of human rights violations and their next-of-kin. The high levels of impunity and the ineffectiveness of the administration of justice in Colombia – which have been the subject of repeated pronouncements and recommendations by the IACHR and the Office of the United Nations High Commissioner for Human Rights – demand that the future investigation of the crimes perpetrated by the parties to the conflict be supported by clear provisions that are consistent with the international obligations of the State.

9. On November 25, 2003, the process commenced whereby 874 members of the so-called "*Bloque Cacique Nutibara*" laid down their arms. It was one of the most aggressive urban

fronts of the AUC which for several years had been operating in the city of Medellín. This process of demobilization agreed upon at the local level pursuant to the legal framework established by Laws 418 and 782 and Decree 128 was considered a pilot scheme for the collective demobilization of AUC members. The testimony, complaints, and information received during the *in loco* visit conducted in July 2004 indicate that despite a certain decline in the number of incidents of political violence, paramilitary domination persists in certain *comunas* of Medellín, along with acts of violence, harassment, and intimidation against those who do not express support for the project backed by these groups. An examination of criminal records by the Prosecutor's Office in Medellín suggests that the demobilized of the Bloque Cacique Nutibara are not representative of the more violent elements within the AUC. Consequently any expectation for the positive impact of their demobilization on the violent actions of the armed groups should be greeted with caution.

10. The AUC negotiating high command and the administration of President Uribe continue the process of dialogue, which is aimed at demobilizing a number of paramilitary fronts by 2004 and 2005. On May 13, 2004, an agreement was reached on the establishment of a *zona de ubicación* in Tierralta, Córdoba, which was implemented through Resolution 092 of 2004. This Resolution had the effect – under the provisions of Law 782 of 2002— of suspending the arrest warrants for the members of the AUC who are within the perimeters of its 368 km² area during the period it is in effect. The agreement does not establish guarantees of security for the civilian population living within the perimeter of the 368 km² of the *zona de ubicación* who –beyond the presence of members of the MAPP/OAS Mission— are deprived of the presence of the military forces or National Police and of the judicial and oversight authorities. In December 2004, members of the *Frente Catatumbo*, which is part of the *Bloque Norte* of the AUC led by Salvatore Mancuso, demobilized and two additional AUC fronts gathered in areas designated by the Government.

11. The IACHR is aware, given the magnitude, duration, and complexity of the internal armed conflict in Colombia, that there are no easy answers, and that the search for political solutions to deactivate the factors and parties in the internal armed conflict is fundamental. Despite the commitment to a cessation of hostilities by the AUC, acts of violence against, and intimidation of, the civilian population continue. Deactivating the complex network of illegal armed groups that have joined the armed conflict in Colombia requires putting an end to the constant succession of acts of violence by paramilitary groups –whether or not part of the process— and the guerrillas, against the civilian population; and ensuring these crimes are properly clarified in the courts.

12. The members of the paramilitary fronts involved in the process of demobilization have been repeatedly accused of responsibility for serious violations of human rights and international humanitarian law. In some cases the Inter-American Commission and the Inter-American Court have established the responsibility of the State, as these grave violations of the American Convention on Human Rights were perpetrated with the acquiescence of State agents. The organs of the inter-American system, the Office of the United Nations High Commissioner for Human Rights, and human rights organizations in Colombia and abroad have made statements to the effect that the process of demobilization should be accompanied by guarantees of respect for the international obligations of the State.

13. For the time being, the process has moved forward without the support of a comprehensive legal framework that clarifies the conditions under which persons responsible for committing human rights violations are to demobilize, or their relationship with the peace process. No efforts have yet been identified to establish the truth of what has happened and the degree of official involvement in paramilitarism. In addition, the issue of reparation for the harm caused to the victims of acts of violence and displacement, including control over lands, does not appear to be addressed with the appropriate levels of participation. The conditions under which the members of illegal armed groups join the demobilization process should be closely monitored to ensure it does not become a conduit towards impunity.

14. In view of the foregoing, the IACHR recommends the adoption of a comprehensive legal framework that establishes clear conditions for the demobilization of illegal armed groups, in accordance with the State's international obligations. This legal framework should provide for the situation of those who have joined processes for individual and collective demobilization to clarify their situation. Moreover, genuine mechanisms of participation should be put in place, in secure conditions, for the victims of the conflict, so as to ensure access to truth, justice, and reparation.

REPORT ON THE DEMOBILIZATION PROCESS IN COLOMBIA^{*}

I. INTRODUCTION

1. On February 6, 2004, the Member States of the Organization of American States (OAS), meeting in the Permanent Council, unanimously expressed their “unequivocal support for the efforts of the Government of President Álvaro Uribe Vélez to find a firm and lasting peace” in the Republic of Colombia, as well as their interest in the Organization accompanying these efforts.¹ Several weeks earlier, then-Secretary General of the OAS César Gaviria and President Álvaro Uribe Vélez had signed an agreement on establishing a Mission to Support the Peace Process in Colombia (hereinafter “the MAPP/OAS Mission”) with a mandate to verify initiatives to bring about a ceasefire and end of hostilities, demobilization, disarmament, and reintegration into society of the illegal armed groups that operate in Colombia.² The Permanent Council’s resolution authorizes the establishment of the MAPP Mission and at the same time highlights the need to “ensure that the role of the OAS is fully consistent with the obligations of its Member States with respect to the effective exercise of human rights and international humanitarian law.”³

2. In its resolution, the Permanent Council invited the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”)⁴ to provide advisory services to the MAPP/OAS Mission. During its 119th session, held in February-March 2004, the IACHR in plenary considered the invitation, and on April 7, 2004, the Commission presented its points of view to the Permanent Council through its Executive Secretary, Santiago Canton. On that occasion, the Commission indicated that it would continue carrying out its mandate to promote and protect human rights in Colombia pursuant to the American Convention on Human Rights (hereinafter “the

^{*} Pursuant to the advisory function entrusted by the Permanent Council of the OAS by Resolution CP/RES. 859 (1397/04) “Support to the Peace Process in Colombia.”

¹ Permanent Council of the OAS, Resolution CP/RES. 859 (1397/04) “Support to the Peace Process in Colombia,” first operative paragraph.

² “Agreement between the Government of Colombia and the General Secretariat of the OAS for Monitoring of the Peace Process in Colombia,” signed January 23, 2004, by the Secretary General of the OAS, César Gaviria, and President Álvaro Uribe Vélez.

³ Permanent Council of the OAS, Resolution CP/RES. 859 (1397/04) “Support to the Peace Process in Colombia,” third operative paragraph. The Permanent Council also instructed the Secretary General to report quarterly on the work of MAPP/OAS and “its continued ability to contribute ... to the fulfillment of the values and principles contained in the Charter of the Organization of American States and the Inter-American Democratic Charter.” The first report was given on May 17, 2004 by the Advisor to the Secretary General, Jorge Mario Eastman, who made reference to an agreement signed by the Colombian Government and the AUC to establish a zone of concentration, where the MAPP/OAS Mission would verify the development of the peace process. On August 5, 2004, the Director of the MAPP Mission, Sergio Caramagna, presented a second oral report to the Permanent Council of the OAS in which he outlined progress in the work done. A major part of his report was intended to highlight the important financial support provided by the Government of Colombia to the MAPP Mission –which, indeed, has enabled it to operate from the moment it was set up— as well as the efforts to expand the sources of financing. On September 28, 2004, the “Second quarterly report of the Secretary General on the Mission to Support the Peace Process in Colombia (MAPP/OEA), pursuant to resolution CP/RES. 859 (1397/04)” *OEA/Ser. G CP/doc.3944/04*, was submitted in writing. On December 8, 2004 the MAPP Mission presented a third oral report before the Permanent Council which included information on the demobilization of approximately 3,000 AUC members during November and the beginning of December, 2004 and on a donation by the Netherlands.

⁴ The IACHR is a principal and autonomous organ of the Organization of American States (OAS), whose mandate arises from the Charter of the OAS and the American Convention on Human Rights, and which acts in representation of all the member countries of the OAS. It is made up of seven independent experts elected by the General Assembly in their personal capacity. The IACHR holds regular and special sessions various times a year during which its members deliberate and adopt reports and other types of decisions. At present the members of the IACHR are commissioners José Zalaquett, President; Clare Kamau Roberts, First Vice-President; Susana Villarán, Second Vice-President; Paulo Sérgio Pinheiro, Evelio Fernández Arévalos, Freddy Gutiérrez, and Florentín Meléndez. They are assisted by the Executive Secretary, Santiago Canton. The directives of the IACHR are carried out by an Executive Secretariat, which operates permanently from OAS headquarters in Washington, D.C.

American Convention") and the Charter of the OAS, and that together with those permanent monitoring functions, it would develop its role of advising the MAPP Mission, subject to provision of the necessary funds. In addition, it was noted that the IACHR would adopt measures aimed at establishing liaisons and channels of communication with the members of the MAPP/OAS Mission in Colombia in order to provide advisory services, monitor the process of demobilization both through the channels established in conjunction with the MAPP and autonomously, and report periodically to the Permanent Council, the international community, and public opinion.

3. On May 10, 2004, as the first step in its advisory function, the IACHR forwarded to the MAPP/OAS Mission background information in the form of case-law and doctrinal writings on peace processes and administration of justice to be taken into account in the demobilization process, with a view to carrying out the objective established by the Permanent Council to ensure that the role of the OAS unfolds in keeping with the obligations of its Member States with regard to the full observance of human rights and international humanitarian law. On May 26, 2004 the Commission made contact with the MAPP/OAS Mission in the wake of the kidnapping of the indigenous Governor of the Embera-Katío of the upper Sinú, Ovidio Domicó, by the AUC in the vicinity of Tierralta, department of Córdoba.⁵ The Embera-Katío indigenous people are protected by precautionary measures issued by the IACHR,⁶ in keeping with Article 25 of its Rules of Procedure.⁷ Hours after the efforts made, Ovidio Domicó's release was secured.

4. From July 11 to 17, 2004, a delegation of the IACHR headed by Vice-President and Rapporteur for Colombia, Susana Villarán, and the Executive Secretary of the IACHR, Santiago A. Canton, travelled to Colombia to examine the initiatives for the demobilization of illegal armed groups as well as the applicable legal regime and mechanisms aimed at ensuring that the process unfolds in keeping with the State's international obligations. During its visit, the delegation of the IACHR held meetings with high-level government authorities, including the Vice-President of Colombia, Francisco Santos; the Minister of Foreign Affairs, Carolina Barco; the Minister of Defense, Jorge Alberto Uribe Echavarría; the High Commissioner for Peace, Luis Carlos Restrepo Ramírez; and the Attorney General of the Nation, Luis Camilo Osorio. The delegation also visited the offices of the MAPP/OAS Mission in Bogotá, where it was received by Sergio Caramagna and his staff. In addition, it travelled to the city of Medellín, where it met with Mayor Sergio Fajardo Valderrama and the staff in charge of the program for demobilization of the Bloque Cacique Nutibara, and with officials of the Office of the Special Prosecutor (*Fiscalía Especializada*) of Medellín and members of

⁵ See IACHR, "CIDH expresa preocupación por el secuestro del gobernador indígena en la República de Colombia", Press Release 14/04, Washington D.C., May 26, 2004.

⁶ On June 4, 2001, the IACHR issued precautionary measures on behalf of Kimi Domicó, Uldarico Domicó, Argel Domicó, Honorio Domicó, Adolfo Domicó, Teofan Domicó, Mariano Majore, Delio Domicó, Fredy Domicó, and other members of the Embera-Katío indigenous community of the upper Sinú allegedly kidnapped by the AUC in the *resguardo* and neighboring areas, in Tierralta. The State was asked to urgently take the measures needed to establish the whereabouts and protect the life and personal integrity of the above-mentioned persons, to take the measures needed to protect all other members of the Embera-Katío indigenous community of the upper Sinú, with the agreement of the petitioners of the precautionary measures, and to clarify judicially the acts of violence against the indigenous community. After the State's response the parties continued to submit information and observations in relation to these precautionary measures. *Annual Report of the IACHR 2001, OEA/Ser.L/V/II.114 doc. 5 rev.*

⁷ Article 25 of the Commission's Rules of Procedure provide that: "(1) In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons. (2) If the Commission is not in session, the President, or, in his or her absence, one of the Vice-Presidents, shall consult with the other members, through the Executive Secretariat, on the application of the provision in the previous paragraph. If it is not possible to consult within a reasonable period of time under the circumstances, the President or, where appropriate, one of the Vice-President shall take the decision on behalf of the Commission and shall so inform its members. (3) The Commission may request information from the interested parties on any matter related to the adoption and observance of the precautionary measures. (4) The granting of such measures and their adoption by the State shall not constitute a prejudgment on the merits of a case."

what is known as the Facilitating Commission (*Comisión Facilitadora*) of Antioquia. During those meetings, the IACHR received the invaluable assistance of staff of the regional office of the MAPP/OAS Mission in Medellín.

5. The delegation of the IACHR also met with representatives of various civil society organizations, including peace organizations, human rights organizations, and members of the Church. During its stay in the city of Medellín, the IACHR had the opportunity to hear the viewpoints of persons who have benefited from the collective demobilization of members of the *Bloque Cacique Nutibara*, affiliated with the organization known as "*Corporación Democracia*." In addition, the IACHR received complaints of human rights violations in the neighborhoods and districts in which this AUC *Bloque* operates.

6. The IACHR wishes to highlight the willingness displayed by the authorities of the State during its delegation's visit to Colombia. The Commission was afforded all the guarantees and cooperation needed to gather information and complete its observation successfully. The IACHR would also like to express gratitude for the cooperation of all of those who provided information or testimony to the Commission.

7. The IACHR has analyzed the situation based on the input obtained, both through the channels of cooperation with the MAPP Mission in Colombia, and through contacts with other entities of the international community, civil society, the government, and its on-site observation. Having considered all of the above, the IACHR presents its first report on the mandate entrusted to it in Resolution CP/RES. 859, in the framework of its powers to publish reports and its mission of promoting and protecting human rights in the Member States.

8. This report constitutes an initial approach to the question of the negotiations between armed actors and the Government of Colombia with the participation of the MAPP Mission as verifier, and the challenges *vis-à-vis* the State's international obligations in the area of human rights. It sets forth the conclusions reached by the IACHR as a result of its observation of the situation, and includes a series of recommendations for those who are participating actively in the process.

9. In order to properly appreciate the nature and significance of the negotiations and agreements reached with some leaders of the AUC, consideration must be given to the historical context and the situation in which they are being pursued, as well as to the international obligations of the State. Accordingly, after making reference to the principles and standards of international law that should guide the efforts aimed at overcoming the internal armed conflicts, the report provides an overview of the origins of the internal armed conflict in Colombia, its impact on the civilian population, and the legislative measures adopted in the past to clear the way for the armed actors' return to civilian life. The report then presents the IACHR's observations on current peace efforts as materialized, respectively, in the processes of individual demobilization and collective demobilization, and in the formation of a "placement zone" ("*zona de ubicación*"), and the legal framework in which they are being pursued.

II. PRINCIPLES AND STANDARDS FOR OVERCOMING ARMED CONFLICTS AND THEIR CONSEQUENCES FOR THE CIVILIAN POPULATION

10. The successful development of a process of demobilization of actors involved in a prolonged internal armed conflict that aspires to the non-repetition of crimes of international law,⁸

⁸ The expression "crime of international law" was adopted by the Special Rapporteur Cherif Biassiouni in a final report submitted pursuant to resolution 1999/33 of the Commission on Human Rights on "The right to restitution,

violations of human rights, and grave breaches of international humanitarian law calls for the clarification of the violence and reparation of its consequences. Realistic expectations of peaceful coexistence under the rule of law should be based on measures that address the challenges posed by the construction of a culture of tolerance and the rejection of impunity. The international community has identified a series of guidelines with respect to truth, justice, and reparations that draw on the experiences of different societies and the principles of law reflected in the obligation of states to administer justice in keeping with international law.

11. The norms of the inter-American system that are binding on the Member States of the OAS are part of this body of law. The experiences in this hemisphere in the context of peacemaking efforts have led both the Commission and the Inter-American Court of Human Rights to interpret, among other things, the obligation of the Member States to ensure compatibility of recourse to the granting of amnesties or pardons for persons who have risen up in arms against the State with the State's obligation to clarify, punish, and make reparation for violations of human rights and international humanitarian law.

12. The obligations of the Member States of the Organization of American States in the area of human rights derive from the Charter of the OAS⁹ and the American Declaration of the Rights and Duties of Man¹⁰ as well as the human rights treaties ratified by them. The States party to the American Convention on Human Rights have obligated themselves to respect the human rights and fundamental freedoms recognized in the Convention, and to ensure for all persons subject to their jurisdiction the free and full exercise of rights and freedoms, without any discrimination on grounds of race, color, sex, language, religion, opinion, national or social origin, economic status, birth, or any other social condition. In addition, they have agreed to adopt legislative and other measures that may be necessary for giving effect to the rights and freedoms protected in the American Convention in those cases in which the exercise of those rights and freedoms is not yet guaranteed.¹¹ In addition to the American Convention, the Member States have adopted other treaties to complement and expand the rights protected therein.¹²

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compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms" and "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law," attached to the report. See United Nations, Economic and Social Council, *E/CN.4/2000/62* January 18, 2000, p. 3.

⁹ The Member States of the OAS are – by virtue of having ratified the Charter of the OAS – obligated to respect and ensure the human rights provisions that are part of the Charter. See, for example, OEA *AG Res. AG/RES. 314 (VII-O/77)* of June 22, 1977; OEA *AG/RES. 370 (VIII-O/78)* of July 1, 1978; OEA *AG/RES. 1829 (XXXI-O/01)* of June 5, 2001. See also, I/A Court H.R. (*Interpretation of the American Declaration on the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*), Advisory Opinion OC-10/89 of July 14, 1989, Series A N° 10, paras. 43-46; and IACHR, Report N° 48/01, Case 12.067, Michael Edwards *et al.* (Bahamas), *Annual Report of the IACHR 2000*, para. 107.

¹⁰ The American Declaration is a source of legal obligations for all the Member States of the OAS, including those states that have not ratified the American Convention on Human Rights. See I/A Court H.R. (*Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*), Advisory Opinion OC-10/89, July 14, 1989, Series A N° 10, paras. 43-46. In addition, the Commission has established that the right to life, the right to liberty, and the right to due process and a fair trial, protected in the American Declaration, have acquired the status of customary norms of international law. IACHR Report N° 19/02, Alfredo Lares Reyes *et al.* (United States), *Annual Report of the IACHR 2001*, para. 46.

¹¹ See Articles 1 and 2 of the American Convention on Human Rights, adopted in San José, Costa Rica, on November 22, 1969, at the Inter-American Specialized Conference on Human Rights, *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L/V/I.4 rev. 10, January 31, 2004.

¹² Of these, special mention should be made of: the Inter-American Convention to Prevent and Punish Torture, signed at Cartagena, Colombia, December 9, 1985, at the 15th regular session of the General Assembly; the Inter-American Convention on Forced Disappearance of Persons, adopted in Belém do Pará, Brazil, June 9, 1994, at the 24th regular session of the General Assembly; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against

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13. These instruments should be interpreted and applied in light of the norms and principles that govern international legal obligations generally, and human rights obligations in particular, primarily the principles of good faith and of the supremacy of international treaties over domestic law.¹³ In addition, the states' commitments under international human rights law are applicable both in peacetime and in the context of armed conflicts.¹⁴ It has been recognized that the states' human rights obligations in this area differ from their other international commitments in that, on ratifying such treaties, they bind themselves not only in relation to other states parties, but also, and mainly, with respect to the persons under their jurisdiction. Moreover, the norms of interpretation of the American Convention require that the organs of protection – the Inter-American Commission and the Inter-American Court – consider higher standards of protection provided for in other treaties ratified by the State. Those treaties include the International Covenant on Civil and Political Rights,¹⁵ the United Nations Convention relating to the Status of Refugees¹⁶ and its Additional Protocol,¹⁷ the United Nations Convention on the Rights of the Child,¹⁸ the International Convention on the Elimination of All Forms of Racial Discrimination,¹⁹ the Vienna Convention on Consular Relations,²⁰ and the Geneva Conventions of 1949²¹ and their Additional Protocols of 1977.²²

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Women, adopted in Belém do Pará, Brazil, June 9, 1994, during the 24th regular session of the General Assembly; and the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, signed in San Salvador, El Salvador, November 17, 1988, at the 28th regular session of the General Assembly. All of these appear in *Basic Documents Pertaining to Human Rights in the Inter-American System OEA/Ser.L/V/II.4 rev. 10, January 31, 2004.*

¹³ See the Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, Article 27, which provides: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." See also I/A Court H.R., *Advisory Opinion OC-14/94, International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights)*, December 9, 1994, Series A N° 14, para. 35, where it recognizes: "Pursuant to international law, all obligations imposed by it must be fulfilled in good faith; domestic law may not be invoked to justify nonfulfillment. These rules may be deemed to be general principles of law and have been applied by the Permanent Court of International Justice and the International Court of Justice." See P.C.I.J., *The Greco-Bulgarian Communities-Advisory opinion* [1930] PCIJ 1 (31 July 1930); P.C.I.J. *Treatment of Polish Nationals and other Persons of Polish Origin or Speech in the Dantzic territory - Advisory opinion* [1932] PCIJ 1 (4 February 1932); P.C.I.J. *Free zones of Upper Savoy and the District of Gex* [1932] PCIJ 3 (7 June 1932).

¹⁴ Article 27 of the American Convention on Human Rights establishes the grounds for suspension of guarantees in emergency situations, and the non-derogable rights. See IACHR, Report N° 5/97, Abella (Argentina), *Annual Report of the IACHR 1997*, para. 158; IACHR Report N° 109/99, Coard *et al.* (United States), *Annual Report of the IACHR 1999*. See, by way of analogy, Article 4 of the International Covenant on Civil and Political Rights, and ICJ *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, July 8, 1996, ICJ Reports 1996*, which confirms that "the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency." See also ICJ *Advisory Opinion of 9 July 2004 "Legal consequences of the construction of a wall in the occupied Palestinian territory"* <http://www.icj-cij.org/icjwww/idocket/imwp/imwframe.htm>, paras. 127, 128, and 129.

¹⁵ International Covenant on Civil and Political Rights, adopted December 16, 1966, in force since 1976.

¹⁶ UN Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150.

¹⁷ Protocol relating to the Status of Refugees, October 4, 1967, 606 U.N.T.S. 267.

¹⁸ United Nations Convention on the Rights of the Child, Resolution AG 44/25, Annex 44, UN GAOR Supp. (N° 49), 167, UN Doc. A/44/49 (1989), November 20, 1989.

¹⁹ International Convention on the Elimination of All Forms of Racial Discrimination, December 21, 1965, 660 U.N.T.S. 195.

²⁰ Vienna Convention on Consular Relations, April 24, 1963, 596 U.N.T.S. 261.

²¹ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 U.N.T.S. 31, which entered into force on October 21, 1950; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 U.N.T.S. 85, which entered into force October 21; Geneva Convention relative to the Treatment of Prisoners of War, 75 U.N.T.S. 135, which entered into force October 21,

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14. This normative framework, in force for most of the Member States of the OAS, is reinforced by customary law as well as by the guidelines agreed upon in the context of intergovernmental organizations such as the United Nations. The international provisions in force for the Member States, their interpretation through the case-law and the guidelines compiled by the intergovernmental organs coincide in identifying truth, justice, and reparation as fundamental and inescapable challenges in rebuilding a culture of peace, tolerance, respect for the law, and rejection of impunity. The IACHR will next develop these concepts and explore the standards and obligations arising therefrom.

A. The right to know the truth about the crimes of international law perpetrated during the conflict

15. One of the most serious and immediate effects of the large-scale violence of internal armed conflicts consists of what many – challenging the language – define as the “invisibilization” of the victims.²³ The absence of effective remedies for attaining the intervention of State institutions leaves the most unprotected sectors of the civilian population – indigenous peoples and Afro-descendant communities, displaced children and women, to cite some examples – at the mercy of armed actors who opt for strategies that not only generate terror and the forced displacement of survivors, but that also have the effect of rendering it difficult to clarify what happened, relegating those killed to oblivion, and propagating the state of confusion that obstructs deciphering the causes of violence and putting an end to them through the rule of law.

16. In the face of this situation, the right to truth should not be restricted through legislative or other measures. The IACHR has established that the existence of factual or legal impediments, such as adopting amnesty laws, to access to information about the facts and circumstances surrounding the violation of a fundamental right, and that stand in the way of initiating the judicial remedies in the domestic jurisdiction, are incompatible with the right to judicial protection provided for at Article 25 of the American Convention.²⁴ The process aimed at determining the truth requires the free exercise of the right to seek and receive information, the formation of investigative

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1950, Geneva Convention relative to the Protection of Civilian Persons in Time of War, *75 U.N.T.S. 287*, which entered into force October 21, 1950.

²² First Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), *1125 U.N.T.S. 3*, which entered into force December 7, 1978. Second Additional Protocol relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), *1125 U.N.T.S. 609*, which entered into force on December 7, 1978.

²³ Principle V(8) and (9) of the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law” defines a victim in the following terms: “A person is ‘a victim’ where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person’s fundamental legal rights. A ‘victim’ may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.” It goes on to make the following clarification: “A person’s status as ‘a victim’ should not depend on any relationship that may exist or may have existed between the victim and the perpetrator, or whether the perpetrator of the violation has been identified, apprehended, prosecuted, or convicted.” See United Nations, Economic and Social Council, Final Report of the Special Rapporteur Cherif Biassiouni pursuant to Resolution 1999/33 of the Commission on Human Rights on “The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms” and “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law,” attached to the report, *E/CN.4/2000/62 January 18, 2000*, p. 8.

²⁴ IACHR, Report N° 25/98, Cases 11,505, 11,532, 11,541, 11,546, 11,549, 11,569, 11,572, 11,573, 11,583, 11,585, 11,595, 11,652, 11,657, 11,675, and 11,705 (Chile) in *Annual Report of the Inter-American Commission on Human Rights 1998*.

commissions,²⁵ and the adoption of the measures needed for authorizing the judiciary to undertake and complete the respective investigations.²⁶

17. The Inter-American Court has established in its case-law that the right to the truth is subsumed in the right of the victim or his or her next-of-kin to obtain from the competent organs of the State clarification of the facts and the prosecution of the persons responsible in keeping with the standards of Articles 8 and 25 of the American Convention.²⁷ For its part, the Human Rights Committee of the United Nations has also ruled on the duty of states to judicially determine the circumstances in which human rights violations take place and the responsibility of those implicated, as part of the reparation owed to the victim's next-of-kin.²⁸

18. In any event, the enjoyment of the right to know the truth regarding the commission of crimes of international law is not limited to the victims' next-of-kin. The Inter-American Commission and the Inter-American Court have stated that societies affected by violence have, as a whole, the unwaivable right to know the truth of what happened as well as the reasons why and circumstances in which the aberrant crimes were committed, so as to prevent such acts from recurring.²⁹ Society as a whole has the right to learn of the conduct of those who have been involved in committing serious violations of human rights or international humanitarian law, especially in the case of mass or systematic violations; to understand the objective and subjective elements that helped create the conditions and circumstances in which atrocious conduct was perpetrated, and to identify the legal and factual factors that gave rise to the appearance and persistence of impunity; to have a basis for determining whether the state mechanisms served as a context for punishable conduct; to identify the victims and the groups they belong to as well as those who have participated in acts victimizing others; and to understand the impact of impunity.³⁰

19. These principles and standards are particularly relevant in situations in which the ferocity of the methods used by the actors in the conflict and the constant acts of retaliation against the civilian population, human rights defenders, and officials willing to investigate complaints diligently and to administer justice, lead surviving victims and witnesses to remain silent. In these cases, intimidation, the suppression of evidence, and the deficient functioning of the justice system all compound the silence of the victims and witnesses, contributing to impunity and the repetition of crimes of international law.

²⁵ Such undertakings have worked with significant results in terms of the right to truth in some countries of the region, such as Argentina, Chile, El Salvador, Guatemala, and Peru.

²⁶ See IACHR, Chapter V "Areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights," *Annual Report 1985-1986, OEA/Ser.L/V/II.68, Doc. 8 rev. 1*, p. 205.

²⁷ I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C N° 70, para. 201.

²⁸ UNHRC, *Communication N° 107/1981, Uruguay, CCPR/C/19/D/107/1981, [1983] UNHRC 16 (21 July 1983)*. See also, Theo Van Boven, Special Rapporteur, Commission on Human Rights, United Nations, "Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms," Economic and Social Council, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 45th session, item 4 of the provisional agenda, *U.N. Doc. E/CN.4/Sub.2/1993/8* (1993).

²⁹ See IACHR, Chapter V "Areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights," *Annual Report 1985-1986, OEA/Ser.L/V/II.68, Doc. 8 rev. 1*, p. 205, and I/A Court H.R., *Barrios Altos Case*, Judgment of March 14, 2001, Series C N° 75.

³⁰ See "*Patrones internacionales en materia de verdad, justicia y reparación para lograr la superación del conflicto armado interno*", Remarks by Mr. Michael Frúling, Director of the Office in Colombia of the United Nations High Commissioner for Human Rights, during the "*Jornadas de concertación social para superar el fenómeno de paramilitarismo*," First Committee of the Senate, April 2, 2004, Bogotá.

B. The right to justice and the judicial clarification of crimes of international law perpetrated during the conflict

20. Whenever the conduct of those who participate in the armed conflict results in the commission of, *inter alia*, assassinations, forced disappearances, rape, forced movement or displacement, torture, inhumane acts aimed at intentionally causing death or serious harm to physical and psychological integrity, attacks on the civilian population or their property, and recruitment of boys and girls under 15 years of age,³¹ the States have, in-keeping with customary international law and treaty law, the peremptory obligation to investigate the facts and prosecute and punish the persons responsible. These are imprescriptable crimes of international law, not subject to amnesty, which, as they have not been duly clarified, may give rise to the international responsibility of the State and open the door to universal jurisdiction to establish the individual criminal liability of the persons involved.³²

21. The states are under an obligation to combat impunity by all legal means available, since it fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their next-of-kin.³³ In the inter-American system, this obligation of the States is reflected in Articles XVIII and XXIV of the American Declaration³⁴ and Articles 1(1), 2, 8, 25 of the American Convention.³⁵ Pursuant to these provisions and their authoritative interpretation, the Member States of the OAS have the duty to organize the government apparatus and all the structures through which government authority is exercised so that they are capable of legally ensuring the free and full exercise of human rights, and to prevent, investigate, prosecute, and punish their violation. This obligation is independent of whether the perpetrators of the crimes are

³¹ See Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, *U.N. SCOR*, 48th Session, *UN Doc S/Res/827*, May 25, 1993, Articles 3 and 5; Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, *UN SCOR*, 49th Sess., *UN Doc S/Res/955*, (1994), Articles 3 and 4; and the Final Act of the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, done at Rome July 17, 1998, *A/CONF.183/10, Resolution E, A/CONF.183/C.1/L.76/Add.14, 8*; and Statute of the International Criminal Court, *UN Doc. A/CONF.183/9* (1998), corrected by the proces-verbaux of November 10, 1998 and July 12, 1999, entered into force July 1, 2002, Articles 6, 7, and 8.

³² Final Act of the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, done at Rome, July 17, 1998, *A/CONF.183/10, Resolution E, A/CONF.183/C.1/L.76/Add.14*, Statute of the International Criminal Court, *UN Doc. A/CONF.183/9* (1998), as corrected by the proces-verbaux of November 10, 1998 and July 12, 1999, entered into force July 1, 2002. See Article 29 on non-applicability of statute of limitations and Article 17 on the Court's jurisdiction. See also, "Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity" adopted by the UN General Assembly by Resolution 2391 (XXIII) of November 26, 1968.

³³ The Inter-American Court has defined impunity as the failure to investigate, prosecute, arrest, try, and impose punishment on persons responsible for human rights violations. See *I/A Court H.R., Paniagua Morales et al. Case*. Judgment of March 8, 1998. Series C N° 37, para. 173. See also *Bámaca Velásquez Case*. Judgment of November 8, 2000. Series C N° 70, para. 211; *Loayza Tamayo Case*, Judgment of November 27, 1998, Series C N° 42, paras. 168 and 170.

³⁴ American Declaration, Article XVIII: "Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights." Article XXIV: "Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon."

³⁵ Article 25 of the American Convention provides that: "(1) Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. (2) The States Parties undertake: (a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state; (b) to develop the possibilities of judicial remedy; and (c) to ensure that the competent authorities shall enforce such remedies when granted."

state agents or private individuals.³⁶ Where crimes of public action are concerned, i.e. subject to prosecution *sua sponte*, it is up to the State to bring the criminal action, and it is responsible for taking the initiative to set the procedure in motion, in compliance with its obligation to guarantee the right to justice for the victims and their next-of-kin, seriously and not as a mere formality condemned *ex ante* to be fruitless.³⁷

22. The protections derived from the right to due process and judicial protection applicable in international and non-international armed conflicts, provided for in the Geneva Conventions, correspond substantially to the protections of international human rights law, and require that the states prosecute and punish persons who commit or order the commission of gross violations of international humanitarian law.³⁸ No derogation from these obligations is allowed on grounds of the continuation of the conflict. In those cases in which, for example, international humanitarian law prescribes minimal due process standards, the states cannot resort to derogations permissible under international human rights law. This view finds support in Articles 27 and 29 of the American Convention, prohibiting derogations inconsistent with a state's other obligations under international law as well as any interpretation of the Convention that restricts the effective exercise of a right or freedom recognized pursuant to another convention to which the state is a party.³⁹

23. Some states affected by internal armed conflicts and their consequences have issued amnesty laws when implementing mechanisms for achieving peace and national reconciliation. Nonetheless, the granting of amnesties and pardons should be limited to punishable conduct in the nature of political crimes or common crimes linked to political crimes insofar as, having a direct and close relationship with the political criminal conduct, they do not constitute serious violations under international law. Those responsible for committing such crimes should not benefit unduly from grounds of exclusion from punishment, such as the prescription of the crime and prescription of the punishment, the granting of territorial or diplomatic asylum, the refusal to extradite a person for the commission of crimes punished by international law, or the granting of amnesties or pardons.⁴⁰

³⁶ I/A Court H. R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, para. 140; *Juan Humberto Sánchez Case*, Judgment of June 7, 2003. Series C No 99, para. 142; *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No 70, para. 210; *"Panel Blanca" Case (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No 37, para. 174; and *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No 4, paras. 172 and 174.

³⁷ From its first judgments, the Inter-American Court established that an investigation must have an objective and be assumed by the state as its own legal duty, and not as a step taken by private interests that depends on the procedural initiative of the victim or his or her next-of-kin, or on the private offer of evidence, without an effective search for truth by the government authorities. See I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No 4, para. 177; *Villagrán Morales et al. Case (The "Streetchildren" Case)*. Judgment of November 19, 1999. Series C No 63, para. 226.

³⁸ See Article 49 of Convention I, Article 50 of Convention II, Article 129 of Convention III, and Article 146 of Convention IV, approved by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, August 12, 1949", which provide: "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention.... Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts...." See also Article 85 of the first Protocol Additional to the Geneva Conventions of 12 August 1949, and comment in ICRC *Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, Sandoz, Swinarski & Zimmermann eds., Nijhoff, 1987, pp. 991 ff.

³⁹ See IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. (2002).

⁴⁰ Commission on Human Rights, United Nations, *Question of the impunity of perpetrators of human rights violations (civil and political)*, Final Report prepared by Louis Joinet, U.N. Special Rapporteur on Impunity, pursuant to Resolution 1996/119 of the Sub-Commission. *E/CN.4/Sub.2/1997/20 Rev. 1 (1997)*, Principles 26 to 35. When it comes to judging perpetrators of crimes of international law, the penalties involving deprivation of liberty should be imposed for the corresponding offenses. Extending benefits involving reduction of penalties should depend on positive and effective actions of collaboration aimed at determining who perpetrated the offenses, their circumstances and motives, the harm caused, and –as appropriate– locating the victims' remains. In addition, those convicted of such crimes should remain, for a reasonable time, judicially disqualified from holding official positions and performing public functions. See *"Patrones internacionales en materia de verdad, justicia y*

24. In this sense, the IACHR has consistently established that while the adoption of provisions aimed at granting an amnesty to persons responsible for the crime of taking up arms against the state may be a useful tool in the context of effort to achieve peace, amnesty laws as well as similar legislative measures that impede or consider concluded the investigation and prosecution of crimes of international law impede access to justice and render ineffective the obligation of the states party to respect the rights and freedoms recognized in the Convention and to ensure their free and full exercise.⁴¹

25. For its part, the Inter-American Court of Human Rights has emphasized that the states party to the American Convention cannot invoke provisions of domestic law, such as amnesty laws, to fail to abide by their obligation to ensure the complete and proper functioning of the justice system.⁴² In its judgment in the *Barrios Altos Case* it established that

all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.⁴³

The Court concluded that, as these amnesty laws were incompatible with the American Convention, they had no legal effect and could not constitute an obstacle to investigating, identifying, and punishing the persons responsible for violations of rights enshrined in the American Convention.⁴⁴

26. In summary, whenever amnesty laws or similar legislative measures render ineffective and meaningless the obligation of the states party to ensure judicial clarification of the facts of crimes of international law, they are incompatible with the American Convention, independent of whether the violations in question may be attributed to state agents or private persons.

27. The states must adopt the measures necessary to facilitate victims' access to adequate and effective remedies both for reporting the commission of these crimes and to attain reparation for the harm suffered and in this way help prevent their repetition. The "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law" provide that the states must: (a) make known, by official and

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reparación para lograr la superación del conflicto armado interno", Remarks by Mr. Michael Fröling, Director of the Office in Colombia of the United Nations High Commissioner for Human Rights, "Jornadas de concertación social para superar el fenómeno del Paramilitarismo," First Committee of the Senate, April 2, 2004, Bogota.

⁴¹ IACHR Report N° 28/92, Argentina, *Annual Report of the IACHR 1992-1993*, para. 41; Report N° 29/92, Uruguay, *Annual Report of the IACHR 1992-1993*, para. 51; Reports N° 34/96 and N° 36/96, Chile, *Annual Report of the IACHR 1996*, paras. 76 and 78 respectively; Report N° 25/98, Chile, *Annual Report of the IACHR 1997*, para. 71; and Report N° 1/99, El Salvador, *Annual Report of the IACHR 1998*, para. 170.

⁴² I/A Court H.R., *Loayza Tamayo Case, Reparations*, (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C N° 42, para. 170.

⁴³ I/A Court H.R., *Barrios Altos Case*. Judgment of March 14, 2001. Series C N° 75, para. 41.

⁴⁴ *Id.* These criteria coincide with the position expressed by other intergovernmental organs. The Human Rights Committee of the United Nations stated its concern over amnesties granted by Decree-laws Nos. 26479 and 26492, and concluded that those laws were incompatible with the State's international obligations. See *Preliminary Observations of the Human Rights Committee*, Peru, CCPR/C/79/Add.67, July 25, 1996. In addition, the United Nations Committee Against Torture stated its concern over the practice of promulgating amnesty laws that foster impunity in torture cases. See *Summary record of the public part of the 333rd meeting*: Panama and Peru. 20/05/98. CAT/C/SR.333.

private mechanisms, all remedies available against violations of international human rights and humanitarian law norms; (b) adopt, during judicial, administrative, or other proceedings that have a negative impact on the victims' interests, measures to protect their privacy, as appropriate, and guarantee their security, and that of their next-of-kin and witnesses against any act of intimidation or retaliation; and (c) use all appropriate diplomatic and legal means for the victims to be able to exercise their right to pursue remedies and obtain reparation for violations of international human rights and humanitarian law norms.⁴⁵

28. Observance of the rule of law requires that individuals, institutions, and the state itself act under the law's empire, consistent with the principles of non-discrimination, legality, due process, and independence of the judiciary. The right to an effective remedy before the competent national judges or courts is one of the basic pillars of the rule of law in a democratic society,⁴⁶ and international law demands that the states guarantee that human rights violations are investigated, that the persons responsible are prosecuted and punished, and that they provide as well for reparation for the harm caused to the victims. The Inter-American Court has highlighted the intrinsic connection between the duties of the state to respect, guarantee, and uphold human rights, and effective judicial protection.⁴⁷ In this regard, the Court has indicated that in order to fully guarantee the rights recognized by the American Convention, it does not suffice to investigate the facts and prosecute the persons responsible, but it is necessary, as well, that state activity be aimed at making reparation to the injured party.

C. Victims' right to reparation for the harm caused

29. The equality of citizens before the law and legal institutions is one of the fundamental aspects of the rule of law. Re-establishing the conditions of equality that make it possible for the victims of the conflict to recognize their status as citizens and regain trust in the institutions is of fundamental importance for attaining peace. The victims of crimes committed during an armed conflict have the right to adequate reparation for the harm suffered, which should take the form of individual measures of restitution, compensation, and rehabilitation, measures of satisfaction generally, and guarantees of non-repetition, making it possible to re-establish their *status quo ante*, without discrimination.⁴⁸

⁴⁵ See United Nations, Economic and Social Council, Final Report of Special Rapporteur Cherif Biassiouni pursuant to Resolution 1999/33 of the Commission on Human Rights on "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms" and "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law," attached to the report, *E/CN.4/2000/62 January 18, 2000*, p. 9.

⁴⁶ I/A Court H.R., *Castillo Páez Case*. Judgment, November 3, 1997. Series C N° 34, para. 82. See also I/A Court H.R., *The Mayagna (Sumo) Community of Awas Tingni Case*. August 31, 2001. Series C N° 79, para. 112.

⁴⁷ I/A Court H.R., *Velásquez Rodríguez Case*. Preliminary Objections. Judgment of June 26, 1987. Series C N° 1, para. 90.

⁴⁸ The Inter-American Court has noted that measures of reparation should tend to wipe out the effects of the violations committed. See I/A Court H. R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 237; *Cantos Case*. Judgment of November 28, 2002. Series C N° 97, para. 108; *Caracazo Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of August 29, 2002. Series C N° 95, para. 78. Those measures include the different ways in which a state may address its international responsibility, which under international law consist of measures of restitution, compensation, rehabilitation, satisfaction, and measures of non-repetition. See United Nations, *Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law, E/CN.4/Sub.2/1990/10, July 26, 1990*. See also, I/A Court H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C N° 48, para. 31; *Suárez Rosero Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999. Series C N° 44, para. 41; *Castillo Páez Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C N° 43.

30. The applicable standards establish that individual measures should be sufficient, effective, prompt, and proportional to the gravity of the crime and the extent of the harm suffered, and should be aimed at re-establishing the victim's situation before the violation.⁴⁹ These measures may consist of re-establishing rights such as personal liberty, in the case of persons who have been detained or kidnapped, and return to the place of residence in the case of displaced persons. In addition, the victims who have been dispossessed of their lands or properties for fear of the violence of the actors in the armed conflict have the right to restitution.⁵⁰

31. When *restitutio in integrum*⁵¹ is not possible because of the nature of the crime, the persons responsible must compensate the victim or his or her next-of-kin for the damages resulting from the crime. The state should endeavor to pay compensation to the victim when the person responsible for the illicit conduct has been unable or unwilling to carry out his or her obligations.⁵² In addition, the situation of the victim may require measures of rehabilitation such as medical and psychological care, legal services, and social support services.

32. General guarantees of satisfaction require measures aimed at remedying the injury suffered by the victim, including the cessation of continuing violations; verification of the acts constituting international crimes; public and complete disclosure of the results of the investigations aimed at establishing the truth of what happened, without giving rise to unnecessary risks for the security of victims and witnesses; the search for the remains of the dead or disappeared; the issuance of official declarations or judicial decisions to re-establish the dignity, reputation, and rights of the victims and of the persons linked to them; public recognition of the events and the responsibilities; recovery of the memory of the victims; and teaching the historical truth.⁵³

33. Guarantees of non-repetition require that measures be adopted aimed at preventing new human rights violations. They require dissolving parastatal armed groups; derogating laws that favor the commission of human rights violations or international humanitarian law; effective control of the Armed Forces and security forces by the civilian authorities; resorting to military courts exclusively for service-related crimes; strengthening the independence of the judiciary; protecting the work of judicial officers, human rights defenders, and journalists; training for citizens and state

⁴⁹ See United Nations, Economic and Social Council, Final Report of the Special Rapporteur Cherif Biassiouni pursuant to Resolution 1999/33 of the Commission on Human Rights on "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms" and "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law," attached to the report, *E/CN.4/2000/62 January 18, 2000*, p. 10, Principles IX(15) and X(21)(22)(23).

⁵⁰ See interview with Salvatore Mancuso in *El Espectador* of November 3, 2004, in which he states: "it's true that in the course of the conflict we have acquired some properties that have served as infrastructure for the defense scheme. You tell me that we've expropriated lands. I'll tell you something: when I was trained in the self-defense scheme, the ones who were being displaced were the ranchers, the peasant farmers. In other words, displacement goes way back." See also, "Los señores de la tierra. Grupos paramilitares se están apoderando, a sangre y fuego, de las tierras más valiosas del país. Las víctimas están desesperadas y no tienen quién les devuelva su patrimonio," in *La Semana* Issue N° 1152, May 31 to June 7, 2004, p. 224, in which reference is made to the methods and strategies used by paramilitary groups in different regions of the country to usurp titles through assassination, forced displacement, issuing unregistered deeds, and corruption.

⁵¹ I/A Court H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999, Series C N° 48, para. 31; *Suárez Rosero Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999, Series C N° 44, para. 41.

⁵² See United Nations, Economic and Social Council, Final Report of the Special Rapporteur Cherif Biassiouni pursuant to Resolution 1999/33 of the Commission on Human Rights on "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms" and "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law," attached to the report, *E/CN.4/2000/62 January 18, 2000*, p. 10, Principle IX(16)(17)(18)(19).

⁵³ *Id.* Principle X(25).

agents on human rights issues and compliance with the codes of conduct and ethical standards; and creating and improving mechanisms for preventive intervention and conflict resolution.⁵⁴

III. CONTEXT: ORIGIN AND CHARACTERISTICS OF THE INTERNAL ARMED CONFLICT IN COLOMBIA

A. Historical Origins

34. After having left behind the bipartisan (Liberal vs. Conservative) civil wars of the XIX and early XX centuries, Colombian society faced a period known as "*La Violencia*" after the change in government in 1946 that saw power change hands from the Liberal Party to the Conservative party. In the 1950s, a violent confrontation occurred between the two political groups and the persecution of Liberal Party members in the rural areas laid the foundation for the rise of armed groups. The fall of the military government of General Rojas Pinilla on May 10, 1957 ushered in a period of reconciliation during which Liberals and Conservatives participated in the government through the *Frente Nacional*, or National Front, taking turns in government, in an effort to maintain stability. During this period, the armed resistance groups linked to the Liberal party disbanded, laid down their arms, and rejoined civilian life.

35. In the 1960s, 1970s, and 1980s, new revolutionary groups organized, and there was renewed violence. That period saw the emergence of the *Fuerzas Armadas Revolucionarias de Colombia* ("FARC"), the *Ejército de Liberación Nacional* ("ELN"), the *Ejército Popular de Liberación* ("EPL"), the *Movimiento 19 de Abril* ("M-19"), the indigenous guerrilla group *Movimiento Armado Quintín Lame*, the *Autodefensa Obrera* ("ADO"), and movements that emerged as dissident factions of the foregoing groups, such as the Ricardo Franco, among others. The rise of these groups and the failure of efforts to reach peace agreements spurred on the development of a new type of violence called "*bandolerismo*" or banditry, which in the mid-1960s reached critical proportions. Drug-trafficking emerged in this context as a destabilizing factor, through the violence used by the drug cartels to control politics and the trade in cocaine in the late 1970s.

36. The State reacted to the resurgence of violence and in 1965 promulgated, as a transitory provision, under the state of emergency, Decree 3398, which provided at its Article 25 that "... all Colombians, men and women, not included in the call to obligatory service, may be employed by the Government in activities and jobs with which they would contribute to re-establishing normality."⁵⁵ The decree also indicates at Article 33, paragraph 3 that "the Ministry of National Defense, through the authorized commands, may provide, when it considers it advisable, as private property, arms that are considered as being exclusively for the use of the Armed Forces," with which groups of civilians armed legally.⁵⁶ This Decree became permanent legislation in 1968⁵⁷ and the so-called "self-defense groups" were formed under these provisions, with the support of the military forces and National Police.

⁵⁴ *Id.*

⁵⁵ Decree N° 3398 of December 24, 1965, "By which the national defense is organized" ("*Por el cual se organiza la defensa nacional*").

⁵⁶ *Id.*

⁵⁷ Law 48 of 1968, "By which some legislative decrees are adopted as legislation, powers are granted to the President of the Republic and the assemblies, and reforms are introduced to the Substantive Labor Code and other provisions are issued" ("*Por la cual se adoptan como legislación permanente algunos decretos legislativos, se otorgan facultades al Presidente de la República y a las asambleas, y se introducen reformas al Código Sustantivo del Trabajo y se dictan otras disposiciones*").

37. These paramilitary self-defense groups had ties to economic and political sectors in certain parts of the country, and were especially strengthened in the late 1970s and early 1980s. During that period, the paramilitary groups also established close ties with drug-trafficking. Many of their key leaders became landowners and used violence to defend the drug business and their economic interests *vis-à-vis* the attempts of the dissident armed groups to extort and expropriate them. By the 1980s, it became clear that these groups were responsible for committing selective assassinations and massacres of civilians.

38. Among the criminal acts perpetrated at that time by the paramilitary groups was the massacre of 19 merchants who were traveling from Cúcuta to Medellín in a caravan of vehicles in 1987. The merchants and drivers were stopped in Puerto Boyacá by a paramilitary group that acted with the sponsorship and collaboration of the official forces in the area. The victims were assassinated and their remains destroyed and cast into a tributary of the Magdalena river. The Inter-American Court of Human Rights established the responsibility of the Colombian State for that massacre in view of its role in the formation of these groups under the legislation then in force and the direct participation of members of the National Army in the commission of acts violative of the American Convention.⁵⁸ This massacre of civilians by paramilitary forces, with the collaboration of state agents, was followed by the assassination on January 18, 1989, at the hands of the same paramilitary group, of the members of the judicial commission that had traveled to the area to investigate the fate of the 19 merchants. The alleged responsibility of state agents in this massacre, known as the La Rochela massacre, is being examined by the IACHR.⁵⁹

39. After the La Rochela massacre the State began to adopt measures, including legislative measures, to counter the armed control exercised by paramilitary groups in several parts of Colombia. On April 19, 1989, the Colombian Government promulgated Decree 0815⁶⁰ by which Articles 25 and 33(3) of Decree 3398 were suspended to ensure that they would not be interpreted as legal authorization for organizing armed civilian groups in violation of the Constitution and statutory law.⁶¹

40. On June 8, 1989, the State issued Decree 1194 "by which additions are made to Legislative Decree 0180 of 1988, to punish new forms of criminal conduct, as it is required for re-establishing public order." In its section on considerations, the norm states that "the events

⁵⁸ See I/A Court H. R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, para. 124.

⁵⁹ See IACHR, Admissibility Report N° 42/02, La Rochela Massacre (Colombia), *Annual Report of the IACHR 2002*.

⁶⁰ Decree 0815 "suspending some provisions incompatible with the state of siege."

⁶¹ Decree 0815 reads: "That bands of paid assassins, death squads, self-defense or private justice groups, mistakenly called paramilitaries, are responsible for acts that disturb the public order; That by Legislative decree 3398 of 1965, adopted as permanent legislation by Article 1 of Law 48 of 1968, the use of civilian personnel in activities and jobs for re-establishing normalcy was authorized; That the interpretation of these provisions by some sectors of public opinion has caused confusion as to their scope and purposes in that they may be taken as legal authorization to organized armed civilian groups that end up acting outside the Constitution and the laws; That operations to re-establish public order are an exclusive function of the Army, the National Police, and the state security forces; That the National Government considers, in the exercise of the constitutional responsibilities incumbent on it, that in the current circumstances that fact of the laws mentioned being in force hinders re-establishment of public order; That it is necessary to suspend those laws, since their interpretation by some sectors of public opinion contributes to creating an environment of confusion that stands in the way of pooling efforts to achieve reconciliation and have a negative impact on the action of the Army, the National Police, and security forces, to the extent that they erode the necessary solidarity of all sectors of the Nation; That the National Government has always fought the existence of armed groups operating outside of the Constitution and the laws, and that accordingly it considers it necessary to suspend those laws, so that there not be any ambiguity whatsoever about the will of the Executive and of the Army, National Police, and security forces to confront those who are part of those groups, organize them, financial them, promote them, in on any way collaborate with them..."Decree 0815 "suspending some laws incompatible with the state of siege." See also, Supreme Court of Justice, Judgment of May 25, 1989, Justice Fabio Morón Díaz writing for the Court, declaring unconstitutional para. 3 of Article 33 of Legislative Decree 3398 of 1965.

unfolding in the country have shown that there is a new form of crime entailing the commission of atrocious acts by armed groups, ill-named “paramilitary,” constituted in death squads, bands of paid assassins, self-defense or private justice groups, whose existence and activities has a serious detrimental impact on the country’s social stability, which should be repressed so as to re-establish public order and peace.”⁶² Accordingly, this decree is an instrument for defining the crimes of promoting, financing, organizing, directing, fostering, and carrying out acts “aimed at obtaining the formation or entry of persons to armed groups of the sort commonly known as death squads, bands of paid assassins, or private justice groups, mistakenly called paramilitary groups.”⁶³

41. Considering that members of the military forces and National Police maintained ties with these groups, Decree 1194 also defined as a crime training or equipping “persons in military tactics, techniques, or procedures for undertaking criminal activities” and stipulated as an aggravating factor that the conduct was committed by active and retired members of the military forces or National Police or by state security bodies. As the Inter-American Court of Human Rights has established, even though the state alleges that it does not maintain an official policy of encouraging the formation of paramilitary groups, this does not release it from responsibility for the interpretation, for years, of the legal framework that gave them cover; for their disproportionate use of the armaments it provided to them; and for failing to take the measures necessary to prohibit, prevent, and duly punish their criminal activities. Moreover, members of the military forces and National Police in certain areas of the country encouraged the self-defense groups to take an offensive attitude towards any person considered a guerrilla sympathizer.⁶⁴

42. In parallel fashion, successive governments undertook to negotiate peace with dissident armed groups. In the early 1990s, several thousand members of the M-19, part of the EPL, and the Quintín Lame demobilized as a result of the peace agreement that they reached with the government. The FARC and the ELN did not demobilize, and, according to figures provided by the Ministry of Defense, as of 2003 they had, respectively, approximately 13,000 and 4,000 members. For their part, and despite legal prohibitions, the paramilitary groups continued to operate and in the 1990s they were responsible for a large number of political killings in Colombia. In approximately 1997, the paramilitary groups consolidated nationwide in an organization called *Autodefensas Unidas de Colombia* (hereinafter “the AUC”), organized in rural and urban units (*bloques*), whose publicly-stated purpose was to act in coordinated fashion against the guerrillas. According to figures provided by the Ministry of Defense, by 2003 the AUC had approximately 13,500 members. These forces, paid and well-equipped, are organized in a series of units (*bloques*) known by the names Norte, Central Bolívar, Centauros, Calima, Héroes de Granada, Pacífico, Sur del Cesar, Vencedores de Arauca, and Élmér Cárdenas, which operate through 49 fronts with a presence in 26 of Colombia’s 32 departments and in 382 of its 1,098 municipalities.

43. The illegal armed groups – both guerrillas and paramilitaries— have created a confusing combination of simultaneous alliances and clashes with drug-trafficking forces and with the official forces. In addition, after relative success in the offensive against the drug cartels in the mid-1990s, these groups assumed the business of controlling the initial phases of narcotics production. The FARC and the ELN, and, since the mid-1990s, the paramilitary groups, also extort and kidnap. In recent decades, organized crime has had an impact on national life as well, affecting elements such as elections and the operation of the judicial system in large parts of Colombian territory.

⁶² Decree 1194 “which adds to Legislative decree 0180 of 1988, to enact new criminal law definitions, as the establishment of public order so requires,” of June 8, 1989.

⁶³ *Id.*

⁶⁴ I/A Court H.R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, para. 124.

44. The problem of violence in Colombia is long-standing and very complex. The stability of democratic institutions is negatively impacted by profound social inequalities and high indices of violence whose significance cannot be reduced to terrorist violence alone. This is a situation that demands solutions, the search for which cannot be further delayed. Nonetheless, the road to peaceful coexistence is not simple: successive governments have failed in their efforts to eradicate the violence or have had only partial or relative successes. Given this context, the complexity of the situation will no doubt require extraordinary efforts to regain peace and ensure the rule of law for all Colombians.

B. The impact of the conflict on the civilian population

45. In the last 15 years, the excesses committed by the actors in the internal armed conflict –in particular by the AUC and the FARC-EP– have taken the form of serious violations of human rights and/or international humanitarian law against the civilian population. Specifically, massacres have been used as a strategy against members of the most vulnerable sectors such as indigenous peoples, Afro-descendant communities, and the displaced, and selective assassinations and forced disappearances were committed against human rights defenders⁶⁵, judicial officers, trade union and social movement leaders, journalists, and candidates for elective office who are repeatedly designated as military targets, mainly by the AUC. The dissident armed groups –mainly the FARC-EP– have also used tactics such as detonating explosives indiscriminately⁶⁶ and kidnapping⁶⁷ in violation of the most basic principles of international humanitarian law, resulting in numerous civilian victims.

46. The concentration of violence in certain areas of the country appears to reflect strategic objectives of military and economic domination. The departments hardest hit have been Antioquia, Bolívar, Magdalena, Norte de Santander, Cauca, Meta, Arauca, Caquetá, Cundinamarca, and Chocó, although there have been violent acts and displacement in every department. The presence of the armed actors in local districts and municipalities has translated into constant acts of violence against or punishment of members of the community, who are perceived to be sympathizers of adversary groups merely because they never presented a resistance to the guerrilla, now or in the past,⁶⁸ while also imposing models of conduct in the community and acts of social cleansing.

⁶⁵ See, for example, Report N° 5/03 Jesús María Valle Jaramillo, P519/2001, Colombia, *Annual Report of the IACHR 2003*. Human rights defenders continue to be targets of constant attacks by the actors in the armed conflict, mainly the AUC in areas in which there is a frequent presence of the military forces or National Police, in an effort to stop their investigations and reports of grave acts of violence, aimed at judicially clarifying such incidents and making reparation to the victims. In addition, they have been confronted repeatedly by statements by President Uribe himself, calling into question their legitimacy and indicating that their orientation and activities are to be investigated. Indeed, the IACHR has received reports indicating that over the last two years there have been situations in which human rights defenders and social leaders have been deprived of liberty for prolonged periods, without the evidence needed to open proceedings. In this regard, the IACHR has been consistent in stating that the punitive power of the State and its judicial apparatus should not be manipulated to harass those who are devoted to legitimate activities.

⁶⁶ See, for example, Office in Colombia of the United Nations High Commissioner for Human Rights, “Informe de la Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre su Misión de Observación en el Medio Atrato” May 20, 2002 <http://www.hchr.org.co/documentoseinformes/informes/tematicos/informes.php3?cod=1&cat=>.

⁶⁷ See, for example, IACHR Press Release 13/03 “The IACHR deplores the death of the Governor of Antioquia and other FARC hostages,” Washington D.C., April 7, 2003 in <http://www.cidh.org/Comunicados/Spanish/2003/13.03.htm>.

⁶⁸ See, for example, Report N° 41/02 Admissibility P11,748, José del Carmen Álvarez Blanco *et al.* (Pueblo Bello), Colombia, October 9, 2002, *Annual Report of the IACHR 2002*. The case regarding the massacre of the campesino farmers of Pueblo Bello was referred to the jurisdiction of the Inter-American Court on March 23, 2004.

47. At least three stages have been identified in the dynamic of the conflict over the last 15 years.⁶⁹ In an initial phase from 1988 to 1991 the parties faced the consequences of the failure of a series of peace initiatives, culminating in the violent rejection of the 1991 Constitution by the FARC. This period was followed by a second stage, from 1992 to 1996, during which the intensity of the conflict diminished and stabilized. Finally, a third stage, from 1997 to 2002, brought a renewed intensity to the conflict, especially in 2000 and 2001, with peaks of paramilitary violence against the civilian population,⁷⁰ including members of the Army, the Police, the FARC, and AUC killed in combat, and, significantly, civilians who were not legitimate military targets and were defenseless.

48. The IACHR has repeatedly stated its concern over the failure of the courts to clarify the facts in the overwhelming majority of these incidents.⁷¹ In those cases in which it is possible for the organs of the inter-American system to exercise their jurisdiction, for example, in cases in which state agents are alleged to be responsible by act or omission for the death out of combat of persons who cannot be considered legitimate military targets, the IACHR has processed petitions alleging the violation of rights protected in the American Convention. A large number of complaints have been resolved by the Commission⁷² and in some cases, they have been referred to the jurisdiction of the Inter-American Court of Human Rights.⁷³

49. Official sources allege that as of 2003, there has been a decline in the number of homicides and massacres perpetrated both by dissident armed groups – the FARC-EP, ELN, and EPL— and by the AUC. According to these sources, there was a 29% reduction in the number of homicides perpetrated by dissident armed groups and a 63.7% reduction in the number of homicides perpetrated by the AUC from August 2002 to June 2003, in relation to the period from

⁶⁹ Jorge Restrepo, Michael Spagat, and Juan Vargas, "The Dynamics of the Colombian Civil Conflict: A New Data Set," Royal Holloway College, University of London, June 2003.

⁷⁰ *Noche y Niebla*, Banco de datos, CINEP and Justicia y Paz, 2002. See also *Cifras de violencia 1996-2002* Justice and Security Bureau, National Planning Department (*Departamento Nacional de Planeación*), 1996-2002, Vol. 0 N° 1.

⁷¹ The IACHR has expressed its points of view on the general human rights situation in Colombia periodically in chapter IV of its annual reports for 1995, 1996, 1999, 2000, 2001, 2002, and 2003, and in its "Third Report on the Human Rights Situation in Colombia", *OEA/Ser.L/V/II.102 Doc. 9 rev. 1*, February 26, 1999.

⁷² Report N° 1/92 Orlando García Villamizar *et al.* Case 10.235, *Annual Report of the IACHR 1991*. Report N° 33/92 Alirio de Jesús Pedraza, Case 10.581, *Annual Report of the IACHR 1992-1993*. Report N° 32/92 Martín Calderón Jurado, Case 10.454, *Annual Report of the IACHR 1992-1993*. Report N° 2/94 Pedro Miguel González Martínez *et al.* (19 workers of the Honduras and La Negra Farms), Case 10.912, *Annual Report of the IACHR 1993*. Report N° 1/94 Álvaro Garcés Parra *et al.*, Case 10.473, *Annual Report of the IACHR 1993*. Report N° 24/93 Olga Esther Bernal Dueñas, Case 10.537, *Annual Report of the IACHR 1993*. Report N° 23/93 Irma Vera Peña, Case 10.456 *Annual Report of the IACHR 1993*. Report N° 22/93 Patricia Rivera *et al.* Case 9.477, *Annual Report of the IACHR 1993*. Report N° 15/95 Hildegard María Feldman, Case 11.010, *Annual Report of the IACHR 1995*. Report 3/98 Tarcisio Medina Charry, Case 11.221, *Annual Report of the IACHR 1997*. Report N° 26/97 Arturo Ribón Ávila, Case 11.142, *Annual Report of the IACHR 1997*. Report N° 5/98, Álvaro Moreno Moreno, Case 11.019, *Annual Report of the IACHR 1997*. Report N° 62/99 Santos Mendivelso Coconubo, Case 11.540, *Annual Report of the IACHR 1998*. Report N° 61/99 José Alexis Fuentes Guerrero *et al.*, Case 11.519, *Annual Report of the IACHR 1998*. Report N° 36/00 Caloto, Case 11.101, *Annual Report of the IACHR 1999*. Report N° 35/00 Los Uvos, Case 11.020, *Annual Report of the IACHR 1999*. Report N° 7/00 Amparo Tordecilla Trujillo, Case 10.337, *Annual Report of the IACHR 1999*. Report N° 62/09 Riofrío Massacre, Case 11.654, *Annual Report of the IACHR 2000*. Report N° 63/01 Prada González and Bolaño Castro, Case 11.710, *Annual Report of the IACHR 2000*. Report N° 64/01 Leonel de Jesús Izasa Echeverri, Case 11.712, *Annual Report of the IACHR 2000*.

⁷³ The IACHR has referred applications on the international responsibility of the Republic of Colombia to the Inter-American Court in the cases regarding the disappearance of Isidro Caballero Delgado and María del Carmen Santana perpetrated in Cesar in 1989; the massacre of civilians in Las Palmeras (Putumayo) perpetrated in 1991; the massacre of 19 merchants in the middle Magdalena valley in 1987; the massacre of civilians in Mapiripán (Meta) perpetrated in 1997; the disappearance of civilians in Pueblo Bello (Córdoba) in 1990; and the massacres of civilians in Ituango (Antioquia) perpetrated in 1996 and 1997.

August 2001 to June 2002⁷⁴ and an 84% drop in the number of massacres perpetrated in the same period by the AUC. The trend in 2004 suggests a 53% reduction in the number of victims of massacres, in relation to the historical high in early 2002. As the IACHR has already indicated, this decline in the number of massacres has been attributed to a change in strategy geared to committing more selective homicides, which in turn have a lesser impact and allegedly a smaller political cost,⁷⁵ together with the partial compliance of the unilateral cease-fire that resulted from the rapprochement between the Government and the AUC to reach demobilization agreements.

50. Other sources note that the levels of sociopolitical violence have remained high from 2002 to 2004, with more than 6,000 persons killed out of combat.⁷⁶ The statistics prepared by the CINEP and *Justicia y Paz* data bank record 4,457 deaths from January to December 2003 attributable to extrajudicial executions because of abuse of authority (199), political persecution or intentional homicide (1,150), homicides involving violations of international humanitarian law (422), death in combat (1,849), and political assassinations by undetermined perpetrators (837).⁷⁷ These statistics attribute the commission of 2,378 of these deaths to paramilitary groups and 235 to the Army. In addition, they attribute a total of 294 homicides to the FARC-EP and the ELN, not counting other serious breaches of international humanitarian law.⁷⁸

51. Even though official sources refer to a 120% increase in the number of arrests of members of paramilitary groups and a 49% increase in the number killed in 2003, the continuation of acts of violence perpetrated against the civilian population has led the IACHR to express its concern over the manner in which paramilitary groups operate in vast areas of Colombian territory despite the presence of the military forces and the National Police. The Commission has repeatedly stated its position on the State's responsibility for the ties and degrees of cooperation between some members of the security forces and paramilitary groups in the commission of acts that constitute serious human rights violations.

52. The widespread violations of human rights and/or international humanitarian law perpetrated against the civilian population, mainly in rural areas, are aimed at causing terror and displacement, and the unlawful appropriation of land and other property,⁷⁹ continues to exacerbate the humanitarian crisis affecting more than two million persons in Colombia. Given this situation, it is necessary to find ways to put an end to the violence and to re-establish lasting peaceful coexistence.

⁷⁴ Ministry of Defense of the Republic of Colombia, *Informe Anual de Derechos Humanos y Derecho Internacional Humanitario 2002 y Avances Período Presidencial, 2003*, p. 167.

⁷⁵ See *Annual Report of the Inter-American Commission on Human Rights 2003*, Chapter IV, Colombia, para. 13.

⁷⁶ See CCJ "Colombia: en contravía de las recomendaciones internacionales sobre derechos humanos. Balance de la política de seguridad democrática y la situación de los derechos humanos y derecho humanitario. Agosto de 2002 a agosto de 2004," pp. 10 to 14.

⁷⁷ CINEP and Justicia y Paz, "Cifras de la violencia política enero-diciembre de 2003" and "Los Derechos Fundamentales" in *Noche y Niebla 28*, p. 27.

⁷⁸ *Id.*

⁷⁹ See interview with Salvatore Mancuso in *El Espectador* of November 3, 2004, in which he states: "it's true that in the course of the conflict we have acquired some properties that have served as infrastructure for the defense scheme. You tell me that we've expropriated lands. I'll tell you something: when I was trained in the self-defense scheme, the ones who were being displaced were the ranchers, the peasant farmers. In other words, displacement goes way back." See also, "Los señores de la tierra. Grupos paramilitares se están apoderando, a sangre y fuego, de las tierras más valiosas del país. Las víctimas están desesperadas y no tienen quién les devuelva su patrimonio," in *La Semana* Issue N° 1152, May 31 to June 7, 2004, p. 224, in which reference is made to the methods and strategies used by paramilitary groups in different regions of the country to usurp titles through assassination, forced displacement, issuing unregistered deeds, and corruption.

C. Background on efforts to resolve the internal armed conflict in Colombia and its legal framework

53. Successive governments have undertaken efforts to end, through negotiations, the political violence that has affected Colombia in recent decades. These efforts have been focused on reaching agreements for the demobilization of illegal armed groups. The agreements were formalized under provisions adopted either by executive decree or by statutes passed by the National Congress. These provisions provided procedural benefits such as termination of the criminal actions or of the penalty imposed *in absentia* in relation to the commission of political crimes, for example rising up in arms against the State, for those who demobilized.

54. In March 1981, during the administration of President Julio César Turbay Ayala (1978-1982), the Colombian Congress declared, by Law 37 of 1981,⁸⁰ a conditional amnesty favoring those in arms who had perpetrated political crimes and crimes related to political crimes. The law included an exception for kidnapping, extortion, and homicide out of combat, among others, and also excluded from the benefit those who were free illegally as a result of having escaped after having been taken prisoner. This provision, applied retroactively, set a four-month period for availing oneself of this benefit. In February 1982, by application of Legislative decree 474, it was declared that the criminal action and the penalty had extinguished in the case of political crimes and crimes related to them.⁸¹

55. On November 19, 1982, under the administration of President Belisario Betancur (1982-1986), the Congress declared a general amnesty for political and politically-related crimes by means of Law 35.⁸² In June 1985 the Congress authorized the President of the Republic to grant pardons to those convicted of political crimes, with the possibility of extending the measure to related crimes.⁸³ In December 1989, under the administration of Virgilio Barco Vargas (1986–1990), the Congress authorized the President to grant a pardon to those who had committed political crimes before the entry into force of Law 77.⁸⁴ One month later, the Government regulated Law 77 of 1989, on the granting of pardon, which set the framework for the peace agreement signed by the National Government and the M-19 on March 9, 1990.⁸⁵

56. In January 1991, the administration of President César Gaviria Trujillo (1990-1994) adopted measures that made it possible to extinguish the penalty and the criminal action for political and related crimes by Decree 213.⁸⁶ This provision provided a framework for the peace agreements

⁸⁰ Law 37 of 1981 (March 23) by which a conditional amnesty is declared. Official Gazette N° 35760, May 14, 1981, p. 442.

⁸¹ Legislative Decree N° 474 of 1982 (February 19) By which measures are issued aimed at the prompt re-establishment of internal public order.

⁸² Law 35 of 1982 (November 19) by which an amnesty is decreed and provisions issued aimed at re-establishing and preserving peace. Official Gazette N° 36133 *bis*, November 20, 1982, p. 529.

⁸³ Law 49 of 1985 (June 4) granting an authorization to the President of the Republic, regulating the exercise of the power to grant pardons, and issuing other provisions. Official Gazette N° 37000, June 5, 1985, p. 1079.

⁸⁴ Law 77 of 1989 (December 22) authorizing the President of the Republic to grant pardons and regulating cases of cessation of criminal proceedings and issuance of resolutions of dismissal (*autos inhibitorios*) in pursuit of the policy of reconciliation. Official Gazette N° 39116, December 22, 1989, p. 1.

⁸⁵ Decree N° 0206 of 1990 (January 22), regulating Law 77 of 1989 by the President of the Republic of Colombia, in the exercise of the powers granted by Article 120(3) of the Constitution, Official Gazette N° 39152, January 22, 1990, p. 1.

⁸⁶ Decree N° 0213 of 1991 (January 23), issuing measures aimed at re-establishing public order, by the President of the Republic of Colombia, in the exercise of the powers conferred on him by Article 121 of the Constitution, and developing Decree 1038 of 1984, Official Gazette N° 39642, January 23, 1991, p. 1.

entered into between the National Government and the *Partido Revolucionario de los Trabajadores* ("PRT") (January 25, 1991), the EPL (February 15, 1991) and the *Movimiento Quintín Lame* (May 27, 1991). The powers of the Executive and the Legislative branches to grant pardons and amnesties were defined in Articles 150 and 201 and transitory article 30 of the Constitution adopted in July 1991.⁸⁷ In August 1991 the Government adopted Decree 1943 as a framework for the peace agreement signed with the "Ernesto Rojas" Commands, on March 20, 1992.⁸⁸ In December 1993, Congress established grounds for extinguishing the criminal action and the penalty in cases of political and related crimes, by Law 104⁸⁹ as a framework for the peace agreements signed in 1994 with the *Corriente de Renovación Socialista* (CRS), the *Milicias Urbanas of Medellín*, and the "*Frente Francisco Garnica*" of the *Coordinadora Guerrillera*.

57. In December 1995, during the administration of President Samper Pizano, the Congress through Law 241 modified and expanded Law 104 of 1993, making it possible to grant legal benefits to the self-defense groups, or *autodefensas*, if they would first voluntarily leave the organization and surrender to the authorities.⁹⁰ In December 1997, Congress adopted Law 418⁹¹, which in its Title III establishes grounds for extinguishing the criminal action and penalty in political and related crimes. In addition, the provision extends the applicability of Law 104 of 1993, which had already been extended, modified, and expanded by Law 241 of 1995. This legislation covered the peace agreement signed by the National Government and the MIR-COAR on July 29, 1998, under Decrees 1,247 of 1997 and 2,087 of 1998.

58. The administration of Andrés Pastrana issued Resolutions No. 85 of October 14, 1998 and No. 39 of 1999 by which the so-called "*zona de distensión*" (literally, "zone for easing of tensions," often referred to as a "demilitarized zone") was established in the municipalities of San Vicente del Caguán (in the department of Caquetá) and La Macarena, Mesetas, Uribe, and Vista Hermosa (in the department of Meta), in-keeping with the definition of Law 418 of 1997. The objective of establishing this zone— with a total area of 42,139 km²— was to demarcate a space for negotiations with the FARC. These resolutions had the effect of suspending arrest warrants in force for those participating in the negotiations. The zone was originally established on October 23, 1998, for a period of three years and four months, and was extended in December 1999 by Resolution No.

⁸⁷ Article 150(17) provides that Congress has the power to "Grant, by two-thirds majority vote of the members of each Chamber, and for serious motives in the public interest, general amnesties or pardons for political crimes. In the event that those favored are exempted from civil liability with respect to private persons, the State will be obligated to pay any compensation where it is due." Article 201 provides: "It is up to the Executive, in relation to the Judiciary: 1. To provide judicial officers, in keeping with the laws, the assistance necessary to enforce their rulings. 2. To grant pardons for political crimes, in keeping with the law, and to report to Congress on the exercise of this power. In no case may such pardons include the responsibility of the persons so favored with respect to private persons." Transitory Article 30 provides: "The National Government is authorized to grant pardons or amnesties for political and related crimes, committed prior to the promulgation of this Constitution, to members of guerrilla groups who rejoin civilian life in the terms of the policy of reconciliation. To that end, the National Government will issue the corresponding regulations. This benefit may not be extended to atrocious crimes or homicides committed out of combat or taking advantage of the defenselessness of the victim." Constitution of Colombia, *Gaceta Constitucional*/N° 116, July 20, 1991.

⁸⁸ Decree N° 1943 of 1991 (August 12) By which measures are issued on pardon and amnesty in the exercise of the power conferred on the President of the Republic of Colombia by Article 30 of the transitory provisions of the Constitution. Official Gazette N° 39964, August 12, 1991, p. 1.

⁸⁹ Law 104 of 1993 (December 30) by which some instruments for seeking co-existence, effective justice, and other provisions are adopted. Official Gazette N° 41158, December 30, 1993, p. 1.

⁹⁰ Law 241 of 1995 (December 26) extending the effect, modifying, and adding to Law 104 of 1993. Official Gazette N° 42719, February 14, 1996, p. 1.

⁹¹ Law 418 of 1997 (December 26) by which some instruments for seeking co-existence, effective justice, and other provisions are adopted. Official Gazette N° 43201, December 26, 1997, p. 4.

92. Also in December 1999, the Congress extended Law 418 of 1997, by adopting Law 548.⁹² The decree of the *zona de distensión* was extended again in June and December 2000. At the same time, the Congress adopted Law 589, which provided that forced disappearance, forced displacement, genocide, and torture are excluded from any pardon and/or amnesty.⁹³

59. Since the *zona de distensión* was established and the dialogue began, with the assistance of the international community, there was an upturn in the acts of violence perpetrated by illegal groups. The FARC were involved in attacks and kidnappings that took a toll of civilian victims. Finally on February 21, 2002, after almost four years, the talks broke off as the immediate consequence of the kidnapping of Jorge Eduardo Gechem Turbay, Chairman of the Senate's Peace Committee. President Pastrana immediately suspended the *zona de distensión*, thus ending his administration's effort to negotiate with the main dissident armed group.

60. These efforts to reach agreements for demobilizing members of illegal groups paid off in some cases with partial or relative gains, which have not ended the violence. The demobilization mechanisms have not been accompanied by comprehensive measures to provide relief to the victims of the violence nor to clarify the many criminal acts that remain unpunished, and therefore the factors generating the conflict in large measure persist. In addition, many of those who have benefited from past demobilizations have been victims of retaliatory attacks⁹⁴ and others have eventually chosen to join other illegal armed groups, re-engaging in the conflict.⁹⁵ In any event, the mechanisms for demobilizing armed groups have not had the impact required to break the circle of violence in Colombia.

IV. CURRENT EFFORTS TO DEMOBILIZE ILLEGAL GROUPS AND THEIR LEGAL FRAMEWORK

61. After the election and inauguration of President Álvaro Uribe Vélez in August 2002, some leaders of the AUC made public their intent to negotiate terms for the demobilization of their forces, and on December 1, 2002, they declared a unilateral cease-fire. In the ensuing months, representatives of the Government initiated contacts with members of the AUC and on July 15, 2003, a preliminary agreement was reached setting goals for demobilization by December 31, 2005. One of the main issues discussed by the parties –and in public debate—related to the incentives for demobilization

⁹² Law 548 of 1999 (December 23) "extending the effect of Law 418 of December 26, 1997 and issuing other provisions."

⁹³ Law 589 of 2000 (July 6) "by which the crimes of genocide, forced disappearance, forced displacement, and torture are defined; and issuing other provisions," Official Gazette N° 44,073 of July 7, 2000.

⁹⁴ See, for example, IACHR, *Report N° 5/97*, Case 11,227 (Colombia) Admissibility, *Annual Report of the IACHR 1996*, referring to allegations of persecution of members of the *Unión Patriótica* (UP), which was established as a political party after the peace negotiations between the FARC and the administration of Belisario Betancur. See also IACHR, *Report N° 63/01*, Case 11,710 (Colombia) in *Annual Report of the IACHR 2000*, on the extrajudicial execution of two members of the *Corriente de Renovación Socialista* (CRS) involved in the negotiation to demobilize members of the ELN who had joined the CRS in the context of the peace negotiations carried out in 1993.

⁹⁵ Some demobilized members of the EPL have entered the ranks of the paramilitary groups. In addition, this alliance has been the basis for both the FARC and the dissident wing of the EPL to attack those who demobilized and formed part of the political grouping *Esperanza Paz y Libertad*. See IACHR, *Third Report on the Human Rights Situation in Colombia OEA/Ser. L/V/III.102 doc 9 rev 1.*, para. 96. See also IACHR, *Report N° 55/04*, P475/2003 (Colombia) Admissibility.

in view of the arrest warrants and requests for extradition outstanding against members of the AUC who have committed serious human rights violations⁹⁶ and have been involved in drug-trafficking.⁹⁷

62. The current legal framework for individual and collective demobilizations rested and continues to rest, on Law 418 of 1997 which was extended by Congress by Law 782 in December 2002.⁹⁸ These laws establish, *inter alia*, that a cessation of procedure (*cesación de procedimiento*), a resolution of preclusion of the investigation (*resolución de preclusión de la instrucción*), or a resolution of dismissal (*resolución inhibitoria*) may be granted on behalf of those who confess and have been or were accused of or tried for political crimes, and have not been convicted by a firm judgment,⁹⁹ provided that they choose to participate in an individual or collective demobilization.¹⁰⁰ According to these provisions, those who have benefited from a pardon or with respect to whom a cessation of procedure has been ordered may not be tried or prosecuted for the same facts giving rise to the granting of benefits.¹⁰¹ Both Law 418 and Law 782 echo the limitation of benefits for those who have been involved in conduct constituting atrocious acts of ferocity or barbarism, terrorism, kidnapping, genocide, and homicide committed when the victim¹⁰² does not participate in combat.¹⁰³

⁹⁶ See, for example, Judgment of the Second Criminal Court of the Specialized Circuit of Antioquia of April 22, 2003, convicting and imposing a 40-year prison sentence on Salvatore Mancuso, current leader of the negotiating high command of the AUC, for committing the El Aro massacre.

⁹⁷ See, for example, "US indicts leaders of Colombian terrorist organization on narcotic trafficking charges," Press Release of the United States Attorney, Southern District of New York, of July 22, 2004, making reference to the proceedings against Diego Fernando Murillo, alias Adolfo Paz or "Don Berna" and Vicente Castaño Gil, alias "El Profe," both members of the negotiating high command of the AUC.

⁹⁸ Law 782 of 2002 (December 23) extending the effect of Law 418 of 1997, extended and modified by Law 548 of 1990, and modifying some of its provisions, Official Gazette N° 45043, December 23, 2002, p. 1. In January 2003, the Government adopted Decree 128, which regulated Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002, on returning to civilian life. Decree 128 regulates the legal, socioeconomic, educational, economic, and other benefits derived from rejoining civilian life as a result of the process of demobilization. In addition, the Decree makes reference to protection and attention for minors who lay down their weapons, providing, among other things, in keeping with the Constitution, the laws, and international treaties, that any use of minors in intelligence activities is prohibited. Moreover, it establishes the functions of the Operational Committee on Laying Down Arms (CODA: *Comité Operativo para la Dejación de las Armas*), whose role is to evaluate the will of the demobilized person to rejoin civilian life, and to assess the circumstances in which the person voluntarily left the armed organization, among other functions.

⁹⁹ If the person is deprived of liberty, the governmental authorities should accord preference to the processing of requests for legal benefits, and in the ruling granting the petition for preclusion of the investigation or cessation of the proceeding, the order for the arrest of the beneficiary should be revoked, and the arrest warrants issued should be canceled. In this section the law does not establish any restriction for granting the benefits mentioned. Article 60 of Law 418 modified by Article 24 of Law 782. Grounds for extinction of the action.

¹⁰⁰ Article 50 of Law 418 modified by Article 19 of Law 782 notes that the National Government may grant the benefit of pardon to nationals who have been convicted by firm judgment for conduct constituting a political crime when the illegal armed group with which a peace process is being pursued, of which the applicant is a member, has displayed its will to rejoin civilian life. In addition, the law provides that this benefit may be granted, upon request, to those nationals who individually and voluntarily give up their activities as members of armed groups, having displayed their will to rejoin civilian life. In other words, the law provides for grounds for extinguishment of the action and of the penalty for proceedings that involve negotiations with illegal groups and with persons who seek to rejoin civilian life individually.

¹⁰¹ Article 62 of Law 418. Nonetheless, Article 43 clarifies that these benefits may be annulled if the beneficiary commits any intentional crime within two years.

¹⁰² Law 782, at Article 6, defines a victim of political violence as a member of the civilian population who suffers harm to his or her life, physical integrity, or property because of terrorist attacks, combat, kidnappings, attacks, and massacres in the context of the armed conflict. The displaced and minors who take part in the hostilities are also considered victims.

¹⁰³ Article 50 of Law 418 modified by Article 19 of Law 782. Law 418, December 26, 1997. Official Gazette N° 43201 of December 26, 1997. Law 782 of 2002 (December 23), extending the effect of Law 418 of 1997, extended and modified by Law 548 of 1990 and modifying some of its provisions, Official Gazette N° 45043, December 23, 2002. It should be clarified that there are doubts as to whether these limitations would only apply to demobilized persons already

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63. The negotiations between the Government and the leaders of the AUC involved in the process have revolved around establishing a legal framework that encourages demobilization of the members of the AUC who are not in a position to benefit from the extinguishment of the penalty provided for by Law 782, noted *supra*. The first initiative resulting from this effort found expression in Enacting Law No. 85 of 2003, which made it possible to have sentences other than imprisonment for persons who have committed serious violations of human rights and/or international humanitarian law, presumably as an incentive for their demobilization and reincorporation to civilian life. After its debate in Congress and in the face of the serious concerns expressed by members of civil society, the Office of the United Nations High Commissioner,¹⁰⁴ the international community in general, and the IACHR¹⁰⁵, the bill was withdrawn and reworked.

64. This reformulation, called "*Pliego de modificaciones al Proyecto de Ley Estatutaria No. 85 de 2003*" ("List of Modifications to Enacting Law No. 85 of 2003"), was introduced in Congress in April 2004, and is pending consideration as of this writing. The bill proposes a new formula by which members of armed groups that have ceased hostilities and signed a peace agreement with the National Government may benefit from alternative penalties, despite their involvement in those violations of human rights and international humanitarian law that barred extinction of the criminal action or penalty under the provisions of Law 782.¹⁰⁶ The bill provides that the power to grant benefits under the alternative penalties provisions rests with the President of the Republic, after receiving a favorable opinion from a "Tribunal for Truth, Justice, and Reparation."¹⁰⁷ If the Tribunal provides an unfavorable opinion, the proceedings are referred back to the judge to enforce the sentences imposed. The President retains the power to deny the benefit, even in the event that the Tribunal has rendered a favorable opinion.

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subject to judicial proceedings, closing off the possibility of withdrawing the granting of legal benefits to those who, already reintegrated into civilian life, could be subject to allegations of crimes committed in the past. This issue will be addressed in greater detail *infra* when analyzing the provisions of Decree 128 of 2003.

¹⁰⁴ See "*Observaciones sobre el Proyecto de Ley por la cual se dictan disposiciones en procura de la reincorporación de miembros de grupos armados que contribuyan de manera efectiva a la paz nacional*", remarks by Mr. Michael Frühling, Director of the Office in Colombia of the United Nations High Commissioner for Human Rights before the First Committee of the Honorable Senate of the Republic, Bogotá, September 23, 2003.

¹⁰⁵ The IACHR has indicated as follows: "The government has also promoted approval of a bill relating to the imposition of alternative penalties which would allow the executive branch to suspend prison sentences against those found responsible for human rights violations in return for their commitment to demobilize. This bill is currently the subject of public debate and it is vital for Colombian society as a whole to be engaged in its scrutiny. This debate must be pursued in light of the clear and firm jurisprudence developed by the inter-American system on the validity and scope of legislation that has the effect of amnesty laws in favor of State actors. This jurisprudence established that States have the obligation to investigate, prosecute, and punish violations of human rights committed by private parties. Although organs of the inter-American system have not yet considered the question of granting amnesty or other forms of pardon for non-state actors as part of negotiations to put an end to a conflict and demobilize members of armed groups outside the law, the IACHR shares the concerns expressed by the Office in Colombia of the United Nations High Commissioner about the measures proposed by President Uribe. The experience gained by the IACHR over several decades shows that enactment of laws that limit the scope of judicial proceedings intended to clarify and redress basic human rights violations committed during a domestic armed conflict actually hinders the quest for true reconciliation and peace." IACHR, Chapter IV, Colombia, *Annual Report of the IACHR 2003*, para. 19.

¹⁰⁶ List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter III "Alternative Penalties Mechanism," Article 5: Peace Agreement.

¹⁰⁷ The Tribunal for Truth, Justice and Reparation, made up of three members who meet the qualifications required for serving as a judge on the Supreme Court of Justice, would have jurisdiction throughout the national territory to judge members of illegal armed groups included in peace accords signed with the National Government. List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter II "Institutions for Carrying Out the Present Law," Article 2, Tribunal for Truth, Justice and Reparation.

65. The bill provides for the creation of a Special Prosecutorial Unit for Truth, Justice and Reparation (*Unidad Especial de Fiscalía para la Verdad, la Justicia y la Reparación*), to take actions that would normally fall to the Office of the Attorney General in view of the scope of its authority. Under the bill, the Executive determines who may benefit from penalties that are alternatives to those established by the criminal courts. The demobilized identified by the Government would remain under the jurisdiction of the Tribunal for Truth, Justice, and Reparation, which would be responsible for certifying that they meet the requirements for acceding to the benefits provided for by law, issuing its opinion on the viability of applying the benefits of alternative penalties to them, reducing the sentence that should be enforced, imposing accessory penalties, and determining appropriate the acts of reparation and acts for ending the armed conflict or attaining peace.¹⁰⁸ The decision of the Tribunal for Truth, Justice, and Reparation is non-appealable, and it is not subject to any remedy.¹⁰⁹

66. The bill defines “alternative penalty” as that part of the sentence imposed whose enforcement will consist of the effective deprivation of liberty for a period not less than five years and not greater than ten years.¹¹⁰ These terms give rise to questions regarding their proportionality to the nature, magnitude, and frequency of the crimes attributed to the illegal armed groups in general, and the AUC in particular, particularly in the last seven years.¹¹¹ The bill provides that on quantifying the alternative penalty, the Tribunal for Truth, Justice, and Reparation should consider, *inter alia*, the “personal qualities” of the person convicted and sentenced and “his or her contribution to ending the armed conflict or attaining peace.”¹¹² In addition, it provides that the time spent by the beneficiary in a zone of concentration decreed by the National Government under Law 782 of 2002 – such as the “*zona de ubicación*” (“zone of placement”) of Santafé de Ralito— shall be included as part of the time served under the sentence.¹¹³

67. The bill highlights the importance of positive acts for overcoming the armed conflict, and achieving peace and the reconciliation of Colombian society.¹¹⁴ Nonetheless, it does not impose as conditions for access to the procedural benefits basic demands to determine the truth of what happened, attain justice, and make due reparation to the victims. Specifically, it makes no reference to acts aimed at revealing the truth of the crimes committed by the beneficiary or collaborating with the justice system to determine what happened, nor does it refer to the declaration and restitution of property acquired through criminal activities. These omissions

¹⁰⁸ *Id.*

¹⁰⁹ List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter III “Alternative Penalties Mechanism,” Article 13: Acceptance of the favorable opinion by the President.

¹¹⁰ List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter I “Definitions,” Alternative Penalty.

¹¹¹ In this respect, it should be recalled that the strategies of violence used and the acts perpetrated by these groups against the civilian population, which were addressed *supra* in this Report, have frequently been characterized as crimes against humanity, and when the Colombian courts have ruled on them, they have been punished with substantially lengthier prison sentences. See, for example, Regular Judgment of the Second Criminal Court for the Specialized Circuit of Antioquia of April 22, 2003, convicting and imposing a 40-year prison sentence on Salvatore Mancuso for his participation in the El Aro massacre.

¹¹² The following are also provided for as penalties accessory to the alternative penalty: 1. Disqualification from performing public functions. 2. Prohibition on the right to possess and bear arms. 3. Expulsion from the national territory in the case of foreigners upon conclusion of the alternative sentence involving deprivation of liberty. 4. Prohibition on approaching or communicating with the victims, except for the acts of symbolic reparation. List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter IX “Accessory penalties.”

¹¹³ List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter III “Alternative Penalties Mechanism,” Article 13: Acceptance of the favorable opinion by the President.

¹¹⁴ List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter VII “Truth, Reparation, Positive Acts on behalf of Peace.”

threaten to deprive the victims of their right to judicial protection and adequate reparation, in the face of realities such as individual and collective displacement from rural areas due to the action of these illegal armed groups and the unlawful appropriation of lands.

68. As the bill indicates, once the prison term is served, the suspension of the sentence will depend on behavior during a test period of supervised release.¹¹⁵ Once the supervision period is over, the judge, titled the Judge of Enforcement of Penalties and Security Measures for Truth, Justice and Reparation, will grant the definitive release of the person convicted so long as he or she has effectively served the alternative penalty involving deprivation of liberty, has fully satisfied the obligations of compensation and reparation that may have been imposed, has performed positive acts to further the demobilization, and has refrained from committing intentional crimes and from possessing arms during the test period.¹¹⁶

69. The bill seeks to satisfy the individual and collective right to the truth by preserving the files of the Tribunal for Truth, Justice and Reparation on the demobilized beneficiaries, to which the public would have access once the cases are finalized.¹¹⁷ As indicated *supra*, the bill does not make reference to acts aimed at revealing the truth of the crimes committed by the beneficiary or any other relevant information to establish what happened to the thousands of victims of the conflict.

70. In any event, as of this writing, there is talk of preparing several other legislative proposals, advocated by different sectors with alternatives for the process of demobilization of the AUC, the applicable judicial procedures, and possible ways of making reparation to the victims of the conflict. The IACHR hopes that these alternative proposals will be consistent with the framework of the State's international obligations with respect to truth, justice, and reparation.

71. Despite the lack of legislative definition of the procedural benefits to be obtained by those who decide to join an eventual demobilization, the process of dialogue between the so-called "negotiating high command" ("*estado mayor negociador*") of the AUC and the Government continued to progress in the course of 2004. This negotiation co-exists with the regime of individual and collective demobilization in force for all the members of illegal armed groups who wish to return to civilian life that is regulated by Decree 128 of 2003. The next section sets forth a series of observations on these unfolding processes at the individual and collective levels, and on the cessation of hostilities proposed by the negotiating high command of the AUC.

A. Individual demobilization as a permanent strategy for disarming illegal armed groups

72. Despite sharing the effect of reincorporating members of illegal armed groups into civilian life, the objectives of individual and collective demobilizations are not necessarily identical. Unlike collective demobilizations – identified with the development of peace negotiations with the leadership of illegal organizations – individual demobilizations seek to dismantle these organizations from their base, offering their members the opportunity to avail themselves of procedural, social, and economic benefits in exchange for their surrender and cooperation with the authorities. It is a strategy in force at all times to attain the disarmament of the illegal armed groups, with the active and permanent participation of the Ministry of Defense and the Ministry of Interior and Justice.

¹¹⁵ The period would be five years, if the alternative prison sentence actually imposed is less than six years, and ten years, if the alternative prison sentence is six years or more. List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter V "Verification", Article 18: Period of Supervision.

¹¹⁶ List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter VI "Annulment and Definitive Liberty."

¹¹⁷ List of Modifications to Enacting Law N° 85 of 2003-Senate, Chapter II "Institutions for Carrying Out the Present Law," Article 2, Tribunal for Truth, Justice and Reparation.

73. As indicated *supra*, the regime for individual demobilization in force is governed principally by Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002, which are regulated by Decree 128 of 2003.¹¹⁸ Decree 128 of 2003 establishes the procedure for the demobilized to avail themselves of the benefits of their demobilization. Specifically, it establishes that persons who intend to avail themselves of the benefits in the areas of health,¹¹⁹ protection and security,¹²⁰ and economic payments for collaborating through the provision of information on activities of illegal organizations¹²¹ and for surrendering their weapons,¹²² should go before judges, prosecutors, military or police authorities, representatives of the Inspector General (*Procurador*), representatives of the Human Rights Ombudsman, or local or regional authorities, who will immediately inform the Office of the Attorney General of the Nation and the military garrison closest to the place of surrender.¹²³

74. From the moment the person approaches the authorities, the Ministry of Defense should cover his or her basic needs for shelter, food, clothes, and transportation, and protect his or her personal integrity. Next, the demobilized person is made available to the Ministry of Interior,¹²⁴ which is responsible for coordinating with the Office of the Attorney General and the Superior Judicial Council the designation of prosecutors and juvenile judges to define a person's legal situation. The Office of the Human Rights Ombudsperson is responsible for ensuring the designation of public defenders to work exclusively for the defense of the demobilized person, and the Presidential Human Rights Program is responsible for ensuring, in general, respect for his or her rights.¹²⁵

¹¹⁸ Decree 128 of 2003 (January 22) regulating Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002 on reincorporation into civilian life. Official Gazette N° 45073 of January 24, 2003, p. 10.

¹¹⁹ Article 7 of Decree 128 provides that the demobilized individual and his or her family group will receive health services through the hospital network, to which end it will suffice to have a certification issued by the Ministry of National Defense. Once certified by the Operational Committee on Laying Down Arms, CODA, he or she will be able to access the benefits provided for in the Subsidized Regime of Social Security in Health, with the following family group: spouse or common-law spouse, parents, children, and disabled younger or older siblings.

¹²⁰ Article 8 of Decree 128 provides that the Ministry of National Defense or the Ministry of Interior, as the case may be, will coordinate the measures needed with the *Departamento Administrativo de Seguridad* (DAS), and the National Police, to provide security to the demobilized or reincorporated individual and his or her family group, as necessary.

¹²¹ Article 9 of Decree 128 provides that "the demobilized individual who voluntarily wishes to make an effective contribution to justice by providing information helpful in preventing terrorist attacks, kidnappings, or who provides information that makes it possible to free kidnapped persons, find arms caches, communications equipment, proceeds of drug-trafficking or of any other unlawful activity carried out by illegal armed organizations, in keeping with the legal provisions in force or the arrest of ringleaders, will receive a sum of money from the Ministry of National Defense in keeping with the results, pursuant to the regulation issued by this Ministry."

¹²² Article 10 of Decree 128 provides that the demobilized person who delivers arms, munitions, explosives, and weapons of mass destruction will receive from the Ministry of National Defense a sum of money, pursuant to the regulation issued by that Ministry.

¹²³ *Id.*, Article 3.

¹²⁴ The Decree provides that the physical delivery of the demobilized person by the Ministry of Defense is made official by a document setting forth the initial data describing the person, his or her fingerprint, and the circumstances of his or her demobilization from the armed group to which he or she belonged. The Ministry of Interior will take the steps for delivering to the demobilized person the military passbook (*libreta militar*), identification papers, and the certificate of the judicial record. *Id.*, Article 6.

¹²⁵ It should be noted that the IACHR has not received any complaints of failure to grant the benefits provided for by Decree 128. Nonetheless, it has received highly credible complaints and testimony regarding questionable accusations leveled at human rights defenders and social leaders by demobilized persons who have been paid in exchange for the information resulting in the accusations.

75. Although the provisions of Decree 128 of 2003 are mostly aimed at regulating the provision of social benefits, it also refers to the right to avail oneself of legal benefits, such as pardon, conditional suspension of the enforcement of a sentence, cessation of the procedure, preclusion of the investigation, or resolution of dismissal based on the certification issued by the Committee on Laying Down Arms (*Comité de Dejación de Armas*: CODA).¹²⁶ On regulating the provisions of Laws 418 of 1997, 548 of 1999, and 782 of 2002, Decree 128 expressly conditions access to legal benefits on the demobilized person being tried or having been convicted of committing crimes which "...under the Constitution, the law, or international treaties signed and ratified by Colombia, cannot receive such benefits."¹²⁷ In other words, those who are being tried or have been convicted of crimes other than rising up in arms against the State that are considered not subject to amnesty by application of the Constitution, the American Convention on Human Rights or other human rights treaties, and Laws 418 and 782 (which defines them as "... atrocious acts of ferocity or barbarism, terrorism, kidnapping, genocide, and homicide committed out of combat and placing the victim in a defenseless state"), among others, may not benefit from pardon, conditional suspension of enforcement of the sentence, cessation of proceedings, preclusion of the investigation, or a resolution of dismissal, by means of individual demobilization.

76. Given that a large number of the members of illegal armed groups responsible for committing crimes against the civilian population have not given sworn statements to investigators or have been declared to be *in absentia*, it has been argued that the restriction in Article 21 of Decree 128 of 2003 allows atrocious crimes in respect of which no investigation has been formally launched to remain unpunished.¹²⁸ According to this interpretation, the certification of the Committee on Laying Down Arms would prevent judicial proceedings from going forward against persons who have not been tried or convicted prior to their demobilization. On this topic, judicial officers involved in the processes of individual and collective demobilization assured the IACHR during its on-site visit of July 2004 that the procedural benefits to which the legal regime in force refers would only be applicable to the crime of "conspiracy to engage in criminal conduct" ("*concierto para delinquir*") because of the affiliation of the demobilized person to an illegal armed group.¹²⁹ Under this interpretation, therefore, a resolution preventing the prosecution from pursuing charges for the crime of *concierto para delinquir* should not impede investigations into other crimes where the demobilized person does not have a judicial record at the time the resolution is issued.

¹²⁶ Article 13 of Decree 128 establishes that "In keeping with the law, the demobilized who had been part of illegal armed organizations with respect to whom the Operational Committee on Laying Down Arms (CODA) issues the certification that is the subject of Article 12(4) of the present Decree, shall have the right to pardon, conditional suspension of the penalty, cessation of proceedings, preclusion of the investigation, or the resolution of dismissal, depending on the status of the proceedings."

¹²⁷ Article 21 of Decree 128 provides: "... Those who are being tried for or have been convicted of crimes which, according to the Constitution, the laws, or international treaties signed and ratified by Colombia cannot receive such benefits shall not enjoy any of the benefits indicated...."

¹²⁸ See CCJ, "*Colombia: en contravía de las recomendaciones internacionales sobre derechos humanos. Balance de la política de seguridad democrática y la situación de los derechos humanos y derecho humanitario. Agosto de 2002 a agosto de 2004*", pp. 72 and 73.

¹²⁹ See Criminal Code (Law 100 of 1980) Title V, Crimes against Public Security. Chapter One: On Conspiracy, Terrorism, and Instigation. Art. 186. Conspiracy to engage in criminal conduct. (Modified. Law 365 of 1997, Art. 8) "When various persons conspire for the purpose of committing crimes, each of them shall be punished, for that mere fact, by imprisonment of three (3) to six (6) years. If they despoil or act with arms, the penalty shall be imprisonment of three (3) to nine (9) years. When the conspiracy is to commit crimes of terrorism, drug-trafficking, kidnapping for extortion, extortion, or to form death squads, private justice groups, or bands of paid assassins, the penalty shall be imprisonment for ten (10) to fifteen (15) years and fine of two thousand (2,000) to fifty thousand (50,000) times the monthly minimum salary. The penalty shall be double to triple for those who organize, foster, promote, direct, head, constitute, or finance the conspiracy or association to engage in criminal conduct."

77. In summary, the gaps and ambiguities in the terms of Articles 13 and 21 of Decree 128 give rise to a lack of clarity as to the scope of the procedural benefits to which the demobilized would have a right, and juridical insecurity for all the parties involved, in particular the victims of human rights violations and their next-of-kin. The high levels of impunity and the ineffectiveness of the administration of justice in Colombia – which have been the subject of repeated pronouncements and recommendations by the IACHR and the Office of the United Nations High Commissioner for Human Rights – demand that the future investigation of the crimes perpetrated by the actors to the conflict be supported by clear provisions that are consistent with the international obligations of the State. At the same time, the transparency generated by clear language in the instruments used to facilitate the demobilization of members of illegal groups may contribute to the legitimacy, and therefore success, of a process aimed at achieving peace.

78. The figures provided by the Ministry of Defense to the IACHR during its on-site observation indicate that from August 2002 to July 2004, 2,604 members of the FARC (approximately 15% of its members), 727 members of the ELN (15% of its members), and 1,176 members of the AUC (approximately 19% of its members) demobilized under this legal regime. It should be noted that 20% of the demobilized are children. At the same time, these figures should be compared with the continuous forced recruitment of children and adults by all the illegal groups. In this regard, government sources have indicated that prior to the declaration of their intent to demobilize, in 2002, the AUC were growing at a rate of 58% annually.¹³⁰ Since then, according to these same sources, the paramilitary ranks have grown 10% annually.

79. Finally, it should be noted that after the visit of the IACHR, the Ministry of Defense adopted a new instrument “to enable the Government to provide the demobilized with mechanisms that offer them an opportunity to develop a life plan safely and with dignity.”¹³¹ Decree 2767 of August 31, 2004, expands the regime of economic benefits already established in Decree 128 of 2004 for collaborating through the provision of information on the activities of illegal organizations. Under this new instrument, the economic benefits for collaborating are generally geared to activities involving cooperation with the military forces and National Police related to crime control in Colombian territory.¹³² Efforts aimed at fostering conditions for the successful reincorporation to society of those who have formalized their intent to put down their arms are valid and desirable. At the same time, the use of civilians in tasks to support the military forces and National Police must be evaluated with caution since it could reproduce the circumstances that originally led to the creation of the groups that are now the object of demobilization efforts.

¹³⁰ Presentation by Carlos Franco, Director of the Presidential Program for Human Rights and International Humanitarian Law, in the event “*Peace Process in Colombia with the AUC*,” Wilson Center, Washington D.C., June 24, 2004.

¹³¹ Considering paragraphs of Decree 2767 of 2004 (August 31) Official Gazette N° 45657 of August 31, 2004.

¹³² Articles 2 and 4 of Decree 2767 of 2004 (August 31) Official Gazette 45657 of August 31, 2004. “Article 2 Benefits for collaborating. The demobilized or reincorporated person who voluntarily wishes to make an effective contribution to justice or to the military forces or National Police by providing information helpful for preventing or clarifying crimes will receive from the Ministry of National Defense, once he or she has been certified by the Operational Committee on Laying Down Arms, CODA, an economic payment depending on the result, in keeping with the procedure issued by this Ministry.” “Article 4 Other benefits. The demobilized or reincorporated persons who voluntarily wish to develop activities of cooperation with the military forces or National Police may receive from the Ministry of National Defense, an economic payment in keeping with the procedure issued by this Ministry.”

B. Collective demobilization: The experience of the Bloque Cacique Nutibara¹³³

80. On November 25, 2003, the process commenced whereby 874 members of the so-called "*Bloque Cacique Nutibara*" laid down their arms. It was one of the most aggressive urban fronts of the AUC which for several years had been operating in the city of Medellín. This process of demobilization agreed upon at the local level with the outgoing authorities of the local government of Medellín was considered a pilot scheme for the collective demobilization of AUC members. The demobilized forces remained concentrated at La Ceja, in the outskirts of the city until December 16, 2003, in order for the authorities of the Ministry of Defense, the Ministry of Interior, and the Office of the Special Prosecutor of Medellín to determine their judicial situation and to issue the respective identification papers, in-keeping with the legal framework established by Laws 418 and 782 and Decree 128, analyzed *supra*. When this stage was completed, the local government of Medellín – through the new administration that took office in 2004— began developing the "Return to Legality" ("*Regreso a la Legalidad*") program, to implement social benefits for the 868¹³⁴ who demobilized, to support their reincorporation into civilian life. These benefits include, *inter alia*, projects for training, income and employment generation, and psychosocial accompaniment.

81. During its visit to the city of Medellín in July 2004, the IACHR received information from the local government authorities involved in the process and from the Office of the Special Prosecutor of Medellín. It also had an opportunity to meet with representatives of demobilized persons in the organization known as *Corporación Democracia*, and to receive complaints and testimony from persons who live in areas where the *Bloque Cacique Nutibara* has operated. It should be recalled that as of the events of October 2002,¹³⁵ the IACHR has closely monitored the human rights situation in the *comunas* of the city of Medellín. The Commission's July 2004 visit complemented its previous visit in June 2003,¹³⁶ when a delegation of the IACHR visited the areas of the city most affected by the paramilitary presence and control.

¹³³ The demobilization of members of the Bloque Cacique Nutibara in Medellín is not the only recent experience of collective demobilization. On December 7, 2003, 168 members of the Autodefensas Campesinas de Ortega demobilized in the village of El Edén, district of Ortega, Department of Valle del Cauca. On November and December 2004, 1,400 members of the *Frente* Catatumbo demobilized and two more AUC *Frentes* concentrated in designated areas.

¹³⁴ While the initial figure of demobilized concentrated in La Ceja was 874 persons, due to different circumstances, six of them were left out of the process.

¹³⁵ IACHR, Press Release N° 40/02 "IACHR concerned over the situation of Comuna 13 in the city of Medellín, Colombia," Washington D.C., October 18, 2002. <http://www.cidh.org/Comunicados/Spanish/2002/40.02.htm>.

¹³⁶ The pertinent part of Press Release 15/03 states: "The IACHR delegation was able to visit various neighborhoods within Medellín's Comuna 13 and to take testimony from members of the community on selective murders, forced disappearances, and other acts of violence and intimidation allegedly perpetrated by paramilitary groups despite the presence of law enforcement personnel. The Commission heard consistent reports that many of these events had not been reported to judicial authorities because the population feared reprisals. The IACHR completed its observation in a series of interviews with officials of the Medellín City Hall, staff of the local inspector's and prosecutor's offices, the commander of the Fourth Army Brigade, and the police chief. The Commission's Rapporteur for Colombia recognized the efforts of law enforcement personnel, in particular the National Police, to restore order and the authority of the state in this outlying district, whose inhabitants have been plagued for years by the activities of criminal groups such as the FARC and the ELN. Nevertheless, it expressed concern over the potential consolidation of paramilitary groups who would continue to commit serious crimes in Comuna 13. Professor Goldman urged the authorities to take the necessary measures to dismantle paramilitary structures operating in the area, to establish the state as the sole authority, and to end the climate of insecurity and fear which is interfering with judicial inquiries into the selective killings and disappearances perpetrated since a law enforcement presence was established in the area. Also raised were concerns relating to judicial proceedings against the detainees in a series of law enforcement operations carried out with the participation of the CTI and the Inspector's Office." See Press Release 15/03 "IACHR Rapporteur concludes working visit to the Republic of Colombia, June 27, 2003 at <http://www.cidh.org/Comunicados/Spanish/2003/15.03.htm>.

82. The testimony, complaints, and information received indicate that despite a certain decline in the number of incidents of political violence – a general trend since 2003, as analyzed *supra*—paramilitary domination persists in certain *comunas* of Medellín, along with acts of violence, harassment, and intimidation against those who do not express support for the project backed by these groups. Specifically, members of these groups and, allegedly, persons who have benefited from individual and collective demobilizations seek to legitimate their influence in the community organizations known as *juntas de acción comunal* and to maintain their control over everyday activities in the *comunas* by the use of violence, extortion, and intimidation. The testimonies received by the Commission refer to the perpetration of 130 forced disappearances in 2003 and 97 disappearances from January to July of 2004, as well as the discovery of mass graves. They also refer to assassinations,¹³⁷ with the emphasis on the use of bladed weapons instead of firearms.¹³⁸ Complaints of collaboration between the paramilitary groups and the official forces persist,¹³⁹ as do fears of lodging complaints before the judicial and oversight authorities, together with a sense of defenselessness *vis-à-vis* the legitimacy that the procedural benefits of demobilization are said to have given to members of the *Bloque Cacique Nutibara*. Also apparent is the aggravation of the neediest and poorest sectors of the *comunas* of Medellín *vis-à-vis* the investment in education, social security, and productive projects benefiting those who demobilized. These factors have resulted in the intra-urban displacement of dozens of families, forced to abandon their homes,¹⁴⁰ thus strengthening what they characterize as “the reign of silence” (“*el reino del silencio*”).¹⁴¹

83. For many years the *comunas* of Medellín have been a focus of violence not only committed by illegal armed groups (FARC, *Comandos Armados Populares*: CAP, AUC, etc.), but also by the members of gangs, known variously as *bandas*, *combos*, and *parches*,¹⁴² who constantly shuttle between the tenuous boundaries separating common crime, organized crime, and political violence. This violent situation has not diminished significantly with the demobilization of November 2003, since it has not modified the problems stemming from impunity, the lack of legitimate activity by the official forces, and the struggle for the control of urban areas.

84. Indeed, from the information available, it cannot be inferred that the 868 demobilized who express the commitment of the *Bloque Cacique Nutibara* constitute a significant or representative share of those who participate actively in the political violence that has derived from the armed conflict in Medellín, an urban area with thousands of active gangs, made up of approximately 25 youths each. In effect, as statistics compiled by the local government of Medellín indicate, 65% of the demobilized of the *Bloque Cacique Nutibara* are youths ages 18 to 25 years. In addition, a review of their criminal records undertaken by the Office of the Special Prosecutor of Medellín, after the concentration at la Ceja, indicates that most of the youths have not been implicated in crimes related to human rights violations. In fact, the information to which the IACHR had access during its visit to Medellín indicates that only 360 of the 868 demobilized have

¹³⁷ One of the testimonies received stated that “a street corner” was used “... as a slaughterhouse, and the neighbors were forced to clean the blood.”

¹³⁸ One of the testimonies received states “... no longer so much trigger, but club and knife, so as not to make noise.” Reference was also made to the use of bags to drown the victims.

¹³⁹ Mention is made, *inter alia*, of the collaboration of demobilized persons and paramilitaries with the Special Antiterrorist Command (*Comando Especial Antiterrorista*: CEAT).

¹⁴⁰ See *El Colombiano*, Medellín, June 13, 2004, p. 12^a, which speaks of 72 displaced families. The testimony indicates that the houses of the displaced have been occupied or leased by paramilitaries.

¹⁴¹ One of the testimonies received states: “what reigns is silence ... no one dares denounce, for when they return, they’re waiting for them.... No one dares open their mouth, out of fear.”

¹⁴² The expressions “*bandas*,” “*combos*,” and “*parches*” are used in the city of Medellín to refer to the greater or lesser number of youths who make up the so-called “new urban tribes” or “gangs” (“*pandillas*”).

proceedings pending, which refer to offenses such as theft (*hurto calificado*), extortion, forgery, failure to pay alimony, drug-trafficking, and domestic violence, among others. At the time of the visit, only one of them was implicated in the investigation of crimes related to alleged human rights violations.

85. While, as has been indicated repeatedly by the IACHR and the Office of the United Nations High Commissioner for Human Rights, there are serious shortcomings in the effectiveness of the administration of justice in Colombia and there is clear reticence on the part of the victims to come forth and report serious human rights violations out of fear of reprisal, the outlook suggests that the demobilized of the *Bloque Cacique Nutibara* are not representative of the more violent elements in the AUC. Consequently, any expectation for a positive impact of their demobilization on the violent actions of the armed groups is low, and should be greeted with caution.

86. Despite the firm statements by the *Corporación Democracia* to the effect that the demobilization of the members of the *Bloque Cacique Nutibara* is directed by the orders given by Adolfo Paz, alias "Don Berna" – a member of the negotiating high command of the AUC— the statistics compiled by the local government of Medellín reveal another reality: 75% of those who have joined the program seek access to benefits that enable them to work a change in their individual situation. The objective of a process of this nature is to ensure that such a change does not result in the eventual return of demobilized persons to the ranks of another illegal armed group, which is one of the phenomena that have contributed to perpetuate the armed conflict in Colombia.

C. The process of negotiating conditions for the return to civilian life with the Negotiating High Command of the AUC (zona de ubicación in Santafé de Ralito)

87. As indicated *supra*, what is known as the "negotiating high command" of the AUC¹⁴³ and the administration of President Uribe continue the process of dialogue, which is aimed at demobilizing a number of paramilitary fronts in 2004 and 2005. The *Bloque Élder Cárdenas*, commanded by José Alfredo Berrío alias "El Alemán", whose influence extends throughout the department of Chocó and the Urabá region – one of the epicenters of the armed conflict – is not a party to the negotiation. Nor are the *Autodefensas Campesinas de Casanare*, led by Héctor Germán Buitrago, alias "Martín Llanos." While there has been an official announcement of the intent to carry out military actions against "Martín Llanos," there has been no news of pronouncements or actions aimed at combating the constant attacks by the *Bloque Elmer Cárdenas* on the civilian population, in particular against the Afrodescendant communities that live in the lower Atrato, which in some cases are protected by precautionary and provisional measures.¹⁴⁴

¹⁴³ The so-called "negotiating high command" of the AUC is made of Salvatore Mancuso, Vicente Castaño (alias "El Profe"), Adolfo Paz (alias "Don Berna"), Javier Montáñez, "Jorge 40," Julián Bolívar, Hernán Hernández, Miguel Arroyave (who was reportedly assassinated on September 19, 2004), Ernesto Báez, and Ramiro Vanoy, in representation of the units known as the *bloques* Norte, Central Bolívar, Centauros, Calima, Héroes de Granada, Pacífico, Sur del Cesar, and Vencedores de Arauca. It should be recalled that these *bloques* are made up of some 40 fronts, which in turn have hundreds of combatants each. It is also said that the following persons are in the *zona de ubicación*: Guillermo Torres, Pablo Sevillano, Pablo Mejía, Gabriel Galindo, Marlón Pérez, Pedro Fronteras, John Santamaría, and Juan Carlos Sierra. The presence of Juan Carlos Sierra in the zone has been the subject of pronouncements by the Government through a press release by the Ministry of Defense dated September 26, 2004, stating that Juan Carlos Sierra, alias "El Tuso", is not recognized as a member of the AUC since "this individual is sought by Interpol through a red circular and sought by a U.S. judge for conspiracy to manufacture and sell cocaine. As such, he cannot participate in the conversations in Santafé de Ralito." The press release clarifies that the arrest warrant outstanding for Sierra is valid both outside and inside the *zona de ubicación*.

¹⁴⁴ See, for example, the Resolution of the Inter-American Court of Human Rights of March 6, 2003. Provisional measures requested by the Inter-American Commission on Human Rights with respect to the Republic of Colombia. Case of the communities of Jiguamiandó and Curbaradó.

88. On May 13, 2004, an agreement was reached on the establishment of a *zona de ubicación*, or “placement zone,” in Tierralta, Córdoba,¹⁴⁵ which was implemented through Resolution 092 of 2004. This Resolution had the effect – under the provisions of Law 782 of 2002— of suspending the arrest warrants for the members of the AUC who are within the perimeters of its 368 km² area during the period it is in effect, in principle until December 1, 2004.¹⁴⁶ This agreement defines the purposes of the *zona de ubicación* as follows: to facilitate the consolidation of the process of dialogue between the Government and the AUC; to contribute to the enhancement and verification of the cease of hostilities; to move towards defining a timetable for the concentration and demobilization of the members of the *Autodefensas Unidas de Colombia*; to allow for an exchange between the negotiating table and all the national and international sectors; and to facilitate citizen participation in the process. While the suspension of the arrest warrants did not become effective until July 1, 2004, the authorities refrained from executing them while they were in effect, during the discussions that have been ongoing since December 2002.

89. As for the role of the MAPP/OAS mission, the agreement provides that it will receive an inventory of the weapons, war *matériel*, and munitions in the possession of the members of the self-defense groups in the zone. The members of the self-defense groups will refrain from making, storing, bringing in or removing arms, war *matériel*, and/or additional munitions, and the MAPP/OAS Mission will receive a report on the means of communication and communication equipment in the possession of civilians or self-defense forces being used in the zone. It also establishes as one role of the Mission the execution of a process of information and awareness-raising with the communities that live in the zone. The agreement establishes that the MAPP/OAS Mission will undertake its mission of verifying the commitments acquired and the cessation of hostilities at the national level with the support of a Verification Committee made up of one member of MAPP/OAS, one delegate from the Office of the High Commissioner for Peace, and one delegate of the AUC. The agreement entrusts this Committee with adopting a procedure for taking in and addressing complaints, information, or reports in relation to implementation of the cessation of hostilities.

90. The agreement does not establish guarantees of security for the civilian population living within the perimeter of the 368 km² of the *zona de ubicación* who –beyond the presence of members of the MAPP/OAS Mission— are deprived of the presence of the military forces or National

¹⁴⁵ The agreement provides that “a. The Colombian State and the Colombian legal order shall have full effect in the territory of the *zona de ubicación*. b. The National Government and the OAS Support Mission, MAPP/OAS, shall each have offices in the *zona de ubicación*, security for which shall be the responsibility of the Colombian official forces. c. Exiting and reentering the zone by the members of the *Autodefensas Unidas de Colombia* shall be authorized and guaranteed by the National Government, shall be limited and granted only for developing activities related to the peace process. d. The Committee for Security and Coexistence shall operate permanently in the *zona de ubicación*; it shall be made up of one delegate from the Office of the High Commissioner for Peace, one delegate from the OAS Support Mission (MAPP/OAS), and one delegate from the *Autodefensas Unidas de Colombia*. The following shall be permanently invited: the Church, one delegate from the Ministry of Defense, the local government of Tierralta, the office of the Governor of Córdoba, one delegate from the community, and/or other entities as agreed upon. e. The Committee for Security and Coexistence shall make decisions and coordinate actions on: logistics, security, internal regulations on coexistence and conduct, communications, and entry of visitors to the zone. f. The members of the *Autodefensas Unidas de Colombia* shall refrain from: engaging in unlawful activities, recruiting persons, using pressure or threats in relation to residents or visitors, engaging in armed training; and ordering or coordinating illegal actions from the zone. g. Should there be a violation or breach of Colombian law, the competent authorities shall address the situation, in keeping with the legal order in force. h. The entry, exit, and mobility in the zone shall be guarantees for the residents and those persons who engage in activities in that territory. i. The Committee for Security and Coexistence shall define a communications policy and shall regulate media access to the *zona de ubicación*.” *Acuerdo Entre Gobierno Nacional y las Autodefensas Unidas de Colombia para la Zona de Ubicación en Tierralta, Córdoba*” Santafé de Ralito, May 13, 2004.

¹⁴⁶ The agreement provides that the zone will be in force for six months, which could be extended depending on the needs of the process, and that in the event that the zone ceases to be in force due to a coordinated decision or unilaterally, the members of the *Autodefensas Unidas de Colombia* will have a period of five days to evacuate the zone. The OAS Mission to Support the Peace Process (MAPP/OAS) will verify compliance with this guarantee, with the accompaniment of the Church.

Police and of the judicial and oversight authorities. In effect, the agreement establishes that the official forces are in charge of the security perimeter in the zone and an internal security cordon to protect the AUC. As already indicated, under Law 782 for as long as the zone is in force, the arrest warrants for and offensive operations against the members of the AUC who are within the delimited territory are suspended.

91. As of the date this report was adopted, the negotiating goals that led to the establishment of the *zona de ubicación* continue to be pursued, and it appears that there has been some progress in negotiating timelines for demobilizing the members of the AUC units (*bloques*) that are participating in the dialogue. During the first days of August 2004, the Uribe administration called for the immediate demobilization of AUC units located in the Eastern Plains or Llanos Orientales (made up of the departments of Meta, Casanare, Vichada, and Arauca), involved in repeated confrontations in violation of the cease of hostilities. On August 1, 2004, an agreement was reached to demobilize the *autodefensas* in the Eastern Plains (*Bloque Centauros, Autodefensas Campesinas de Meta y Vichada, and Bloque Vencedores, de Arauca*), which together are said to have more than 6,000 combatants.¹⁴⁷ In December 2004, 1,400 members of the *Frente Catatumbo*,¹⁴⁸ which is part of the Bloque Norte of the AUC led by Salvatore Mancuso, demobilized. Two additional AUC fronts gathered in areas designated by the Government for that purpose in, respectively, late November and early December 2004.

92. Progress has been made in coordinating the logistical aspects of the concentration of some fronts despite the lack of a definition of the applicable legal framework and the constant violations of the cease of hostilities declared by the AUC. On May 28, 2004, the High Commissioner for Peace himself stated that “the tendency of the AUC to commit criminal actions increases month by month, especially homicides” and that there had been increased attacks against the civilian population.¹⁴⁹ The Office in Colombia of the United Nations High Commissioner for Human Rights has also issued statements regarding acts of violence perpetrated in Valle del Cauca, attributing them to the AUC and characterizing them as “... another clear breach of the commitments assumed by paramilitary groups today at the negotiating table in Santafé de Ralito”.¹⁵⁰

93. The IACHR has received allegations of human rights violations allegedly perpetrated in areas with a presence of *bloques* led by members of the negotiating high command, such as Antioquia, Córdoba, Norte de Santander, la Guajira, Cesar, Arauca, Tolima, Cauca, and Caldas, among others. The situation of violence against the indigenous communities that live in the Sierra

¹⁴⁷ Second Quarterly Report of the Secretary General on the Mission to Support the Peace Process in Colombia (MAPP/OAS), pursuant to Resolution CP/Res. 859 (1397/04) OEA/Ser.G CP/doc. 3944/04, September 28, 2004, p. 7.

¹⁴⁸ The Catatumbo Front, which operates in Norte de Santander and Santander, is said to be made up of some 300 men under the orders of Salvatore Mancuso; it has been accused of being responsible for the massacre at La Gabarra, on May 29, 1999.

¹⁴⁹ High Commissioner for Peace, Press release, May 28, 2004; *El Tiempo*, May 28, 2004. High Commissioner for Peace, May 28, 2004. See also, statements by Sergio Caramagna, September 25, 2004, in which he recognizes that there have been violations of the ceasefire in Antioquia and La Guajira.

¹⁵⁰ In a press release of October 5, 2004, the Office in Colombia of the United Nations High Commissioner for Human Rights condemned the assassination of at least 11 persons, all members of the same family, perpetrated October 3, 2004, at the “La Cascada” farm in the district of Villagorgona, municipality of Candelaria (Valle del Cauca). Among the victims were pregnant women and children. The press release indicates that “according to official information collected by the Office, this serious crime has been attributed to members of a paramilitary group belonging to the *Autodefensas Unidas de Colombia* -AUC- that operates in the zone. This massacre is in addition to other acts of violence committed in those municipalities of Valle del Cauca where paramilitaries operate closely connected to criminal gangs that clash over interests related to the illegal drug business. The Office notes that this massive assassination appears to be yet another act of clearly violating the commitments taken on by paramilitary groups today at the negotiating table in Santafé de Ralito.” <http://www.hchr.org.co/publico/comunicados /2004/ comunicados2004.php3?cod=37&cat=15>.

Nevada de Santa Marta led to a request for provisional measures before the Inter-American Court of Human Rights on behalf of the Kankuamo indigenous people pursuant to Article 63(2) of the American Convention,¹⁵¹ and the issuance of precautionary measures on behalf of the women leaders ("*lideresas*") of the Wayúu indigenous people pursuant to Article 25 of the Commission's Rules of Procedure. In addition, the IACHR has paid particular attention to the situation of the Embera-Katío people of the upper Sinú river basin, who live in their ancestral territories adjacent to the Tierralta area and the *zona de ubicación* of Santafé de Ralito, as well as the reservations (*resguardos*) of the Embera-Chamí in Caldas and Risaralda, who are also protected by precautionary measures.

94. The process is in a crucial stage in which both the negotiations and respect for the cease-of-hostilities commitments should be guided by the principles and standards set forth in international law for resolving armed conflicts, and the content of the state's obligation to ensure justice, truth, and reparations for all persons under their jurisdiction.

V. CONCLUSIONS

95. The IACHR is aware, given the magnitude, duration, and complexity of the internal armed conflict in Colombia, that there are no easy answers, and that the search for political solutions to deactivate the factors and groups participating in the internal armed conflict is fundamental. This requires substantive proposals which, based on such a difficult reality, will assist the peace process, an initiative that all very much hope will make progress in Colombia.

96. Despite the commitment to a cessation of hostilities by the AUC, acts of violence against and intimidation of the civilian population continue. Deactivating the complex network of illegal armed groups that have joined the armed conflict in Colombia requires putting an end to the constant succession of acts of violence by paramilitary groups, whether or not part of the process, and the guerrillas, against the civilian population; and ensuring that these crimes are properly clarified in the courts. The consequences of the violence and displacement for hundreds of thousands of victims of the conflict and their exclusion from the process of seeking a negotiated solution stand in the way of the search for truth and access to justice and reparation.

97. The members of the paramilitary fronts involved in the process of demobilization now being fostered by the government have been repeatedly accused of responsibility for serious violations of human rights and international humanitarian law, including massacres of defenseless civilians, selective assassinations of social leaders, trade unionists, human rights defenders, judicial officers, and journalists, among others, acts of torture, harassment, and intimidation, and actions aimed at forcing the displacement of entire communities. In some cases the Inter-American Commission and the Inter-American Court have established the responsibility of the State, as these grave violations of the American Convention on Human Rights were perpetrated with the acquiescence of state agents.

98. The organs of the inter-American system, the Office of the United Nations High Commissioner for Human Rights, and human rights organizations in Colombia and abroad have made statements to the effect that the process of demobilization should be accompanied by guarantees of respect for the international obligations of the State. For the time being, the process has moved forward without the support of a comprehensive legal framework that clarifies the conditions under which persons responsible for committing human rights violations are to demobilize, or their relationship with the peace process. No efforts have yet been identified to establish the truth of

¹⁵¹ I/A Court H.R., Resolution of July 5, 2004, on provisional measures requested by the Inter-American Commission on Human Rights with respect to the Republic of Colombia. Pueblo Indígena Kankuamo.

what has happened and the degree of official involvement in paramilitarism. In addition, the issue of reparation for the harm caused to the victims of acts of violence and displacement, including control over lands, does not appear to be addressed with appropriate levels of participation. The conditions under which the members of illegal armed groups join the demobilization process should be closely monitored to ensure it does not become a conduit towards impunity.

99. In view of the foregoing, the IACHR recommends the adoption of a comprehensive legal framework that establishes clear conditions for the demobilization of illegal armed groups, in accordance with the State's international obligations. This legal framework should provide for the situation of those who have joined processes for individual and collective demobilization to clarify their situation. Moreover, genuine mechanisms of participation should be put in place, in secure conditions, for the victims of the conflict, so as to ensure access to truth, justice, and reparation.

100. The efforts at peacemaking and demobilization of armed groups should be strengthened on the basis of legitimacy and participation, so as to offer the beneficiaries a genuine opportunity for reintegration into society and guarantees of protection in the face of possible violent reprisals. This legitimacy should in turn be nurtured through a real commitment *vis-à-vis* the agreements reached in light of international standards, to end the use of violence and intimidation against the civilian population, to submit to the law, and to provide reparations for the victims. The development of a culture of peace, tolerance, respect for the law, and rejection of impunity requires the participation of all Colombians, in particular those who have directly suffered the consequences of the conflict. It is an endeavor that must be consolidated on the basis of truth, justice, and reparation.

PRESS RELEASE

N° 26/05

IACHR ISSUES STATEMENT REGARDING THE ADOPTION OF THE “LAW OF JUSTICE AND PEACE” IN COLOMBIA

The Inter-American Commission on Human Rights (IACHR) has been advised of the passing by Congress of the so called “Law of Justice and Peace” in the Republic of Colombia. This legislation, that requires the presidential signature in order to enter into force, establishes a legal framework for the demobilization of members of illegal armed groups involved in the commission of serious crimes against the civilian population in the context of the armed conflict.

In view of the recent adoption of this bill, the IACHR makes public its general observations regarding the contents in light of its mandate to promote the observance and defense of human rights, as well as the task delegated to it by the Permanent Council of the Organization of American States (OAS) in the sense of “ensuring that the role of the OAS be completely in accordance with the commitments of the member states regarding full compliance with human rights and international humanitarian law” in the process of dialogue between the Colombian government and the paramilitary in Colombia.

In its reports on the general situation of human rights in the countries of the Hemisphere and on individual cases, the IACHR has consistently insisted on the states’ obligation to establish adequate mechanisms to achieve truth, justice and reparation for victims of human rights violations. Establishing the truth about what happened during the conflict, searching seriously for justice through the determination of the responsibility of the perpetrators *vis-a-vis* the victims, and the reparation of the damage cause –far from generating obstacles for the agreements that can lead to peace building– constitute basic pillars of its strength.

Regarding the Law of Justice and Peace in Colombia, the IACHR notes that the determination of the historical truth regarding what happened during the last few decades of the conflict does not appear as an objective. Nor does the determination of who has sponsored paramilitarism or of the degree of involvement of different participants in the perpetration of crimes against the civilian population by action, omission, collaboration or acquiescence.

The adopted bill concentrates upon the mechanisms to establish individual criminal responsibility in individual cases and involves demobilized members of illegal armed groups receiving procedural benefits. However, its provisions fail to establish incentives for a full confession of the truth as to their responsibility in exchange for the generous judicial benefits received. Consequently, the established mechanism does not guarantee that the crimes perpetrated will be duly clarified, and therefore in many cases the facts may not be revealed and the perpetrators will remain unpunished. The provisions of the law might favor the concealment of other conduct that, once brought to light at a future date, could benefit from the same alternative penalties. These procedural benefits not only reach conduct directly related to the armed conflict, but also can be invoked regarding the commission of ordinary crimes such as drug trafficking.

The IACHR also observes that the institutional mechanisms created by the law to administer justice –in particular the Prosecutor’s National Unit for Justice and Peace, composed of 20 prosecutors– lacks the strength necessary to undertake effectively the task of prosecuting thousands of massacres, selective executions, forced disappearances, kidnappings, tortures, forced displacement and usurpation of lands, amongst other crimes, committed by several thousand demobilized individuals during the many years that paramilitary structures have operated in Colombia. Regarding the seriousness and complexity of the crimes perpetrated, the short time limits

and procedural stages provided for in the legal mechanisms to investigate and prosecute the demobilized individuals benefiting from the law also fail to offer a realistic alternative to establish individual responsibility in full measure. This circumstance will prevent the uncovering of what happened to many of the victims, thus frustrating the reparations process they are entitled to. The investigation of serious violations of human rights require adequate time limits and the opportunity for necessary procedural activity.

In terms of the reparation of the damage caused by those responsible for the commission of heinous crimes, the law places special emphasis on the restitution of unlawfully acquired property rather than on the mechanisms that might serve the full reparation of the victims. Particularly, it does not provide for specific mechanisms to repair the damage caused to the social fabric of the indigenous peoples, the afro-descendant communities, or the displaced women, often heads of household, who rank among the groups more vulnerable to violence by the participants in the armed conflict. The law fails to provide as part of the reparation owed to the victims, measures directed to preventing the repetition of the crimes committed, such as disqualification or separation from official functions of state agents involved by action or omission.

The IACHR acknowledges that, in such a complex, painful and prolonged situation as the conflict in Colombia, the deactivation of the armed participants by means of negotiation is a priority. However, in order to secure a lasting peace, guarantees for non-repetition of crimes of international law, human rights violations and serious infractions of international humanitarian law must be in place. This requires the clarification and reparation of the consequences of violence through mechanisms which prove to be adequate to establish the truth of what has happened, administer justice and provide reparation for the victims in light of the American Convention on Human Rights and the OAS Charter. The IACHR shall continue to exercise its mandate to promote and protect human rights in Colombia *vis-a-vis* the demobilization process and the interpretation and application of its legal framework, both through the adoption of general and special reports and the consideration and decision of individual cases.

Washington D.C., July 15, 2005

STATEMENT BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE APPLICATION AND SCOPE OF THE JUSTICE AND PEACE LAW IN COLOMBIA

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**STATEMENT BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE
APPLICATION AND SCOPE OF THE JUSTICE AND PEACE LAW IN COLOMBIA**

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STATEMENT BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON THE APPLICATION AND SCOPE OF THE JUSTICE AND PEACE LAW IN COLOMBIA

1. The Inter-American Commission on Human Rights (IACHR) has often stressed the need for using effective negotiation mechanisms to deactivate the parties to the armed conflict and put an end to the violence inflicted on the people of Colombia over the past four decades. A lasting peace, the Commission has also pointed out, requires that crimes under international law, violations of human rights and serious transgressions against international humanitarian law will not be repeated, and that violence must consequently be investigated and its consequences remedied through mechanisms designed to establish the truth, administer justice and offer restitution to victims of the conflict.

2. In 2005 and so far in 2006, laws have been enacted in Colombia to prosecute and punish members of illegal groups that--having given up their weapons after taking part in the conflict--were involved in crimes against the civilian population. The Colombian Constitutional Court has ruled on the constitutionality of one of those laws--Law 975 of 2005, better known as the Justice and Peace Law--whose application to members of recently demobilized paramilitary groups is imminent.

3. As this new stage is launched, it is crucial for the legal framework and its interpretation by the Constitutional Court to be fully complied with by the agencies charged with implementing it, namely, the Justice and Peace Unit of the National Prosecutor's Office, the Justice and Peace Tribunals, the Ministry of Justice, and the National Commission on Reconciliation and Reparation, so that the criminal-law benefits granted to those demobilized do not become a mere gift of the justice system but will truly meet the goal of operating as an incentive for peace, learning the truth and appropriately compensating the victims of the conflict. Accordingly, the IACHR alerts the Colombian authorities to the need to strictly enforce the eligibility requirements for benefiting from a lighter sentence and preserving that benefit; and to contribute to a diligent and full investigation of crimes covered by the law, thereby ensuring that the imposition of lower penalties will reflect an uncovering of the whole truth and will not rely solely on the defendant's confession.

4. The IACHR will now set out its comments and conclusions on the legal system designed to clear up and provide redress for crimes committed during the armed conflict. It will review the consistency of that system with the State's international obligations in the area of human rights and will make the relevant recommendations. These considerations by the Commission are based on information received from government and civil society sources in Colombia, as well as from its own direct observation during its *in loco* visits in December 2005 (Bogotá), February 2006 (Bogotá), March 2006 (Valledupar), April 2006 (Apartadó) and May 2006 (Bogotá) during which it received full cooperation from the government, the MAPP/OAS Mission and civil society.

I. GENERAL FRAMEWORK

5. Over the past 15 years, parties to the armed internal conflict--particularly the United Self-defense Forces of Colombia (AUC) and the FARC-EP--have employed massacres as a strategy against members of the most vulnerable sectors of the population, such as indigenous peoples, communities of Afro descendents, and displaced people, as well as selective assassination and forced disappearance of human rights defenders, justice auxiliaries, labor union and social leaders, journalists and candidates for elected office, who have been repeatedly declared to be military targets, especially by the AUC. Dissident armed groups--primarily FARC-EP--have, in turn, also employed as a strategy indiscriminate attacks with explosives and kidnapping, violating the most basic tenets of international humanitarian law and causing numerous victims among the civilian population.

6. The IACHR has repeatedly voiced its concern that the overwhelming majority of these events have not been cleared up by the judiciary.¹ In cases in which agencies of the inter-American system may exercise their jurisdiction--for instance, where the responsibility of government agents is alleged for actions or omissions connected with non-combat deaths of people who may not be regarded as legitimate military targets--the Commission has heard cases of alleged violation of human rights protected by the American Convention. A significant number of complaints has been resolved by both the Commission² and the Inter-American Court of Human Rights.³

7. Between November 2003 and April 2006, according to official data, more than 30,000 members of 35 groups within the armed network of the AUC are said to have demobilized under an agreement with the Government of President Uribe.⁴ For over a year and a half this process took place under the system of individual and collective demobilization applicable to all members of illegal armed groups who wished to rejoin civilian life. At that time the IACHR,⁵ like other international agencies,⁶ recommended enacting a legal framework to establish clear requirements for demobilization of illegal armed groups consistently with the State's international obligations in the areas of truth, justice and redress for victims of the conflict.

8. On June 22, 2005, the Colombian Congress enacted Law 975, which took effect after promulgation by the President on July 22, 2005. The IACHR issued a statement voicing its concern about the implementation prospects of this law.⁷

¹ The IACHR has periodically set out its views on the general human rights situation in Colombia in Chapter IV of its annual reports for 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004 and 2005; in the *Third Report on the Status of Human Rights in Colombia OEA/Ser.L/V/II.102 Doc. 9 rev. 1*, February 26, 1999; and in its *Report on the Demobilization Process in Colombia OEA/Ser.L/V/II.120 Doc. 60*, of December 13, 2004.

² Report N° 1/92 Orlando García Villamizar *et al.*, Case 10.235, *IACHR Annual Report 1991*. Report N° 33/92 Alirio de Jesús Pedraza, Case 10.581, *IACHR Annual Report 1992-1993*. Report N° 32/92 Martín Calderón Jurado, Case 10.454, *IACHR Annual Report 1992-1993*. Report N° 2/94 Pedro Miguel González Martínez and 19 other workers of the Honduras and La Negra estates, Case 10.912, *IACHR Annual Report 1993*. Report N° 1/94 Álvaro Garcés Parra *et al.*, Case 10.473, *IACHR Annual Report 1993*. Report N° 24/93 Olga Esther Bernal Dueñas, Case 10.537, *IACHR Annual Report 1993*. Report N° 23/93 Irma Vera Peña, Case 10.456 *IACHR Annual Report 1993*. Report N° 22/93 Patricia Rivera *et al.* Case 9.477, *IACHR Annual Report 1993*. Report N° 15/95 Hildegard María Feldman, Case 11.010, *IACHR Annual Report 1995*. Report N° 3/98 Tarcisio Medina Charrand, Case 11.221, *IACHR Annual Report 1997*. Report N° 26/97 Arturo Ribón Ávila, Case 11.142, *IACHR Annual Report 1997*. Report N° 5/98, Álvaro Moreno Moreno, Case 11.019, *IACHR Annual Report 1997*. Report N° 62/99 Santos Mendivelso Coconubo, Case 11.540, *IACHR Annual Report 1998*. Report N° 61/99 José Alexis Fuentes Guerrero *et al.*, Case 11.519, *IACHR Annual Report 1998*. Report N° 36/00 Caloto, Case 11.101, *IACHR Annual Report 1999*. Report N° 35/00 Los Uvos, Case 11.020, *IACHR Annual Report 1999*. Report N° 7/00 Amparo Tordecilla Trujillo, Case 10.337, *IACHR Annual Report 1999*. Report N° 62/09 Massacre at Riofrío, Case 11.654, *IACHR Annual Report 2000*. Report N° 63/01 Prada González and Bolaño Castro, Case 11.710, *IACHR Annual Report 2000*. Report N° 64/01 Leonel de Jesús Izasa Echeverri, Case 11.712, *IACHR Annual Report 2000*.

³ The Inter-American Court has held States liable for directly supporting or acquiescing in actions of paramilitary groups in the cases of: the massacre of 19 businessmen in the "Magdalena Medio" region in 1987; the disappearance of civilians at Pueblo Bello (Córdoba) in 1990; the massacre of civilians at Mapiripán (Meta) in 1997; the massacres of civilians at Ituango (Antioquia) in 1996 and 1997.

⁴ On July 15, 2003, under the "Santa Fe de Ralito Agreement," the AUC undertook to demobilize its armed forces and have them rejoin civilian life.

⁵ See *IACHR Report on the Process of Demobilization in Colombia, OEA/Ser.L/V/II.120 Doc. 60*, December 13, 2004, available at Internet portal [http://www.IACHR.org/countrandrep/Colombia04sp/ indice.htm](http://www.IACHR.org/countrandrep/Colombia04sp/indice.htm).

⁶ See Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, dated February 28, 2005, *E/CN.4/2005/10* and Amnesty International, Press Release of April 26, 2005.

⁷ IACHR Press Release 26/05 "IACHR Issues Statement on the Enactment of the Peace and Justice Law in Colombia," July 15, 2005. Available at Internet portal <http://www.IACHR.org/Comunicados/Spanish/2005/26.05.htm>.

9. On December 30, 2005, Decree No. 4760 was issued to regulate certain aspects of Law 975. On the whole, these had to do with deadlines to investigate applicants for benefits under the law before they are arraigned, and with introducing the principle of opportunity for the benefit of third parties involved in the purchase, procession, holding, transfer and, in general, acquiring title over unlawfully obtained property surrendered to compensate victims.⁸

10. Several human rights organizations,⁹ for their part, filed a series of lawsuits with the Colombian Constitutional Court challenging the constitutionality of Law 975.¹⁰ The Attorney General's Office also took part in these proceedings.¹¹ The Constitutional Court issued its ruling on May 18, 2006¹² and the grounds for its decision were made public on July 13, 2006.

11. On the whole, the Constitutional Court found Law 975 constitutional; at the same time, it set constitutionality requirements for several of its provisions. Among the interpretation parameters established by the Court are those intended to insure the victims' participation in the proceedings¹³ and their access to full redress.¹⁴ The decision also clarifies the obligation to impose a reduced sentence, provided by the law, and introduces legal consequences such as the loss of benefits if demobilized persons seeking to benefit from the law conceal information from the judiciary.¹⁵ The decision also clarifies the definition of paramilitarism as a common crime. In brief, persons demobilized who are implicated in crimes connected with the armed conflict and wish to secure the benefits of Law 975 will have to cooperate with the judiciary in securing the full effectiveness of the victims' rights to the truth, justice, redress and non-repetition.

⁸ Republic of Colombia, Ministry of the Interior and Justice, Decree No. 4760 of December 30, 2005, Articles 4 and 13.

⁹ Some of the lawsuits filed with the Constitutional Court were from entities grouping several human rights organizations. These are some of the names of the Colombian civil society organizations that filed suit against the Justice and Peace Law: 1) *Comisión Colombiana de Juristas (CCJ)*, *Asociación Campesina de Antioquia (ACA)*, *Asociación de Afrocolombianos Desplazados (AFRODES)*, *Asociación de trabajo Interdisciplinario (ATI)*, *Asociación Líderes en Acción*, *Asociación Nacional de Mujeres Campesinas, Negras e Indígenas de Colombia (ANMUCIC)*, *Asociación para la Promoción Social Alternativa MINGA*, *Consultoría para los Derechos hel Desplazamiento (CODHES)*, *Confederación de Trabajadores de Colombia (CTC)*, *Corporación Apoando a Víctimas de Violencia Socio Política Prorecuperación Emocional (AVRE)*, *Corporación Cactus*, *Corporación Casa de la Mujer*, *Corporación de Servicio a Proandectos de Desarrollo (PODION)*, *Corporación Jurídica Libertad*, *Corporación para el Desarrollo del Oriente (COMPROMISO)*, *Corporación para la Defensa y Promoción de los Derechos Humanos (REINICIAR)*, *Corporación Región para el Desarrollo y la Democracia*, *Corporación SISMA Mujer*, *Corporación Vamos Mujer*, *Escuela Nacional Sindical*, *Fundación para la Educación y el Desarrollo (FEDES)*, *Humanidad Vigente Corporación Jurídica*, *Instituto Popular de Capacitación (IPC) de la Corporación de Promoción Popular (CPP)*, and *Organización Indígena de Antioquia (OIA)*; and 2) *Movimiento de Víctimas de Crímenes de Estado*. Several nongovernmental organizations also made presentations to the Constitutional Court as *Amicus Curiae*, among them the International Center for Justice (ICTJ), the International Commission of Jurists (CIJ), the Center for Justice and International Law (CEJIL) jointly with the Allard K. Lowenstein Human Rights Clinic of Yale Law School, the Human Rights Committee of the Barristers of England and Wales, and the International Confederation of Free Labor Unions.

¹⁰ Article 241, paragraph 4, of the Political Constitution empowers the Constitutional Court to hear claims of unconstitutionality against legal provisions such as Law 975 of 2005. Government agencies responsible for applying the provisions must fully comply with decisions of the Constitutional Court when interpreting and applying the law and its implementing regulations.

¹¹ The Attorney General made presentation No. 4030 of February 15, 2005, to the Constitutional Court in the legal action brought by human rights organizations.

¹² Constitutional Court, Press Release on the legal challenge to the Justice and Peace Law, Law 975 of 2005, May 18, 2006. Dossier D-6032 - Decision C-370/06.

¹³ Constitutional Court Decision C-370/06 (Dossier D-6032), para. 6.2.3.2.2.1 – 6.2.3.2.2.10.

¹⁴ *Ibidem*, paras. 6.2.4.1 – 6.2.4.1.24.

¹⁵ *Ibidem*, paras. 6.2.2.1.1 – 6.2.2.1.7.30.

II. THE JUSTICE AND PEACE LAW AS A GUARANTEE OF THE VICTIMS' RIGHT TO JUSTICE, THE TRUTH AND REDRESS

12. The Constitutional Court decision defines Law 975 as a set of provisions intended to facilitate individual or collective reinsertion into civilian life of former members of illegal armed groups, with a view to pacification. The purpose of the law is to establish reduced sentences without disregarding the rights of victims, so as to insure the right to peace.¹⁶

13. The Justice and Peace Law prescribes alternative penalties, as a benefit that suspend application of a specific sentence, ranging from five to eight years. These reduced penalties are granted because of the beneficiary's contribution to peace, his cooperation with justice, fact-finding and redress for the victims. The alternative penalty benefit depends directly on fulfillment of certain eligibility requirements that the law establishes for both individual and collective demobilization.

14. In addition, the law prescribes a system of special criminal proceedings for applicants. Their names are included in a list to be provided by the national government to the National Prosecutor's Office. Under the established procedure, applicants will need to provide their own version of events in a deposition before a prosecutor designated for the demobilization process, who will then conduct the necessary investigation culminating in the appropriate charges.

15. This Law establishes a Justice and Peace Unit of the National Prosecutor's Office, Justice and Peace Tribunals, and a National Commission on Reconciliation and Reparation. These agencies are responsible for investigating the applicants' participation in the commission of massacres, selective executions, forced disappearances, kidnappings, torture and serious injuries, forced displacements and illegal occupation of land, among other offenses, and for insuring that the victims are duly heard and compensated.

16. We now turn to the scope of Law 975 in relation to the State's obligation to respect and insure the victims' right to justice, the truth and redress.

A. Protection of the right to justice under Law 975

1. Verification of eligibility requirements

17. Persons demobilized who were involved in crimes committed during the armed conflict and wish to benefit from the lower penalties established in Law 975 must meet certain requirements prescribed in articles 10 and 11, as verified by the judiciary with cooperation from other government agencies.¹⁷ The Justice and Peace Law, consequently, clearly defines a double set of obligations. On the one hand, obligations that must be met by applicants to qualify for and preserve those benefits in the future without risking their loss. On the other hand, the duty of government agencies to zealously oversee compliance with those eligibility requirements, as decided by the Constitutional Court.

18. The IACHR observes that application of Law 975 awaits the national government's delivery to the National Prosecutor's Office of the list of persons demobilized who wish to apply for its benefits. The judicial phase of this demobilization and disarmament process will open as soon as

¹⁶ Constitutional Court, Statement by the Constitutional Court on the Decision finding Law 975 of 2005 consistent with the Constitution, May 19, 2006.

¹⁷ Republic of Colombia, Ministry of the Interior and Justice, Decree No.4760 of December 30, 2005, Article 3, para. 6.

the list is delivered. Then, the agencies named in the law will investigate and insure the victims' participation and the courts will verify compliance with the eligibility requirements and issue orders to secure property surrendered to the authorities. The IACHR believes that it is crucial for government agencies involved in this process to apply the rules consistently with the judgment of the Constitutional Court, so as to make certain that the State fulfills its international obligations in the area of human rights.

19. The IACHR observes that, even if the specific framework introduced by the Law is interpreted as taking effect only as from the delivery of the relevant list to the Justice and Peace Unit of the National Prosecutor's Office, the State may not disregard its international obligations in the area of fundamental rights during the preliminary stages. The existence of a specific framework cannot be regarded as a sort of suspension of the obligations to uncover the truth and dispense justice. It is crucial for government officials to zealously monitor activities before the opening of the specific procedure established in the Law. Negotiations with illegal armed groups or their members, registration and verification of weapons turned in, verification of the identity of persons demobilized and their criminal record, preparation of the final lists to be sent to the prosecutors, approval of social reinsertion programs, verification of the actual dismantling of armed networks, as well as any other government activities preceding the opening of the special procedure under the law, are vital to the subsequent fulfillment of the government's obligations thereunder, especially in ascertaining compliance with the eligibility requirements for obtaining the legal benefit and preserving it. The Commission further believes that it is essential for government authorities to broadly disseminate information on, and publicize, every step taken in this initial stage of the process, so as to encourage maximum public scrutiny.

20. Eligibility requirements for collective demobilization make benefits contingent on compliance with the following: 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 proceeds from the illegal activity; 3) delivery of all recruited minors to the Colombian Family Welfare Institute (ICBF); 4) cessation of any interference by the group in the free exercise of political rights and public freedoms and in any other unlawful activity; 5) the group itself must not have been organized for the purpose of drug trafficking or making illegal profits; 6) release of persons kidnapped and held by the group, on the understanding that information about the fate of missing persons must be given in any case.¹⁸ The Constitutional Court added this requirement on the need to report on the 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.¹⁹

21. For individual demobilization under this Law, the person must: 1) provide information on or cooperate in dismantling the group to which he belonged; 2) sign a commitment document 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 proceeds from illegal activities, to benefit the victims; and 6) have not been involved in drug trafficking or making illegal profits.²⁰ In addition, only persons whose names and identities are reported by the national government to the National Prosecutor's Office may apply for benefits under this Law.²¹

¹⁸ Law 975 of 2005, Articles 10.1, 10.2, 10.3, 10.4, 10.5, 10.6 and Constitutional Court Decision C-370/06 (Dossier D-6032), ruling No. 8, p. 211.

¹⁹ Constitutional Court Decision C-370/06 (Dossier D-6032), ruling No. 8 and 22, p. 212; also see para. 6.2.2.2.5.

²⁰ Law 975 of 2005, Articles 11.1, 11.2, 11.3, 11.4, 11.5, 11.6 and Constitutional Court Decision C-370/06 (Dossier D-6032), ruling No. 9, p. 211.

²¹ Law 975 of 2005, Article 11 last paragraph.

22. Implementation of some aspects of this legal framework may turn out to be complex. The IACHR deems it advisable to point out some of these aspects, so as to help the State apply the Law and ensure compliance with its international commitments.

23. The IACHR notes that, in order to meet the goals of the Law, eligibility requirements must be verified according to the type of demobilization chosen, namely, individual or collective. This because the system of incentives and burdens imposed on the two types of demobilization reflect different reasons and objectives. Individual demobilization seeks to encourage the delivery of information on groups involved in the conflict. Collective demobilization, on the other hand, seeks to effectively dismantle them and bolster a peace process or a lowering of tensions with the armed organizations.

24. One problematic aspect of the application of the Law is, in fact, the connection that must exist between collective and individual demobilization procedures. The IACHR notes with some concern the absence of a clear definition of the status of persons demobilizing individually and applying for legal benefits under group demobilization. It is the view of the IACHR that the State should not tolerate legal interpretations enabling an individual to evade collective demobilization requirements by using the requirements of individual demobilization. Likewise, the IACHR urges officials to clearly define the consequences of failing to meet collective demobilization requirements under Article 10, especially the consequences that noncompliance by the group may have on its individual members. This is particularly important because Article 10 establishes, in principle, obligations incumbent on the demobilized group--aside from the fact that criminal proceedings may be individual--as well as the criminal-law benefits that may be granted in each case. The IACHR believes that failure to meet any requirement under Article 10 should be interpreted as barring, in principle, access to those legal benefits by all members of the demobilized group as a whole. At the same time, failure to meet the requirements of Article 10 should be interpreted as barring individual demobilization under Article 11, unless the procedure is begun anew. Thus, Colombian officials should zealously interpret and apply the Justice and Peace Law with a view to preserving the delicate balance of incentives it offers.

25. The IACHR notes that the Justice and Peace Unit of the National Prosecutor's Office will be responsible for verifying compliance with eligibility requirements, so that only persons demobilized who satisfy all requirements may benefit from the alternative penalty. Justice and Peace Magistrates will also play a crucial role in setting interpretation standards to verify compliance with the requirements. The IACHR urges both agencies to apply the law strictly when assessing the degree of compliance, so as to preserve the meaning of the reduced-sentencing system, support the victims' right to justice and the effective dismantling of paramilitary networks and enable full redress for the victims.

26. Furthermore, under the procedure established in Law 975 beneficiaries will make a deposition before the prosecutor designated for the case by the Justice and Peace Unit of the National Prosecutor's Office. The prosecutor will question them about all events they have knowledge of.²² The Constitutional Court held that this provision is constitutional so long as the statement given is complete and truthful, thus ruling out the possibility that events not included in that statement might later be confessed without thereby losing the legal benefits.²³ The IACHR notes that compliance with this requirement is crucial to solving the crimes perpetrated and to the proper administration of justice. Beneficiaries under this Law must cooperate with the justice

²² Law 975 of 2005, Article 17, first paragraph.

²³ Constitutional Court Decision C-370/06 (Dossier D-6032), ruling No. 12, p. 211.

system so that victims and society as a whole may effectively exercise their right to the truth, justice, redress and non-repetition.²⁴ The mechanics of the Law itself, consequently, will demand special attention from the authorities when verifying the completeness and truthfulness of these statements, as will be discussed in paragraphs 40 and 41.

27. The IACHR notes as well that the defendants' confession does not relieve the authorities of their duty to diligently investigate the events. This obligation, under the Justice and Peace Law, has a twofold purpose. First, to ensure that events will be fully cleared up. In most cases a confession will not be sufficient for that and the State will need to take all investigative steps within its power to arrive at the truth. Secondly, to discharge the duty of investigating and preventing impunity. The reduced prison terms provided by the law offer a very strong incentive not only to those sincerely wishing to fully confess their participation in violations of human rights, but also to those seeking to evade criminal prosecution by the State. Lastly, a full and diligent investigation of the events is also the foundation or effective verification of eligibility for reduced sentencing and preservation of that benefit in the future, as discussed in paragraphs 37, 38 and 42.

28. One eligibility requirement for such benefits, under articles 10 and 11 of the Law, is that the illegal armed group demobilizing must not have been organized for drug trafficking or making illegal profits. This requirement seeks to prevent the negotiation process and its regulatory framework from being used surreptitiously to legalize drug trafficking activities.

29. Paramilitary groups have been connected with drug trafficking since their inception and subsequently.²⁵ Articles 10 (5) and 11 (6) compel the interpreter of the law not only to examine how the group came to be but also its development over time and its operational dynamics, in order to determine if its purpose is to traffic in drugs or make illegal profits. This requires examining the various levels of relations or connections that the demobilized group may have established with drug trafficking, including relations and connections of an operational, financial and territorial nature, the so-called "sale of franchises," as well as the relations between its leaders.²⁶

30. Both the Prosecutor's Office and the Justice and Peace Tribunals must use all investigative tools in their power to accurately determine the genesis and development dynamics of each demobilized group, so as to dispel any suspicion of connection with drug trafficking and illegal businesses, before deciding whether it qualifies for benefits under the law. In addition, wide publicity should be given to the findings for each demobilized group and its members who

²⁴ *Ibidem*, ruling No. 4, p. 211.

²⁵ It has been pointed out that "paramilitarism in Colombia must be understood from a political standpoint, as a federation of groups intimately connected with drug trafficking." See Mauricio Romero, *"La desmovilización de los paramilitares y las autodefensas: riesgosa, controvertida y necesaria"*, Bogotá, 2005. See also Gustavo Duncan, *"Del campo a la ciudad en Colombia, la infiltración de los señores de la guerra"*, Document CEDE 2005-2, ISSN 1657-7191, January 2005, p. 22.

²⁶ Between 1999 and 2001 the number of AUC combatants went from 6.000 to 10.500, approximately, with a simultaneous expansion of coca crops in the areas of influence of this organization, such as the northeast of Antioquia, southern Córdoba, the Sierra Nevada de Santa Marta, southern Santander, western Boandacá, southern Meta and Vichada. At the same time, rumors sprouted about "purchases of franchises" from the AUC by known drug traffickers such as Miguel Arroandave, who was said to have bought the military units organized by Vicente Castaño – including the Frente Capital – for US \$7 million in 2001. The "Bloque Catatumbo," in turn, implemented a strategy of "achieving a military position by removing any risk of a civilian or armed opposition, so as to gain control of a portion of territory with coca leaf crops," and set the price of the kilogram of coca base, focused sales on AUC buyers, controlled inputs and transportation, barred drug shipments without its authorization and, of course, promoted a massive increase in coca plantings. In 1996-1997 about 2.580 hectares were planted with coca. A year after the paramilitary incursion, this figure was about 12.390, according to data from the General Command of the Armed Forces. See *Corporación Nuevo Arco Iris*, *"Catatumbo: la tragedia continúa"* and *"El Bloque Capital de las AUC en el sur de Bogotá and Soacha"* in Revista Arcanos No. 11, available at Internet portal www.nuevoarcoiris.org.co.arcanos11.htm. See also UNODC, Colombia Coca Survey (2003 -2004).

demobilized individually. This will increase accountability of officials involved in the process as well as oversight by the public at large.

2. Procedures and reasonable deadlines

31. Once the deposition has been made before the designated prosecutor, complex deadlines begin to run under the law for bringing charges and investigating the events, as established by the implementing decree and interpreted by the Constitutional Court. The IACHR has noted in earlier statements the deadlines, as prescribed by the Law, would seriously compromise the investigation and prosecution of beneficiaries.

32. Under the Law, after making his statement the person demobilized is to be brought before a magistrate to ensure that formal charges are brought within the following 36 hours.²⁷ The implementing decree, in turn, provides that the designated prosecutor will be given a reasonable time that may not exceed the six-month period set by article 325 of the 2000 Code of Criminal Procedure.²⁸ Examining these controversial deadlines, the Constitutional Court decided that 36 hours would be considered constitutional so long as the persons demobilized are placed at the disposal of a magistrate to ensure the proper safeguards and a hearing to bring charges is held, once the methodological schedule is completed, in accordance with Article 207 of the 2004 Code of Criminal Procedure.²⁹

33. The IACHR notes that this interpretation by the Constitutional Court makes it possible for the designated prosecutors and their teams to fully and seriously investigate the crimes committed by demobilized members of illegal armed groups. These new deadlines will make it easier for prosecutors to contribute the full evidence needed to do justice. In short, the IACHR recommends that the agencies responsible for applying these provisions interpret and apply the deadlines according to the Constitutional Court's decision.

3. Participation of victims in all stages of the proceedings

34. Another noteworthy aspect of the right to justice has to do with the victims' participation in the proceedings. In its decision on the constitutionality of the Law, the

²⁷ Law 975 of 2005, Article 17(4).

²⁸ Republic of Colombia, Ministry of the Interior and Justice, Decree No.4760 of December 30, 2005, Article 4(1).

²⁹ Constitutional Court Decision C-370/06 (Dossier D-6032), ruling No. 13, p. 211 and paras. 6.2.3.1.61 – 6.2.3.1.6.4. See also Code of Criminal Procedure, Law 906 of 2004 published in Diario Oficial [Official Gazette] No. 45.657 of August 31, 2004, as amended by Decree 2770 of 2004, Article 207. METHODOLOGICAL PROGRAM. After receiving the report mentioned in Article 205, the prosecutor responsible for coordinating the investigation will take steps, as appropriate, to verify the investigative work and meet with members of the judicial police. If warranted by the complexity of the matter, the prosecutor may order, with authorization from the head of the unit to which he is assigned, a larger investigative team. Article 205. THE ROLE OF THE JUDICIAL POLICE IN THE INQUIRY AND INVESTIGATION. Public officials who, in the exercise of their judicial police functions, receive reports, complaints or information pointing to the possible commission of a criminal offense, must immediately take every urgent step, such as inspecting the scene, the body, conducting interviews and questioning witnesses. They must also identify, collect and properly pack the material and physical evidence and write down, tape or make audio/sound recordings of the interviews and interrogation sessions and preserve the chain of evidence. When a medical-legal examination of the victim is required, the victim will be accompanied, insofar as possible, to the appropriate medical center. When dealing with a dead body, it will be taken to the proper facility of the National Legal Medicine and Forensics Institute or, barring that, to an official medical center for the medical-legal autopsy. In urgent cases, within the following thirty six (36) hours the judicial police must submit an executive report on the case and results to the proper prosecutor, so that he may take charge, coordinate and oversee the investigation. In any event, the judicial police authorities must report their initial steps so that the National Prosecutor's Office may immediately begin to direct, coordinate and oversee the investigation.

Constitutional Court held that victims have the right to participate in all stages of the proceedings,³⁰ which furthermore guarantees their right to learn the truth about the events.

35. The Constitutional Court's decision points out that "a systematic vision of the provisions on the procedural rights of victims--the procedural accusation system--leads to the conclusion, in light of the underlying principles and current case law on procedural participation by victims, that the law guarantees the victims' participation during the stages of the deposition and confession, the bringing of charges and their acknowledgment."³¹ The IACHR observes that the victims' participation in the various procedural stages guarantees the right to the truth and justice, is part of the complex structure of weights and balances in criminal proceedings and encourages public oversight of government actions.

4. Revocation of benefits

36. The Constitutional Court decision laid down the requirements for preserving the benefit of the alternative penalty, establishing the possibility of revoking it when the demobilized person's deposition concealed his participation in a crime directly connected with his membership in the armed group. This interpretation, as mentioned, encourages full and truthful confessions and discourages concealment of information. In addition, as regards recidivism, the Court decided that any criminal offense committed by the beneficiary may entail revocation of the alternative penalty benefits. This helps promote the effective dismantling of armed organizations and the cessation of criminal activity.³²

37. Similarly, the IACHR notes that other problematic situations may arise in granting or revoking the benefit. Verification of compliance with requirements, for example, may not be a simple matter when all or part of the information needed to rule on eligibility must be produced by government agencies involved in the negotiation process. It is critical that the Executive act in a transparent fashion in applying the law, and that the Prosecutor's Office and the judiciary, aside from other government agencies, play an active role in ascertaining compliance with requirements for eligibility and subsequent preservation of benefits. This is particularly important in certain sensitive areas such as supervision of the effective dismantling of armed groups, cessation of criminal activities, the actual surrender of weapons used in the conflict and land illegally taken, as well as other property intended for compensation of victims.

B. The right of victims to learn the truth

38. The Justice and Peace Law envisages lighter sentencing as a result of a series of actions designed to arrive at the truth and provide redress for the victims. The IACHR notes that, in applying this law, it is important for these truth and redress components to be strictly examined as an essential prerequisite for granting a lesser penalty. The law must be applied as a system of useful incentives to tell the truth, identify and punish perpetrators and provide reparations to the victims.

39. Several provisions of Law 975 leave open the possibility of beneficiaries receiving lighter sentences without revealing the whole truth about the crimes perpetrated or the participation

³⁰ Constitutional Court, Decision C-370/06 (Dossier D-6032), ruling No. 26, p. 211, and para. 6.2.3.2.2.3 – 6.2.3.2.2.10.

³¹ *Ibidem*, ruling No. 26, p. 212, and para. 6.2.3.2.2.8.

³² Constitutional Court, Decision C-370/06 (Dossier D-6032), ruling No. 22, p. 212. The Law did not explicitly provide for loss of benefits already granted if other crimes are later proven to have been committed (Article 25).

of various parties in the conflict, including government security forces (Articles 17, 18, 19 and 25 of the law).

40. In this connection, the Constitutional Court held:

the law under challenge does not clearly establish the judicial mechanisms needed to uncover the overall criminal enterprise in question. Nor does it establish judicial means to ensure disclosure of the truth about specific crimes committed by members of specific groups that may demobilize. In fact, persons applying for benefits under the law have as their sole obligation to acknowledge the offenses that the State is able to charge them with (...) but this is entirely insufficient to guarantee the minimum constitutional content of the right to the truth.³³

The Court consequently held that the statement given by persons demobilized who apply for benefits under the law will only achieve its purpose, which is to serve as a means of arriving at the truth, if it is full and truthful.³⁴ In addition, it indicated, beneficiaries have a single opportunity to tell the truth, and if their statements have concealed the truth about their participation as members of the group in a crime directly connected with that membership, the benefit of the alternative penalty is to be revoked.³⁵

41. The IACHR insists on the need for government officials, specifically the agencies responsible for administering justice and applying the Justice and Peace Law, to fully apply the law and the Constitutional Court decision, so that the victims and Colombian society as a whole may learn the truth about the serious crimes committed over recent decades of armed conflict. Implementation of the present system will satisfy international standards only if and to the extent that the granting of lower penalties is made strictly contingent on eliciting the truth and does not rely exclusively or primarily on the defendant's confession.

42. The National Commission on Reconciliation and Reparation³⁶ was set up to guarantee the right to the truth and redress for the victims. Since it was established in July 2005, the Commission has been outlining its basic guidelines and work program to discharge its mandate, which are expected to be defined in 2006.³⁷ Among the primary functions assigned to this Commission are creating favorable conditions to set up a Truth Commission in the future; guaranteeing the participation of victims in judicial proceedings and the exercise of their rights; presenting a public report on the causes that led to the establishment and development of unlawful armed groups in Colombia; monitoring the reinsertion of former combatants into civilian life and the policy of demobilization of armed groups outside the law; periodically evaluating the policies on

³³ Constitutional Court, Decision C-370/06 (Dossier D-6032), para. 6.2.2.1.7.14.

³⁴ *Ibidem*, ruling No. 12, p. 212 and para. 6.2.2.1.7.1- 6.2.2.1.7.30.

³⁵ *Ibidem*, ruling No. 22, p. 212, and para. 6.2.2.1.7.27. In addition, to provide legal certainty standards the Court held that "for a benefit to be revoked, it is not enough for somebody to allege during the probationary period that the truth was concealed in the deposition, or to report the beneficiary for the commission of another offense not mentioned in that deposition. The concealed offense must be real, not the product of imagination or suspicion, which means that during the probationary period there must be a court decision providing legal certainty about the commission of the unreported offense. The existence of a court decision is important because, for the convicted defendant, it will mean serving a long regular sentence reflecting the seriousness of the crimes committed, which requires certainty about his participation in those crimes." *Ibidem*.

³⁶ Law 975 of 2005, Article 50.

³⁷ *Elementos para la construcción de una Hoja de Ruta*. Materials delivered by the Chair of the National Commission on Reconciliation and Reparation, Eduardo Pizarro, to the IACHR on March 13, 2006, during the IACHR's 124th session.

restitution and making recommendations to the State on how they may best be implemented; recommending standards for reparations to the victims from the Victims Reparations Fund.³⁸

43. In the view of the IACHR, the work that the National Commission on Reconciliation and Reparation may be able to do in the eight years of its mandate under Law 975 is crucial; the IACHR hopes that the gains made by this Commission will be made known to Colombian society and the international community.

C. The right of victims to full redress

44. The IACHR observes that the Justice and Peace Law includes provisions designed to satisfy the right of victims to be fully compensated for injuries suffered as a result of crimes perpetrated during the conflict.³⁹ Full redress will depend in part on the demobilized beneficiaries returning their ill-gotten gains.⁴⁰

45. In its decision the Constitutional Court held that, in light of the individual nature of criminal liability, demobilized beneficiaries must turn over the proceeds of illegal activities and answer in this connection with all their assets,⁴¹ so as to compensate each victim of the crimes for which they were convicted. In addition, they are to be jointly liable for civil damages to the victims caused by other members of the armed group to which they belong, inasmuch as civil liability, when based on a punishable offense, gives rise to joint responsibility.⁴² The Court held that beneficiaries must make every effort to undo the deals that enabled them to hide their real assets, or find clearly identified illegal proceeds that may not be in their possession.⁴³ This interpretation of Law 975 supports the victims' expectation of being compensated.

46. Nevertheless, as regards the surrender of real property, the IACHR notes with concern that there is no coordination in Colombia between the systems of notary certification, registration and land records,⁴⁴ which will raise difficulties in returning land to victims of forced displacement. In addition, the IACHR worries about the lack of information on real property that the heads of demobilized AUC groups might surrender to meet one of the eligibility requirements of the Law, namely, Article 10.2.⁴⁵ The lack of information on property includes matters such as its

³⁸ Law 975 of 2005, Article 52.

³⁹ *Ibidem*, Chapter IX, Articles 42 to 56.4.

⁴⁰ *Ibidem*, Articles 10.2; 11.5; 13.4; 44; 46; and 54.

⁴¹ *Ibidem*, Article 11.5, and Constitutional Court Decision C-370/06 (Dossier D-6032), ruling No. 9, No. 12, and No. 27, pp. 211 – 212. See also paras. 6.2.4.1 – 6.2.4.1.24.

⁴² Law 975 of 2005, Article 54 and Constitutional Court Decision C-370/06 (Dossier D-6032), ruling No. 31, p. 212; see also para. 6.2.4.4.7.

⁴³ Constitutional Court Decision C-370/06 (Dossier D-6032), ruling No. 9, No. 12, and No. 28, pp. 211 – 212; see also para. 6.2.4.1.23.

⁴⁴ *Proandecto "Control Preventivo y Seguimiento a las Políticas Públicas en materia de Reinserción and Desmovilización"*, Procuraduría General de la Nación, Volume I, p. 208, note 334. Available at Internet portal: <http://www.procuraduria.gov.co/>. The report by the Attorney General notes that "real estate records are essential to management of land. Land records provide the data needed to define the socioeconomic structure, territory distribution, title, property taxes, and the information needed to make restitution of property to the victims of violence".

⁴⁵ Law 975 of 2005, Article 10. Eligibility requirements for collective demobilization. Benefits established by this law may be applied for by members of an illegal organized armed group who have been or may be charged, accused or convicted as perpetrators or participants in crimes committed during or on the occasion of their membership in those groups, if they are not eligible for the benefits prescribed by Law 782 of 2002, provided they are included in the list that the National Government will deliver to the National Prosecutor's Office and they meet, in addition, the following requirements: (...) 10.2 Surrender the proceeds of their illegal activity.

location, the names of the alleged owners, the condition of lands, and the methods used to acquire them.⁴⁶ Nor is it known whether such property will be earmarked for the Victims Reparations Fund or for productive projects benefiting persons reinserted or displaced or farmers, or what actions will be taken to trace the legitimate owners.⁴⁷

47. The IACHR is concerned that there is still not much clarity as regards the time frame for compensating victims and how this will be done. The Law sets up certain agencies to handle the process and facilitate restitution to the victims. These agencies, however, have a few means available to them to interact. Thus, the Law establishes a National Commission on Reconciliation and Reparation that will help implement an institutional program of collective compensation, to reinstate and support the rights of citizens affected by violence and to recognize and honor victims of violence.⁴⁸ In addition, it establishes Regional Commissions on Restitution of Property to ease the processing of claims on ownership and possession of property contemplated by the Law.⁴⁹ Lastly, it sets up the Victims Reparations Fund as a special account, not a legal entity, to be governed by private-law rules. Its resources are to be managed by the National Controller's Office.⁵⁰ It is with resources from this fund that the Social Solidarity Network will be charged with settling and paying court-ordered compensation under the Law, administering the fund and taking other compensation steps, as appropriate.⁵¹

48. Under the United Nations "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims," victims are entitled to adequate, effective and swift reparation of the injuries suffered.⁵² The case law of the inter-American system has repeatedly held that victims of crimes perpetrated during the armed conflict have a right to adequate reparations for the injury suffered, which must take the form of individual steps designed to offer restitution, compensation and rehabilitation to the victims, as well as broader redress measures and guarantees against repetition.⁵³ Reparations must consist of measures designed to undo the effects of the violations; consequently their nature and amount will depend on the injury inflicted, both material and intangible. Reparations may neither enrich nor impoverish the victims or their heirs.⁵⁴

⁴⁶ *Proandecto "Control Preventivo y Seguimiento a las Políticas Públicas en materia de Reinserción and Desmovilización"*, Procuraduría General de la Nación, Volume I, p. 225. Available at Internet portal: <http://www.procuraduria.gov.co/>.

⁴⁷ *Ibidem*. See also Articles published by Revista Semana on March 30 and 31, 2006, "*¿Oferta de reparación, lavado o mero deseo?*", and "*Ministro del Interior aclara supuesta oferta de tierra de los paramilitares*," respectively.

⁴⁸ Law 975 of 2005, Article 49.

⁴⁹ *Ibidem*, Article 52.

⁵⁰ *Ibidem*, Article 54.

⁵¹ *Ibidem*, Articles 55, 56.1, 56.2 and 56.3.

⁵² General Assembly A/RES/60/147, March 21, 2006. Resolution approving the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," basic principle and guideline No. VII. See also U.N. Economic and Social Council, Report by Diane Orentlicher, independent expert responsible for updating the set of principles to combat impunity, E/CN.4/2005/102, February 18, 2005.

⁵³ See I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, paras. 236-237; *Case of the Caracazo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, paras. 77-78; *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, paras. 31-32; *Suárez Rosero Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 41; *Castillo Páez Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 53.

⁵⁴ I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, para. 228; *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 245; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 148; *Case of the Indigenous Community Yakye Axa*.

49. In light of the above, the IACHR urges the State to clarify the interaction mechanisms between the various agencies charged with facilitating reparations for the victims and to improve the real estate registration and recording systems in Colombia.

III. CHALLENGES FOR COLOMBIA IN MEETING INTERNATIONAL STANDARDS ON TRUTH, JUSTICE AND REPARATIONS

50. Under the case law of the inter-American system, States have the duty to prevent and combat impunity, which is defined as an absence, on the whole, of investigation, prosecution, arrest, trial and conviction of those responsible for violating rights protected by the American Convention.⁵⁵ In the opening phase of this stage, following demobilization of more than 30,000 members of illegal armed groups⁵⁶ involved in crimes against the civilian population, the State faces the challenge of applying the legal provisions designed to prosecute these crimes under domestic law and its international obligations in the area of human rights.

51. The Constitutional Court's decision on the legal and institutional framework set up by Law 975 of 2005 establishes guidelines to meet these challenges and must become a cornerstone of the legal framework governing demobilization of illegal armed groups that took part in the conflict.

52. The agencies charged with implementing the Law -- the Justice and Peace Unit of the National Prosecutor's Office, the Justice and Peace Tribunals, the Ministry of Justice and the National Commission on Reconciliation and Reparation -- have a vital role to play in interpreting Law 975 of 2005 and its implementing provisions and ensuring the proper administration of justice as a guarantee against repetition of the serious crimes perpetrated during the armed conflict.

53. These agencies must first make certain that persons demobilized who wish to receive the benefits of Law 975 meet each and every eligibility requirement as interpreted by the Constitutional Court. In addition, all agencies involved in the application of that law must cooperate by delivering all available information, so as to support the judiciary in the verification of those requirements.⁵⁷ Second, the Justice and Peace Unit of the National Prosecutor's Office should issue guidelines to encourage proper and full investigation by the designated prosecutors of the actions of persons demobilized, and to standardize the criteria used by prosecutors when implementing the legal framework in each particular case. Third, the notary certification, registration and real estate recording systems must be strengthened, so that the agencies involved will be able to ensure proper restitution of real estate to victims of the conflict, mostly displaced persons who were forced to abandon their lands because of violence.

...continuation

Judgment of June 17, 2005. Series C No. 125, para. 182; and *Case of Caesar*. Judgment of March 11, 2005. Series C No. 123, para. 123.

⁵⁵ I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, paras. 236-237; *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 203; *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, para. 170; and *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 148.

⁵⁶ Figure estimated by the Office of the High Commissioner for Peace in May 2006, available at Internet portal <http://www.altocomisionadoparalapaz.gov.co/>.

⁵⁷ Republic of Colombia, Ministry of the Interior and Justice, Decree No.4760 of December 30, 2005, Article 3, para. 6.

54. A fourth challenge is to make certain that victims will be truly able to participate in the investigation, prosecution and reparation proceedings. The State, through its institutions, must guarantee the victims access to adequate legal representation and participation in every procedural stage, as established by the Constitutional Court.⁵⁸ In addition, the IACHR stresses the need for adequate steps to protect the victims and witnesses, looking after their physical and psychological well-being as well as their dignity, and respecting their privacy.⁵⁹

55. Lastly, the IACHR notes that officials must not lose sight of their duties under the case law of the Inter-American Court of Human Rights concerning the massacres at Mapiripan,⁶⁰ Pueblo Bello⁶¹ and Ituango.⁶² These decisions established the responsibility of Colombia for actions or omissions of its agents in abetting or acquiescing to serious crimes that resulted in the death or physical injury of civilians, perpetrated by members of the AUC who took part in the Santa Fe de Ralito agreement and surrendered their weapons within the framework of demobilization between 2004 and May 2006.

56. The IACHR emphasizes that, in light of these challenges, the State must publicize the results of negotiations with armed groups, the procedures for identifying combatants and the surrender of weapons, as well as the implementation of the Justice and Peace Law, so that Colombian society as a whole may follow and monitor events during this important stage of the country's life.

IV. CONCLUSIONS

57. The Constitutional Court decision substantially improves the balance originally established in the Justice and Peace Law between the system of reduced sentencing incentives for demobilization and the principles of truth, justice and redress that are part of the State's international obligations. This decision specifies the requirements for gaining access to the alternative penalty and for preserving its in the future without risking revocation. It discourages concealment of information and promotes truthful and full confessions. It also improves conditions for prosecutors to adequately investigate events and expands the victims' prospects of participating in proceedings and obtaining reparations. Consequently, the decision of the Court is an essential tool for the legal framework, to be implemented consistently with the State's international obligations.

58. Among the key aspects of the Constitutional Court's decision that must be strictly complied with by government agencies involved in implementing Law 975, are the following.

1. The deposition given by those applying for benefits under this law must be complete and truthful and must include the right to learn the causes and circumstances of time, manner and place in which the crimes were committed, thereby enforcing the right to the truth.

⁵⁸ Constitutional Court Decision C-370/06 (Dossier D-6032), ruling No. 26, p. 212; see also para. 6.2.3.2.2.8.

⁵⁹ Law 975 of 2005, Article 38, first paragraph.

⁶⁰ I/A Court H.R., *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134.

⁶¹ I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140.

⁶² I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148.

2. The right of victims to participate in all procedural steps established by the law.
3. The obligation of those applying for benefits under this law to reveal the whereabouts of missing persons and make restitution to the victims out of their own assets, including legal assets that may be the subject of precautionary measures.
4. Members of the demobilized armed group are jointly liable for compensating the victims of crimes, when the courts so decide.
5. Those who benefit from the alternative penalties provided in Law 975 will lose that benefit if they commit new offenses or fail to comply with obligations imposed during their sentence.
6. The designated prosecutors of the Justice and Peace Unit of the National Prosecutor's Office will have a reasonable time to investigate crimes, and once they have completed the methodological program will ask the proper magistrate to schedule a hearing in order to bring charges.

59. In addition, the IACHR continues to be concerned over the number of issues connected with uniform application and implementation of the Justice and Peace Law and reparations for victims of the conflict, including the return of lands, in regard to which it recommends that the State take the following measures:

1. Issue guidelines to unify and standardize the criteria to be used by designated prosecutors of the Justice and Peace Unit of the National Prosecutor's Office in implementing legal provisions in each case, so as to ensure uniform interpretation of Law 975, guaranteeing: a) strict verification of compliance with eligibility for alternative penalties; b) minimal guidelines on conducting a full and diligent criminal investigation that does not rely solely on the confession of defendants; c) the steps to be taken and the criteria to be followed in the future in order to actively ascertain whether requirements are met for preserving the benefits granted or, when appropriate, call for revocation of those benefits. The State must ensure adequate dissemination of these guidelines, as appropriate, so as to facilitate citizen oversight of compliance with the Justice and Peace Law.
2. Establish time frames and mechanisms to implement the process of compensating victims and ensuring interaction between the agencies involved.
3. Strengthen the notary certification, registration and real estate recording system, so that the agencies involved will be able to properly return real estate to victims of the conflict.

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

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 Enenías 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

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.

organization; knowledge of persons kidnapped by the group; knowledge of property acquired by the group or organization during its activities.

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 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.

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 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

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.

total of 359 weapons.³⁵ There, the IACHR observed that the weapons surrendered appeared to be 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.

³⁵ See High Commissioner for Peace, *Reporte Balance de armas entregadas por integrantes del Bloque Élder 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 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".

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, 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,

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.

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 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

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

“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 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 unconstitutional,⁵⁰ and held:

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

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 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

...continuation

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".

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).

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

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.

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 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.

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 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

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.

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 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

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.

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 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

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.

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.

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 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.

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.

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.

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 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

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).

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.

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 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'

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.

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

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.

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

...continuation

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.

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, D.C., February 2, 2007.

⁸⁸ *Ibid.*

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

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 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

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.

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.

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 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.

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.

⁹⁴ I/A Court H.R., *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.

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.

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.

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.

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 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.

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.

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.

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 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

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 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 Héroes 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.

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

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:

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.

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.