

**TWENTY-THIRD REPORT OF THE SECRETARY GENERAL TO THE PERMANENT
COUNCIL ON THE ORGANIZATION OF AMERICAN STATES MISSION TO SUPPORT
THE PEACE PROCESS IN COLOMBIA (MAPP/OAS)**

The following report is submitted pursuant to resolution CP/RES. 859 (1397/04), in which the Organization of American States (OAS) instructs the Secretary General to report periodically to the Permanent Council on the work of the Mission to Support the Peace Process in Colombia, hereinafter “the MAPP/OAS” or “the Mission.”

The mandate of the MAPP/OAS derives from the agreement entered into by the Government of Colombia and the General Secretariat of the Organization of American States, hereinafter “the GS/OAS,” on January 23, 2004, as well as from Permanent Council resolution CP/RES. 859 (1397/04), adopted on February 6, 2004. It has been broadened and renewed six times. It was most recently renewed until December 31, 2018.

In compliance with resolution CP/RES. 859 (1397/04), paragraph 3, before publishing this report, the MAPP/OAS consults the Inter-American Commission on Human Rights (IACHR) for its observations in its area of competence, thereby ensuring and establishing coordination and information sharing between the two OAS bodies.¹

The MAPP/OAS works to support peacebuilding in Colombia on a daily basis. It directly assists local communities, public agencies, indigenous authorities, Afro-descendant communities, social, civil, and women’s organizations, religious communities, security forces, victims, community leaders, and former combatants in the territories most affected by the internal armed conflict, working at the municipal, departmental, and national levels. This report presents the findings of the GS/OAS based on the Mission’s monitoring and support for peacebuilding in Colombia for the period August 1, 2016 to January 31, 2017. On an exceptional basis, it also discusses a few important events outside that timeframe.

The support of the international community is vital for the MAPP/OAS to be able to carry out the activities in its mandate. The GS/OAS therefore wishes to thank the donors and friends of the MAPP/OAS, including in particular the Basket Fund countries,² whose political and financial support make the Mission’s operations possible. It is also grateful for the contributions of the European Union, Korea, Sweden, Switzerland, and Turkey, as well as the Spanish Agency for International Development Cooperation (AECID), the German Agency for International Cooperation (GIZ), the United States Agency for International Development (USAID), and the Swedish International Development Cooperation Agency (SIDA).

From August 1, 2016 to January 31, 2017, the MAPP/OAS carried out a total of 959 field missions, of which 703 involved monitoring and the remaining 256, support activities. These missions were conducted in 203 municipalities, 26 departments, and 524 populated centers, which included municipal capitals, townships, villages, indigenous reserves, and community councils.

¹ The MAPP/OAS report presents a detailed analysis of the situation in Colombia. It also covers topics and concerns identified by the IACHR in its monitoring of the general human rights situation and discussed in Chapter V of its 2016 Annual Report, “Follow-up on recommendations made by the IACHR in the report *Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia*.”

² The Basket Fund members are Canada, Germany, the Netherlands, the United Kingdom, and the United States.

1. GENERAL CONSIDERATIONS

International experience has shown that the processes for building peace in a country take time and involve complex and intractable social issues. Tackling these challenges requires not only tremendous government institutional efforts, but also determined commitment on the part of those laying down arms, relief for war-torn populations, support for civil society, the conviction of the opposing political powers, and solid support from the international community. All of these conditions are central to strengthening and deepening the social processes inherent in the signing of a peace agreement, so that they become sustainable over time.

Thus, although the peace agreement between the Government of Colombia and the *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* [Revolutionary Armed Forces of Colombia] (FARC-EP) has been declared irreversible, during the current phase of political and social transition, the GS/OAS considers it necessary to continue to strengthen the peace process by addressing the need to make concessions with respect to the ordinary justice system and the operation of the regular legislative mechanisms. It is also important not to delay implementing the components of the peace agreement for too long because undue delay could engender mistrust and uncertainty among the affected communities and various actors involved, as well as possible outbreaks of violence at the territorial level.

Concrete steps to implement the agreement are the best guarantee against recurrence of the circumstances that gave rise to the conflict and resurgence of violence. Stopping armed confrontation is not enough. It must be accompanied by concrete measures designed to change local realities. Making the goal of peace a reality implies beginning to build from the bottom up—from the most adversely affected areas—and concentrating the greatest effort there, so that the people feel the effects of ending the conflict in their daily lives.

The GS/OAS notes, that according to field observations, the concentration of members of the FARC for demobilization, disarmament, and reintegration has created new power vacuums in the territories which are being filled by other players, leading to disputes and attacks on leaders and human rights defenders. The Mission has also observed the reaccommodation of individuals identified by the communities as FARC dissidents, the expansion of the *Ejército Nacional de Liberación* [National Liberation Army] (ELN), and the arrival of new illegal armed groups attracted by profits from the legal and illegal economies. Amid the disputes, the communities are under increasing stress, which creates new stresses.

In this context, there has been a resurgence of common violence. Although without the political connotations of the past, it has the potential to be very damaging. Armed groups such as the *Clan del Golfo* [Gulf Clan] or *Los Pelusos* are gaining notoriety for their attacks on security forces. These groups have nonhomogeneous structures and are able to take differentiated, flexible action in response to specific local and regional circumstances and contexts. They seek to replay coercive control scenarios in rural and urban communities, impeding the consolidation of community organizational bases and social mobilization to assert rights.

At the same, as in other peace processes, there are pockets of FARC members who have not disarmed, while some FARC dissidents have joined gangs of common criminals. Where such dissident cells are present, extortion activities and the recruitment of minors have continued. The dissidents have also distributed pamphlets and tracts with ideological and political messages justifying their decision not to lay down arms. However, in the local communities, there is a continued perception that their

primary reason for rejecting the disarmament and demobilization process is the tie with illegal economies such as the drug trade.³

The GS/OAS remains deeply concerned about threats and attacks targeting leaders, community representatives, and human rights defenders attempting to claim social rights in the territories. The ongoing impact on the lives of this population is seriously weakening the social fabric of the communities and fundamentally affecting organization, exercise of rights, and political participation. It is also endangering the peace process.

The GS/OAS recognizes the government's steady progress on combating illegal drug trafficking. Through major initiatives launched as part of the peace agreement, it is attempting to replace illicit crops, with a focus on assistance and rural development. However, this effort is not without challenges at the local level, both for implementation and in regard to collective rights and social conflicts in the areas. At the request of the national government, the MAPP/OAS assisted some of these initiatives in the territories by facilitating settings for communities and government representatives to negotiate agreements and by helping to publicize the preliminary agreements in the regions. The GS/OAS reiterates its commitment to providing support for these efforts, given their importance for achieving peace.

As indicated in previous reports, one of the side effects of the peace process is the emergence of new social conflicts, which are rampant. These conflicts have common roots and take the following forms: (1) economic and political interests in local dialogues on implementing the peace agreements; (2) new organizations colliding with the historical traditional organizations in the areas; (3) bigger organizations trying to override smaller local organizations; (4) tensions between *campesinos* and ethnic groups over access to land; (5) expectations and stigmatization created by the institution of the transitional local zones for normalization (ZVTNs) and transitional local points for normalization (PTNs).

The SG/OAS also recognizes the progress made on the Special Jurisdiction for Peace, a temporary alternative mechanism focused on victims' rights, and calls attention to the challenge of consolidating a comprehensive transitional justice system integrating the system for truth, justice, reparation and guarantees of non-recurrence with other mechanisms such as Law 975/05, Law 1424/10, Law 1448/11, and mechanisms agreed in the context of the government's ongoing talks with the ELN.

1.1 Peace process with the ELN

The continuation of the public phase of negotiations between the national government and the ELN gives hope that the country can achieve total peace. With their specificities and inherent difficulties, the talks are still moving forward, and both delegations remain committed to reaching an agreement. To that end, they have established negotiating subgroups, one on participation and the other on humanitarian guarantees and issues, which are working in parallel.

The GS/OAS welcomes the progress made and urges the parties to work tirelessly for a peaceful solution to the conflict. Given the political situation and the upcoming elections, it is important for them to move as quickly as possible and to try to implement what is agreed as they go in order to make the process stronger and more stable and build confidence, so that the progress and agreements achieved are acknowledged and accepted by the next government.

³ With respect to the forced recruitment of children and adolescents, the IACHR has repeatedly stated that it is important to have a formal separation process for children and adolescents in the ranks of the FARC and that informal separation would appear to violate the obligation to protect children and adolescents in armed conflict. It also shares the Mission's concern regarding illegal armed group recruitment and use of children and adolescents for the purpose of controlling the territory, including in particular the recruitment of girls for sexual exploitation.

The GS/OAS also considers that implementing confidence-building measures such as actions to mitigate the impact of the armed conflict and/or decrease its intensity would create support for the peace process and act as a real catalyst for dialogue. It would also facilitate participation processes.

It is also important to build awareness of the peace process at an early stage. In this connection, the GS/OAS has noted that the restricted flow of information on progress in the talks to regional government, local government, and civil society has prevented more determined involvement by other levels of government and society as a whole. Stronger, effective participatory mechanisms are needed to allow for the expression of different interests, views, and expectations.

Lastly, the GS/OAS reiterates its willingness to continue to assist the peace process through both administrative and substantive mechanisms, and it urges the representatives of the national government and the ELN to work tirelessly to achieve peace, overcome polarization, and weaken the capacity of factors that can damage the peace process. It also calls on society as a whole to continue to support the peace efforts, and on the support and generosity of the international community.

2. MONITORING THE CONTEXTS OF ARMED CONFLICT AND CRIMINAL ACTIVITY

The GS/OAS emphasizes the Colombian Government's continued commitment to a sustained strategy on organized crime targeting groups known institutionally as organized armed groups (GAOs) and organized criminal groups (GDOs) in order to mitigate their observed incipient dangers for the consolidation of peace in the territories. Furthermore, the GS/OAS recognizes the role and commitment of the Colombian security forces in implementing the agreements between the national government and the FARC, but it is also aware that some communities see them as more interested in providing security for moving members of the FARC to the temporary pre-grouping points (PTTs), ZVTNs, and PTNs than in improving and extending security in rural areas. In this connection, they perceive a need for the security forces to continue stationing troops⁴ in some of the territories vacated by the FARC in order to prevent other armed groups from moving into these spaces and heightening the perception of insecurity there.

One of our major concerns for the observation period is that, as the FARC forces have pulled out of the territories, GAOs, GDOs, other illegal armed groups, and ordinary criminals have gradually moved into some of these areas. The perception in these territories is that the security forces have not positioned themselves adequately and effectively. Regions such as Southern Córdoba and Lower Cauca even see themselves as abandoned or unprotected by the security forces as a result of the peace process with the FARC. In the eyes of some, the national government is refraining from military action in some regions in order not to impede that process.

2.1 Expanding violence: the *Clan del Golfo*⁵ moves into new areas

The GS/OAS notes with concern the *Clan del Golfo* strategy of territorial occupation and the impact of its actions on the community and the security forces. With this strategy, the approach depends on whether the area is rural or urban.

⁴ The Ministry of Defense has announced the opening of police stations in Bilbao township, municipality of Planadas (Tolima); Juan José township, municipality of Puerto Libertador (Córdoba); El Capricho township (Guaviare), and Medellín del Ariari township (Meta).

⁵ In this report, we will refer to the *Clan del Golfo*, which is what the Colombian Government calls this organized armed group. However, in its zone of influence, institutions and communities know it as the *Autodefensas Gaitanistas de Colombia* [Gaitanist Self-Defense Forces of Colombia] (AGCs), the *Gaitanistas*, or *Los Urabeños*.

In rural areas, it is variable and may involve tactics of confrontation or cooperation and nonaggression with other illegal groups over the occupation of new territories. With respect to confrontation tactics, clashes between the *Clan del Golfo* and the ELN have been observed in the High, Middle and Lower Baudó subregions of Chocó department, in Lower San Juan, and in the La Mojana region, along the border between Bolívar and Sucre departments. Regarding relationships of cooperation or nonaggression agreements, we have received information about alleged agreements between the *Clan del Golfo* and the ELN for illegal mining operations in the Lower Cauca subregion of Antioquia and in Southern Bolívar, along the border between the municipalities of Santa Rosa del Sur and Simití. In the Catatumbo region, the *Clan del Golfo* and *Los Pelusos*⁶ have maintained economic relations despite the leadership turnover underway as a result of the blows inflicted by the Colombian authorities.

In urban areas, especially in the capital cities, the strategy has been to establish fragmented networks with multiple contacts by coopting small criminal gangs without the disputes or major confrontations that could attract the attention of the authorities. Here, the objective is to control points of sale of psychoactive substances, to collect extortion payments from businesses, and in some cases, to carry out contract killings. This strategy has worked for the illegal armed groups. Despite the authorities' focus on attacking and dismantling criminal economies and networks, they have not been able to impact the leadership hierarchy of the Clan.

At the same time, the GS/OAS has observed a change in how the *Clan del Golfo* exercises control in communities in its zones of influence. In the past, this control was expressed through the collection of extortion payments, imposition of restrictions on movement, and so forth. However, during the period covered by this report, there has been a noticeable trend towards support for social mobilization actions, which had not been seen previously.⁷

With respect to *Clan del Golfo* armed activities, its hostilities appear to be directed increasingly against members of the Colombian security forces. In December, it took national police officers hostage in Zaragoza, Antioquia, and launched the “pistol plan,” resulting in the killing of national police officers in the municipalities of Apartadó, Cisneros, San Jerónimo, Valdivia, and Puerto Valdivia in Antioquia department. The weapons capabilities of the *Clan del Golfo* were evident in various armed clashes with members of the national armed forces and national police in Puerto Libertador, Córdoba; Atrato, Chocó; Barbacoas, Nariño; and Zaragoza and San Pedro de Urabá, Antioquia.

2.2 Situation of *Los Pelusos*, Northern Santander

In regard to the *Los Pelusos* GAO, the GS/OAS has seen evidence of increased strength and armed and political activity in communities in the Catatumbo region of Northern Santander. Particularly in the municipalities of Hacarí, Tibú, San Calixto, Sardinata, and El Tarra, it has observed greater impact on the civilian population in the form of income inspection-related extortion and selective homicides. Furthermore, on the day of the peace agreement referendum, *Los Pelusos* observers were present in force at urban and rural polling places in El Tarra and Tibú. Previously, there had been threats to leaders of these municipalities who participated in information sessions on the government's peace agreement with the FARC or helped to get out the vote for the referendum.

⁶ In this report, we will refer to *Los Pelusos*, the name given by the Colombian Government to the group known in the territory, the communities, and the institutions as a splinter group of the *Ejército Popular de Liberación* [People's Liberation Army] (EPL), a guerilla group demobilized in the 1990s.

⁷ The most significant example was the call issued in mid-November for a “March for Peace” in the Urabá and Lower Cauca regions. The *Clan del Golfo* offered logistical support for the residents of Lower Cauca, Southern Córdoba, and La Mojana to participate. It even pressured communities and authorities to attend the march.

With respect to the group's relationship with the other illegal armed groups present in the area, between August and September 2016, the dominant perception of the civilian population was that relations among *Los Pelusos*, the ELN, and the FARC were becoming very tense. The instability of the *Los Pelusos* leadership and violent actions such as threats, extortion, and "social cleansing" reportedly led to warnings from the ELN to *Los Pelusos* and to a political distancing of the two groups. In contrast, in October 2016, there was evidence of high level of coordination among the FARC, the ELN, and *Los Pelusos*, at least in the municipality of Tibú. In the urban core of this municipality, for example, militia members of the three groups cooperated to establish agreements for the payment of extortion in various sectors according to various schemes. Similar agreements have reportedly also been established for compiling lists of people whom the groups consider military targets.

2.3 Territorial dynamics of areas vacated by the FARC

The GS/OAS notes that in areas where the FARC has vacated or has moved to the ZVTNs or PTNs, a feeling of uncertainty persists in the local communities, despite positive perceptions. In addition to not having a clear understanding of the situation, particularly with respect to security conditions, the territorial reaccommodation of former FARC members, and the presence of new illegal armed groups, the communities continue to feel harmed by the conflict, especially with respect to actions that have a negative socioeconomic impact on the territories.⁸ Nevertheless, the GS/OAS recognizes the efforts of the national government to strengthen state presence in the territories where the FARC is obviously no longer an armed player. For example, the security forces in Ituango, Antioquia, and the township of Saiza have been reinforced to prevent the influx of new illegal groups.

In some areas where the FARC had strong territorial presence and influence, the GS/OAS notes a general perception of the presence of other illegal armed groups. In the view of the communities, this new presence or reaccommodation is inspired by purely financial motives related to the presence of illicit crops and illegal mining. Reaccommodation may work in a number of ways. In some cases, the communities believe that the FARC smoothed the way for other organizations to move into its old zones of influence. In this scenario, control was handed over calmly in accordance with plans arranged between the FARC and the ELN. This is the perception in Catatumbo and Lower Cauca. The Inter-American Commission on Human Rights (IACHR) shares this view. In this connection, the Commission agrees with the MAPP/OAS regarding the impact of this situation on the social fabric, its structure, and human rights in the communities, which represents an obstacle to implementation of the peace agreement.

Then there is the case of the so-called dissidents, whose presence can be seen in the municipality of Tumaco, Nariño; in the establishment of the group *Nuevo Orden* [New Order] in San Vicente del Caguán, Caquetá; in the group formed under the leadership of "Mojoso";⁹ and in Guaviare in the organization that was formerly a part of *Frente 1°* [Front 1]. In this scenario, the FARC expelled or separated members who were not committed to the peace process, as happened in Meta and Guaviare departments. The communities point to cases of self-described FARC militia members who were not included in the process and continue to be involved in activities connected with illegal economies.¹⁰

In Guaviare department, the GS/OAS notes that *Frente 1°*, a former FARC faction declared dissident during the negotiations between the Colombian Government and the FARC, has significantly expanded its territory by taking control of remote villages with illicit crops and little government

⁸ Specifically, the communities point to the continuing impact of extortion payments, commonly referred to locally as "vacunas" (vaccines).

⁹ "Mojoso" handed himself over to the authorities in March 2017.

¹⁰ This can be seen in the municipality of Tumaco, Nariño department.

presence. This expansion has particularly affected the indigenous communities.¹¹ *Frente 7°* [Front 7] of the FARC has also significantly expanded its territory, consolidating its presence in Southern Meta, especially in the municipality of La Macarena.

The GS/OAS is concerned by the community impact of, *inter alia*, extortion payments and threats to those who refuse to make them; forced recruitment; use of anti-personnel mines and improvised explosive devices (IEDs); and control of land and water traffic. It also draws attention to instances encountered in which the dissident phenomenon can be confused with the presence of criminal gangs that go by the dissident label to sow fear in the communities.

In addition, in some areas, the communities have reported the presence of internal conflicts among middle-ranking officers of the FARC not identified as dissidents. This situation worries local residents and is considered a risk factor, given the potential collateral consequences that a breakdown in unity within the FARC would have on the disarmament process, the security conditions of the future ex-combatants, and the security of the community itself. Cases of this nature have been seen in the municipalities of Codazzi, Cesar; Fonseca, Guajira; and Belén de los Andaquíes, Caquetá.

2.4 Approaches to the territorial dynamics of the ELN

The GS/OAS has described in previous reports how the ELN moved into former areas of FARC influence. This positioning and takeover was achieved either by cooperating with the FARC or by the tactic of disputing territory held by other players such as the *Clan del Golfo*.

Using this takeover strategy, we see that the ELN has been able to gradually establish hegemony in areas formerly shared with the FARC without raising its profile. For example, in a number of municipalities (Barrancas, Guajira; Samaniego, Barbacoas, and Santa Bárbara de Iscuandé, Nariño; Amalfi and Remedios, Antioquia; and Santa Rosa del Sur, Bolívar), there was an awareness that ELN members had begun consolidating power in villages and townships that had previously provided drug trafficking, mining, and extortion income for the FARC. But in other regions, the presence of ELN members brought abrupt changes in communities that had not realized they were there. This is the case in a number of municipalities in Vichada department, as well as in the municipality of Riosucio, Chocó.

With respect to the relationship of the ELN with the communities, the GS/OAS has identified from testimonies certain rhetoric and practices that the ELN perceives as hostile. The communities consequently perceive this guerrilla group as less open to dialogue. This situation has generated widespread fear and has significantly affected organizational processes related to dispute resolution and rules of coexistence. It has had the greatest sociocultural impact on the organizational and self-government structures of the indigenous and Afro-descendant communities, which have been delegitimized and subordinated to control imposed and exercised by the armed group. This openly violates the collective rights of these communities and, in turn, creates deep fractures and greater problems within them.¹²

¹¹ With this expansion and the territory historically under its control, *Frente 1°* controls a wide river corridor encompassing the Guaviare, Unilla, Itilla, Vaupés, Infrida, and even Apaporis rivers.

¹² In July 2017, the IACHR held a hearing on the human rights situation of Afro-descendent persons affected by armed conflict during which it was informed of their invisibility and, especially, the failure to implement the “ethnic chapter” of the peace agreement. According to the organizations, the absence of public policies with an ethnic and gender focus has aggravated the situation of these populations in the Pacific region. They mentioned this year’s civil strike in Buenaventura, which they said was a call for access to job opportunities, housing, drinking water, education, healthcare, and other economic, social, and cultural rights. They reported that the Mobile Anti-Riot Squad (ESMAD) used excessive force to shut down this peaceful protest, leaving 19 people with bullet wounds.

Furthermore, the GS/OAS finds that in areas where the ELN has historically been in control, it has focused on organizing support and carrying out political work with the communities with an eye to possible participation in talks between the ELN and the national government. In these areas, we also find an increase in ELN violence, in the form of attacks on the civilian population, the security forces, and the oil and gas infrastructure.

Other incidents of particular interest include actions against security forces in Casanare, Arauca, Northern Santander, and Cesar (all part of the “pistol plan”), attacks on police stations, and kidnappings. The predominant strategy for attacks on the oil and gas infrastructure continues to be blowing up sections of the trans-Andean pipeline in Nariño and the Caño Limón-Coveñas pipeline in Arauca and Northern Santander.

2.5 Impact on the people: A threat to national peace

The GS/OAS recognizes the efforts of the Colombian Government to implement protection measures and develop interinstitutional spaces for addressing threats and risks reported by social leaders, human rights defenders, and various elected and local representatives. For example, institutions such as the National Protection Unit (UNP), local and departmental government entities, and the security forces have created spaces for dialogue and provided preventive protection measures to shield individuals from possible retaliation, particularly in connection with citizen engagement activities and community complaint mechanisms. However, the GS/OAS remains deeply concerned at the continued threatening and killing of leaders, community organizers, human rights defenders, and representatives of various social groups in the regions. The ongoing impact on the lives of this population has weakened organizational and community processes in some regions: primarily Chocó, Cauca, Nariño, Meta and Caquetá.¹³

For its part, the IACHR has lamented the rise in murders of members of this population in the final months of 2016 and has noted with concern an increase in the vulnerability of *campesino*, indigenous, and Afro-Colombian leaders to such violence. According to the Commission, this trend has continued in 2017. We note that it is impossible to identify a national pattern or trend that explains all of the instances of violence. However, in the hypotheses generally advanced to explain the violence, there are certain common threads: (1) a leader’s report of an armed group moving into the area; (2) public complaints about the mismanagement of government resources, or assertion of community rights to the use of natural resources and defense of the territory; (3) political work involving education for peace; (4) community work to create new representative spaces and/or movements; and lastly, (5) leaders whose work reveals and endangers illicit financial flows from the area that directly benefit the illegal armed group.

With regard to attacks on women and girls, the GS/OAS reiterates that deliberate acts of gender-based violence are continuing in the context of the armed conflict in Colombia. Attacks on

¹³ During the government-requested IACHR hearing on investigation of attacks on human rights defenders, the government presented information on progress made in developing and implementing comprehensive public policies for protecting human rights defenders based on the pillars of prevention, protection, and prosecution. The government said that protecting the work of human rights defenders was extremely important for the true success of the peace process and that it recognized defenders as indispensable allies, peace builders, and active participants in the civilized political resolution of the armed conflict. For their part, the participating organizations noted the persistence of stigmatization, persecution, and violence against human rights defenders, despite the signing of the peace agreements. In this connection, they pointed to the absence of a differentiated approach for developing risk analyses and protection plans appropriate to the realities of Afro-descendent, LGBT, and other minority leaders. They also presented evidence of the ongoing persecution of members of the *Marcha Patriótica* [Patriotic March] movement, and they condemned the “denier” attitude of the government, which does not acknowledge the continued existence of paramilitary groups, does not take the criminal organizations behind the violence into account in its investigations, and refuses to acknowledge the systematic nature of the violence. (IACHR, Hearing on investigation of attacks on human rights defenders in Colombia, March 21, 2017)

women and girls involve sexual violence, exploitation, threats, forced displacements, and selective killings.¹⁴ From the monitoring, we know that the liquidity-generating dynamics of the communities are bringing in more men, thereby increasing the risk of violence against women and girls. For example, in some areas, the *Clan del Golfo* has focused on recruiting and involving women in its illegal armed structures to carry out various illegal activities, including providing information, helping to launder money, and acting as death squad leaders.

The IACHR shares this concern, particularly in light of the observed underreporting of crimes of sexual violence and the high rates of impunity for these crimes. In the context of the Special Jurisdiction for Peace, the IACHR considers processing the evidence already collected in cases before the various courts extremely important in order to prevent revictimization. The Commission also considers it important to provide adequate spaces for taking statements in a confidential setting, with a gender-sensitive approach to statements by victims and witnesses and the support necessary in such cases.

The Mission has also determined that women leaders and members of women's organizations continue to risk threats and intimidation for defending or promoting human rights. Intimidation is directed against members of their immediate family, particularly their children, as well as against property and relationships that the women consider valuable and important. Such incidents appear to be most prevalent in municipalities such as Barrancabermeja, Santander; and Vistahermosa, Meta.

On the topic of recruitment, the SG/OAS is concerned that the illegal armed groups are resorting to the recruitment and use of children, adolescents, and youth as a strategy for achieving greater territorial control. It is noteworthy that the use of children, adolescents, and youth may be differentiated on the basis of social roles and gender. In some areas, illegal armed groups have been observed to use a strategy consisting of kidnapping girls between the ages of 10 and 13 as love interests for the men in the group; later, the girls are sexually exploited and assigned to domestic labor within the group. Boys and young men are used as informers or extortion collectors and tend to do much more operative work.

With the presence of the *Clan del Golfo*, there appears to be an upward trend in the use of children, adolescents, and youth in municipalities in Southern Córdoba. In these areas, this phenomenon is referred to as "voluntary enlistment" and presented as an option for earning money in the absence of educational and job opportunities. However, the groups have changed their tune and are increasingly threatening to reinstate forced recruitment, especially if children, adolescents, and youth do not enlist voluntarily, because they need to be build their ranks in order to strengthen their control and prevent other groups from moving into the areas vacated by the FARC.

There has also been a rise in cases of recruitment of children, adolescents, and youth by FARC factions that have decided not to join the peace process. Areas such as the municipality of Miraflores, Guaviare, have seen a high incidence of recruitment of this population by former members of *Frente 1°* of the FARC. According to perceptions collected in the territories, this phenomenon is driven primarily by the lack of educational and job opportunities. Thus, one of the primary challenges for the institutions active in this sphere will be addressing the structural economic factors that drive enlistment in illegal armed groups. As previously mentioned, the withdrawal of the FARC from its old zones of influence has generated interest in these territories among other illegal armed groups. Logically, if the structural factors are not addressed, recruitment of children, adolescents, and youth could intensify in regions such as Northern Santander, Southern Cesar, Southern Bolívar, and Choc.

¹⁴ On the basis of MAPP/OAS monitoring, the GS/OAS has determined that sexual violence against women and girls by armed players in the conflict continues to be a recurring practice in different areas. Unlike the acts of sexual violence that occurred as an integral part of larger operations, what is now being reported are deliberate, premeditated acts of sexual violence by individual members of armed groups.

2.6 Perceptions of government actions to address security conditions

Thanks to the monitoring work of the MAPP/OAS, the GS/OAS has identified a number of dominant perceptions of government action with regard to security in former areas of FARC influence and concentration. In some areas with a high concentration of coca crops (e.g. Puerto Concordia, Meta; El Paujil, Caquetá; Argelia, El Tambo, Buenos Aires, and Piamonte, Cauca; and Orito, Putumayo) or marijuana crops (e.g. Corinto, Miranda, and Toribío, Cauca), the presence of security forces is directly associated with forced eradication of illicit crops. In other areas, such as Putumayo department, it is associated with protection of the oil and gas infrastructure and not the safety of the communities *per se*.

Given that, as of the period of this report, the actions proposed in the context of the negotiations between the Colombian Government and the ELN do not include a bilateral ceasefire, the government is still taking military action against the structures of this group. However, in areas where the presence of the FARC and the ELN varies from one village to the next (e.g. El Bagre, Anorí, and Amalfi, Antioquia; and Arauquita, Arauca), the GS appreciates that the security forces have been avoiding actions that could endanger the FARC disarmament process.

The GS has not identified strong tensions between the FARC and the National Army. Even in areas such as Dabeiba, Antioquia, coordination between the two is visible. In areas where coordination is not as obvious, it is occurring through mechanisms provided by other institutions such as the International Committee of the Red Cross (ICRC) in Catatumbo or the municipal security council itself in Anorí, Antioquia. Thus, despite the perception that the security forces are less active in areas being vacated by the FARC than in areas which the ELN is attempting to enter, we see an increase in the presence of the National Army precisely to prevent this guerilla group from moving in. This pattern has been observed primarily in municipalities in Northern Santander (e.g. Convención and El Tarra) and Chocó (San José del Palmar, Sipí, and Litoral del San Juan).

Regarding state actions, it is a matter of concern that, after the massive arrests of community leaders said to be FARC or ELN collaborators or members, no evidence has been produced in the course of the trials that proves their connection or membership with these armed groups. In late March, communities in Southern Bolívar and Córdoba reported the arrest of social and community leaders who had been developing organizational processes in the area. Moreover, the IACHR has expressed concern this year about the excessive use of force during protests over public insecurity and unfulfilled government commitments regarding access to economic and social rights.

With respect to the government's strategies for countering the organized armed groups (GAOs), the GS/OAS appreciates its repeated attempts to weaken these organizations. Specifically, in the case of *Los Pelusos*, it notes the capture in Medellín of Guillermo León, alias "David León," considered the replacement of Víctor Ramón Navarro, alias "*Megateo*," who was killed by the security forces in Catatumba in the second half of 2015.

We also note the continuation of Operation Agamemnon, a campaign to dismantle the *Clan del Golfo* launched almost two years ago. Although the three main targets of this operation—Dairo Antonio Úsuga, alias "Otoniel," Luis Orlando Padierna, alias "*Inglaterra*," and Roberto Vargas, alias "*Gavilán*"—remain at large, the results thus far reflect ongoing actions against this group, not only in the Urabá region but also in other areas of the country, in the context of the functions of the security forces with competence to counter this criminal phenomenon.

National Police, National Army, and National Navy operations in the seaports of Cartagena, Barranquilla, and Tumaco resulted in the confiscation of large shipments of *Clan del Golfo* cocaine bound for Central America. Other operations led to the impoundment of small weapons-laden boats between the municipalities of Cáceres and Caucasia in Antioquia, as well as in Mapiripán, Meta and Turbo, Antioquia.

In addition, the GS/OAS recognizes and appreciates the Strategic Military Plan for Stabilization and Consolidation “Victory”¹⁵ as an armed forces strategy for preventing the emergence of new groups or the growth of old ones, including possible FARC splinter groups, intent on controlling the income generated by drug trafficking, extortion, illegal mining, smuggling, and human trafficking. The plan is intended as a step towards modernizing the armed forces to operate in a post-conflict environment where they are responsible for consolidating the security gains made in 160 Colombian municipalities under the previous plan, Sword of Honor.

3. MONITORING CURRENT AND POTENTIAL SOCIAL CONFLICTS IN THE TERRITORIES

The GS/OAS recognizes the efforts of the President of Colombia and his government to address emergent social conflicts at the national and regional levels through a high-level interinstitutional strategy for analyzing, preventing, and monitoring social conflicts.

3.1 Land and territories

The GS/OAS appreciates the intent of the Colombian Government to improve the living conditions of people in rural Colombia. However, this intent should be translated into clear, respectful, and differentiated policies which should to be implemented rapidly with a view to subsequent sustainability. For example, as mentioned in *Twenty-Second Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia*, there are still tensions between *campesinos* and ethnic groups over access to land in much of Colombia.¹⁶ These tensions have recently escalated in collectively held ethnic territories where ZVTNs and PTNs have been established and in ancestral territories where infrastructure is being renovated or expanded. This is the case in the municipalities of La Paz, Cesar; Vigía del Fuerte, Antioquia; Riosucio, Chocó; Tumaco, Nariño; and Tierralta, Córdoba. In some cases, tensions have escalated in connection with requests for the establishment of *campesino* reserve zones in areas with an ethnic population, such as Serranía del Perijá or Nudo de Paramillo.

In this connection, the GS notes that the failure to clarify land ownership creates fear in rural communities where the FARC had a historical presence. During that period, landless *campesinos* moved into these territories with the consent of the FARC. These same communities, located in departments such as Meta and Tolima, now fear that, with the demobilization of the FARC, they will lose the land where they have lived and farmed and be displaced and landless once again. This situation of uncertainty also affects various ethnic territories whose border areas have been settled by communities of landless *campesinos* displaced by the actions of illegal armed groups. Today, tensions have increased, particularly with the implementation of rural development plans in departments such as Cesar, Nariño, Cauca, and Chocó.

In a number of community councils located in the Pacific region of Colombia, where illegal mining is occurring alongside traditional and artisanal mining, there has been an increase in tensions between the communities and new armed groups that would like to control mining. The absence of regulations, which had been agreed in some form with the hegemonic armed group in each of the regions, and the appearance of new players have had strong social and environmental effects on the

¹⁵ Effective January 1, 2017

¹⁶ This is the situation, for example, in the municipality of Tumaco, Nariño, the seat of both the Community Council of Upper Mira and Frontera (CCAMF), representing 42 Afro-descendant communities, and the Association of Mira, Nulpe, and Mataje River Community Boards (ASOMINUMA), representing *campesino* settlers displaced by violence beginning in the 1990s. The *campesino* settlements in the territory of the Council are seen as an obstacle to the exercise of the territorial rights of the ethnic territorial authorities. This has created latent tensions between *campesinos* and Afro-Colombians.

regions.¹⁷ Furthermore, with the withdrawal of the FARC, the slashing and burning of woods and forests in special protection zones (such as forest preserves and national natural parks) has become a high impact environmental problem. These areas are being deforested to expand pastures, create new farms, and establish new areas for illicit crop production, smuggling of forest products, and land marketing, particularly where the FARC once restricted such activities.

3.2 Social impact of public policies on territories

The communities resent the intensification of the policy of forced eradication of illicit crops, given the expectations created by the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, which proposes gradual eradication with concertation and dialogue. The GS notes that the gap between the formal agreement and the strategies as implemented generates mistrust and skepticism in the local communities concerning the government's actions. There are regions, especially in the settlement zones¹⁸ of the departments of Meta, Guaviare, Putumayo, and Nariño, where most of the population depends exclusively on illicit crops because of difficult access to goods and services. Here, the income from illicit crops allows many families to pay for groceries, medical treatment, and secondary and university education for their children.

Given their economic dependency on illicit crops, which do not require an adequate highway infrastructure to be highly profitable, the response of the communities has been one of opposition to the policy of forced eradication. This opposition has taken both peaceful and violent forms and has even been accompanied by *de facto* agreements with the security forces. In addition, at present and during the period covered by this report, there is and has been no way of escaping the participation of illegal armed groups such as the FARC (prior to its demobilization), the ELN, or the *Clan del Golfo*, which interfere in various ways depending on the territorial environment.¹⁹

One of the most common concerns in the communities is the lack of clear information about the policy on the substitution and eradication of illicit crops. According to the communities, on the one hand, under the Havana agreements, which commit the national government to establishing a comprehensive national substitution program, the government is signing local agreements implementing the program and has arranged for the replacement of approximately 50,000 hectares. On the other hand, with the help of the security forces, it is continuing and escalating the forced eradication plan with the goal of clearing 100,000 hectares. These contradictory policies create concerns in the communities about the national government's approach to illicit crops, especially in departments such as Meta, Guaviare, and Nariño. These territories, where collective agreements for voluntary and consensual substitution of illicit crops have already been signed, have been harmed by the dynamics of forced eradication, which have triggered serious confrontations between the communities and the security forces.

From the viewpoint of the ethnic communities, implementation of the policy of forced eradication has had various negative effects. First, the communities perceive the public stigmatization of the coca plant as bad, given its medical use and the traditional identity-based worldview which some

¹⁷ These effects occur, for example, in the context of the employment of children, adolescents, and youth in the mines, the control of prostitution on communal lands that are mined, and the regulation of community participation in national days and days when there is no mining so that the river silts up to allow social and cultural activities in it.

¹⁸ By "settlement zones," we mean rural areas that have experienced successive flows of settlers driven by continuous agrarian and political conflict.

¹⁹ For example, in some cases, armed players have promoted and provoked confrontation with the security forces within the communities. In others, they have encouraged the establishment of new base-level leaders and organizations in competition with the natural leaders of the areas. They have also held social leaders responsible for what may happen to communities that sign crop substitution agreements with the national government.

indigenous communities have built around the plant. Second, the communities are demanding differentiated, ethnically sensitive treatment, agreed through a process of prior consultation, with respect to eradication activities on ancestral and communal lands, particularly in areas where there are tensions between ethnic and *campesino* communities over the establishment of *campesino* reserve zones. In this connection, both the indigenous communities and the various Afro-descendant community councils have asked the national government to honor and execute the agreements signed in the context of the “ethnic chapter” of the final Havana agreement.²⁰

Another important aspect when considering the impact of public policy in the territories is the broad spectrum of organizations that are currently energizing rural Colombia. Thanks to the MAPP/OAS, we know that there are not only local base-level organizations calling for equal and dignified access to goods and services in a context of voluntary and consensual substitution, but also new organizations, social movements, and organizational platforms with political plans relevant to local and regional development.

This organizational capacity of the rural population represents a major challenge for the national government in terms of signing voluntary, consensual substitution agreements for illicit crops in the various regions of the country. The national government should take the most inclusive, pluralistic approach possible to this process in order to ensure the participation of people representing all sectors, ideologies, and positions. The participation component of agreement-building is vital for the implementation and legitimacy of the agreements reached. Omitting it encourages social conflict and mobilization in organizations and sectors that do not feel included in and/or connected with the dialogue.

In this connection, the MAPP/OAS has uncovered community and regional proposals warranting dialogue and concertation by the national government. It has subsequently provided assistance for dialogue and concertation between the national government and coca-growing rural sectors which, in a context of uncertainty, have successfully encouraged coca-growers to elect voluntary eradication in the hope of rapid substitution. Specifically, the MAPP/OAS has provided support for the signature of substitution agreements in departments including Putumayo, Meta, Guaviare, and Caquetá.

4. TERRITORIAL RECRUITMENT FOR PEACE: PARTICIPATION AND SOCIAL DIALOGUE

Building peace requires an emphasis on knowing the territories and their cultural, organizational, economic, social, political, and institutional specificities. Inclusion of voices and proposals from the territories in peacebuilding processes both boosts the recognition of regional and local groups, sectors, organizations, and platforms and helps to repair the territorial social fabric in the near and medium term. The local communities are seeking accessible, concrete, real options for contributing to the development of proposals, plans, and strategies for implementing the agreements with the FARC, or for discussing topics that may be useful for the talks with the ELN. Pluralistic, inclusive action can contribute decisively to lasting peace. Recognition of civil, traditional, military, social, and religious authorities and respect for the diverse organizational forms specific to the territories is essential to the process of legitimizing the agreement.

²⁰ Regarding the rights of indigenous peoples, the IACHR agrees with the MAPP/OAS on the need to create dialogue and participation channels and spaces for peoples occupying territories in two or more countries. It also agrees that the indigenous jurisdictions should be harmonized with the tools of transitional justice and the other ethnic jurisdictions, taking account of multiculturalism. The Commission has received copious information about indigenous peoples whose rights have been infringed by the Mobile Anti-Riot Squad (ESMAD), which has allegedly used excessive force to compel eradication of illicit crops without consultation and consent; and, generally, about the threatening, disappearing, and murder of indigenous leaders, acts of violence against indigenous persons by the *Águilas Negras* [Black Eagles] in Cauca department, and more.

In this context, the current transition of the FARC from armed player to political player and the negotiations with the ELN have opened a window of opportunity for increasing democratization of resources, public participation, and also social dialogue, so that civil society organizations can take the national government's proposals to their regions, legitimize them, implement them and, at the same time, offer their own proposals and initiatives. In this connection, the GS/OAS welcomes the openness of the Colombian Government to the participatory building of consensus, which are needed to manage the post-conflict phase in the best possible way, and it urges ongoing reflection on guarantees for participation and generalized social dialogue.

In addition, MAPP/OAS monitoring reveals that, despite progress and opportunities, some participation and democratization processes in the territories are beginning to be coopted by organizations with special political and economic interests. In departments such as Córdoba, Chocó, Antioquia, and Bolívar, civil society organizations and NGOs are being formed for the purpose of running projects proposed by the national government, to the detriment of base-level civil society organizations and local NGOs with local track records and prior knowledge of the context.

Furthermore, in departments with predominantly ethnic populations such as Chocó and Nariño, political movements and parallel organizations have been established to provide political platforms, with an eye to the spaces for participation in the implementation of the Havana agreements (and the spaces for participation in the negotiations with the ELN). Their political activities are one reason why the legitimacy of the ethnic territorial authorities in the various departments is ignored. These ethnic authorities say that they have been excluded from participation and dialogue with local governments and the national government in the context of the activities of these movements.

In Southern Bolívar and Northern Santander, various pre-existing base-level organizations are confronting tensions over participation schemes, given that higher profile associations are reducing the visibility of smaller local rural ones. We observe this situation creating tensions and setbacks not only in the development of participation schemes, but even in the implementation of measures generated by the national roundtable dialogues. Similarly, in Cesar department, existing tensions within the coalition of organizations helping to implement the Havana agreements have prevented the establishment of an effective network of civil society organizations to support its implementation.²¹

Similarly, the GS/OAS has noted feelings of frustration and powerlessness in some communities due to the national government's failure to keep commitments on matters that directly affect the regions and the quality of life of their inhabitants. An example of this is the agreements reached and never implemented with the indigenous communities in Cauca. Another is in Putumayo, where fulfillment of only some of the commitments is seen as evidence of the low credibility and sustainability of actions on the ground.²² Weaknesses in the implementation of other territorial policies

²¹ Furthermore, limited publicity and education about spaces established in the Monitoring and Verification Mechanism for civil society coordination with the Mechanism at the national and local levels have created tensions among base-, second-, and third-level community organizations that are visible in broader political contexts.

²² A still current example of unimplemented agreements with an indigenous people in Putumayo department might be in the context of the creation of the Awá people's roundtable as a result of Order 004/09 of the Constitutional Court and Decree 1137/10.

This roundtable, established by the government for the basic purpose of suggesting, developing, and agreeing on measures to prevent violations of fundamental rights of the indigenous people in the territory, last met in 2014, when it was deactivated owing to the government's failure to respond to the issue of its attendance at roundtable meetings. According to the official homepage of the *Organización Nacional Indígena de Colombia* [National Indigenous Organization of Colombia] (ONIC), the roundtable had been pointless since its establishment, given that "the few roundtable meetings held have [had] countless absences; [furthermore] the few entities that participate send employees with no capacity to commit vis-à-vis the requests advanced by [the Awá representatives] in [the] Awá ethnic safeguard plan." The press release points out that "the

have a direct impact on the peace policy as a whole. Thus, it might advance the peacebuilding process if, as a learning exercise in rebuilding its relationship with the local communities, the government acknowledged the distrust created by weak implementation of territorial policies.²³

The GS/OAS urges the creation of a stronger culture of dialogue and respect for diversity through the strengthening and use of pre-existing institutional and noninstitutional mechanisms for grassroots organization and citizen participation to bridge differences, share territorial visions, and discuss, analyze, and debate territorial priorities in the political, social, and economic sectors.²⁴

To build the trust necessary for peacebuilding, it is necessary to promote the introduction and presence of watchdog bodies in the territories. This helps to lessen community uncertainty in cases of alleged corruption. It also reduces the perception of impunity and helps restore community trust in the justice systems. The GS/OAS urges the national government, and in particular, the Office of the Public Prosecutor, to strengthen the presence and services of different public authorities in the territories and to strengthen monitoring and alert mechanisms such as the early warning system of the Office of the Ombudsperson and the national and regional observatories.²⁵ We also recommend that, with due respect for the legal requirements and guarantees inherent in the fundamental right of due process, criminal investigation and disciplinary oversight bodies strengthen their investigatory and penalization capacities for cases in which public officials who can use their positions to obstruct or evade justice are relieved of their duties.²⁶

The immediate challenges for the agreement between the national government and the FARC include establishment of the local-level mechanisms and components needed to implement the agreements, withdrawal of the FARC from the territories as an armed player, and possible resistance to implementation of the peace policy. The GA/OAS finds that, despite the commitment of some civil society organizations and local and regional authorities to implementing the final agreement, disinformation, incomplete information, and lack of awareness reign in the territories.²⁷ Furthermore, there is no public outreach and education strategy to inform the communities and local authorities in simple, everyday language about the final agreement itself, obstacles for its implementation in the territories, and how inhabitants can make their voices heard if they wish to participate.

With respect to the talks with the ELN, bringing organizations and victims into the negotiation process as active participants at an early stage is key to achieving stable and lasting peace. As was the case in the past with the negotiations with the FARC, little information on progress in the talks between the national government and the ELN is being released to the regional and local authorities and civil society. In this connection, the community still does not have suitable, effective channels of

[Constitutional] Court set six months for the development and implementation [of agreements], and seven years have elapsed without progress.”

In addition, government failure to implement illicit crop substitution programs (such as the PLANTE program and the Forest Ranger Families program) has greatly undermined the trust of indigenous peoples in the national government, and even the trust of the general public.

²³ Such as the programs and plans for eradicating illicit crops

²⁴ Law 1757/15, which is designed to promote, protect, and ensure arrangements for exercising the right to participate in political, administrative, economic, social, and cultural life and control political power, provides a legal framework for coordinating these mechanisms.

²⁵ At the national level, Observatory for Human Rights and International Humanitarian Law, Office of the Presidential Advisor for Human Rights

²⁶ Under Colombian law, if it is suspected that public officials under investigation may use their privileged position to alter and/or hide incriminating evidence or exert pressure on their subordinates for the purpose of evading the arm of the law, they may be temporarily relieved of their duties.

²⁷ One noteworthy initiative is the government of Cauca campaign “Cauca: Territory of Peace.”

communication for expressing and discussing questions and uncertainties. The GS/OAS encourages the national government to strengthen effective mechanisms through which the different sectors can express their interests and perspectives, not only on what they hope from the peace process but also on what they can do for it.

The GS/OAS is concerned at the detention of social leaders accused of collaboration with the guerrillas, given the sense of persecution and political stigmatization that these detentions have had communicated to social movements and human rights organizations.

Lastly, through the MAPP/OAS, the GS/OAS provided support to community action organizations during the election of members to the community action boards (JACs) and the *Asociación de Juntas de Acción Comunal* [Association of Community Action boards] (ASOJUNTAS).²⁸ During the period, it saw the pressures to which the organizations are subject in the territories, their capacities, and the challenges for peacebuilding from a territorial perspective.²⁹

Two distinct scenarios were evident in the election processes of the community action organizations. The first occurred in rural environments that were safe during the day. The second occurred in urban environments, where there were risks associated with the presence of organized crime, which tried to shut down community processes for reporting social problems such as the local sale of psychoactive substances. In addition, armed groups, especially guerilla groups, attempted to assert social control through means other than direct violence both before and after the elections.³⁰

In this connection, the level of civil society organization was observed to be inversely proportionate to the risks incurred in community election processes. In places where civil society is more autonomous, such as the municipality of Apartadó, Antioquia, there were better protections than in places where it is fragmented and involved in local power structures, such as the municipalities of Dabeiba, Antioquia, and Valledupar, Cesar.

5. COMPREHENSIVE REPARATION OF VICTIMS

The GS/OAS wishes to emphasize the progressive presence of the Victim Assistance and Comprehensive Reparation Unit (UARIV) in the territories, where it has 20 territorial directorates,³¹ 22 regional centers,³² and numerous assistance points, all fixed locations where victims can access government assistance and learn about the public policy applicable to them. Furthermore, the Unit has expanded its coverage by organizing multiple mobile victim assistance days targeting the victim population. However, from the MAPP/OAS monitoring work in the territories, we know that there are areas where the competent institution is unable to serve the population or can only do so on a precarious, inefficient basis, which strengthens the perception of government abandonment and

²⁸ In the context of its monitoring and support for collective reparation under the National Cases Strategy

²⁹ The IACHR is also concerned by the high rate of violence against JAC leaders, which represents a major obstacle to organized community support for the peace process. It remains essential to provide better protections for human rights defenders, including protecting them from impunity by investigating cases and producing results. Moreover, coordination between the mechanisms for protecting defenders and the investigating organizations is extremely important for determining the sources of risk and identifying and penalizing perpetrators. This makes it possible to deactivate elements that put individuals in protection programs at risk.

³⁰ The member election process allows election results to be challenged.

³¹Victim Assistance and Comprehensive Reparation Unit. Figures available at <http://www.unidadvictimas.gov.co/es/quienes-somos/direcciones-territoriales/147>

³² Victim Assistance and Comprehensive Reparation Unit. Figures given in its ninth report to Congress, August 2016, available at <http://www.unidadvictimas.gov.co/es/ix-informe-del-gobierno-nacional-al-congreso/16095>.

revictimization in some regions.³³ It also affects victims' awareness of their rights and, consequently, their access to the measures provided for in Law 1448/11 and its regulating decrees.

The GS/OAS is also concerned about the Unit's slow progress on providing comprehensive reparation to subjects of collective reparation, whether in the damage assessment phase, the development of comprehensive plans for collective reparation (PIRCs), or the implementation of PIRC already submitted to the Transitional Justice Committees for approval. This delay is due to a number of factors, including community timeframes and rhythms for assessing the damage and insufficient coordination, planning, and resource availability in a medium- and long-term interinstitutional effort. Additionally, the Unit faces the immediate challenge of implementing efficient contracting procedures.

With respect to reparation procedures, the GS/OAS notes that, according to the MAPP/OAS, members of the facilitating committees and representatives of victims committees who took part in the broad participatory forums³⁴ report deficiencies in the psychosocial rehabilitation processes. The victims say that their unfortunate situation of precarious psychological care is worsening because the healthcare system does not provide medical and psychological services effectively, and that the rehabilitation measures are ineffective for those reasons.

There is also still the challenge of consolidating a UARIV public care model based on a differentiated and territorial approach. Implementation of the ethnic decrees³⁵ remains incipient, and public officials, the ethnic territorial authorities, and the ethnic communities are unaware of their scope and content. Furthermore, the territory-based care model still has problems in terms of inclusiveness, functioning, and maintenance.³⁶ Victims express low confidence in the possibility of obtaining reparation, given the slow implementation of the care circuits established for the effective enjoyment of rights. The GS/OAS urges redoubled effort to overcome the limited institutional presence in the territories and boost enforcement and implementation of the decree-laws established for the ethnic groups.

As of August 1, 2017, the Single Register of Victims (RUV) contained a total of 8,186,896 individual victims of the armed conflict,³⁷ including 4,064,710 women. However, the GS notes a high rate of underregistration due to factors such as ignorance of care circuits, mistrust of government institutions, meager funds for traveling to regional victims services and reparation centers, and the persistence of internal armed conflict itself.

In various territories, the GS/OAS has observed that victims of offenses against sexual freedom and integrity (overwhelmingly women³⁸) are among those least likely to report, principally out of fear

³³ For example, in Southern Guajira or the municipality of Montecristo, Bolívar

³⁴ In accordance with 5.1.3.7 of Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, a broad participatory process was initiated to strengthen the policy on comprehensive support and reparation for victims in view of the requirements and opportunities in the new context. Thirty-two participatory exercises were conducted at the national, departmental, and municipal levels for the purpose of identifying, collecting, and discussing proposals for fine-tuning the aforementioned public policy with an emphasis on ensuring compatibility with the guidelines based on the final agreement.

³⁵ Decree-Laws 4633/11, 4634 /11, and 4635/11, available at <https://www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/enfoqueetnico.PDF>

³⁶ The Regional Center of Santander de Quilichao, Cauca, is an example of the problems for implementing this strategy of territorial presence. It has not even opened to the public and has already had problems with damage to infrastructure and loss of furnishings due to a lack of security.

³⁷ A total of 8,186,896 victims were recorded as of August 1, 2017. Figure from <http://rni.unidadvictimas.gov.co/RUV>

³⁸ As of November 1, 2016, the Single Register of Victims (RUV) contained 17,898 victims of offenses against sexual freedom and integrity, of which 15,515 (86.6 percent) were women.

of possible armed group reprisal. Shame and the absence of adequate spaces and confidentiality when statements are taken also contribute to the underregistration of individuals in this category. It is therefore essential to give attention to communication, support, and personalized follow-up procedures for individuals who have not registered as victims of offenses against their sexual liberty and integrity. These cases require building community trust in Colombian government institutions, with an emphasis on establishing a relationship with direct victims and their families.

The GS recognizes the proactive work of national, departmental, municipal, and village leaders, as well as their decisive contribution to promoting respect and protection for human rights and fundamental freedoms, especially in the context of Law 1448/11. It also wishes to call attention to the activation of the High-level Commission for the Protection of Human Rights on November 22, 2016.³⁹ It particularly wishes to highlight the ongoing efforts of the Office of the Presidential Advisor for Human Rights to coordinate with the various national institutions and civil society.

However, it should be noted that, through the presence of the MAPP/OAS on the ground, we know that there continue to be cases of threatening, murder, stigmatization, and disappearance, particularly among local and community leaders. For example, in the community action organizations, 45 people⁴⁰ died in different circumstances in 2016.⁴¹ These incidents do not contribute to peacebuilding, and the GS/OAS urges implementation of preventive measures, as well as action on the investigations. Protective measures should also be put in place for professionals providing victim care in the territories under various different forms of government contracting.⁴²

In addition to the above, during the period covered by this report, a number of former paramilitary commanders of the *Autodefensas Unidas de Colombia* [United Self-Defense Forces of Colombia] (AUC) were released from prison and placed under house arrest.⁴³ In some cases, these former commanders have returned to the areas previously controlled by the demobilized armed group, creating strong local uncertainty about conflict victims' organizations and participation, as well as fear among victims of dispossession or forced abandonment who are currently seeking to claim their fundamental right to the restitution of land and territories and who perceive the protection for pursuing their claims as precarious or nonexistent. Side effects of this nature are most prevalent in regions where violence related to the armed conflict persists owing to the emergence of new players following demobilization of the AUC.⁴⁴

5.1 Land restitution chapter: Perceptions and observations about the process

The GS/OAS remains concerned by some communities' negative perception of the work of the Land Restitution Unit (URT) and the land restitution judges and magistrates. The work of the Unit

³⁹ The related presidential statement is available at <https://www.youtube.com/watch?v=HvJhgnNZ2OU>

⁴⁰ Figure from a joint exercise between the community action organizations and the Victims Unit in the context of damage assessment

⁴¹ On November 20, 2016, the community action organizations submitted a figure of 33 persons affected to the Ministry of the Interior, as reported at the time in the MAPP/OAS press release. <https://www.mapp-oea.org/comunicados/mappoea-hace-llamado-para-garantizar-seguridad-de-integrantes-de-accion-comunal-y-avanzar-en-investigaciones-judiciales/>

⁴² Protection of persons associated with the UARIV is based on the type of their association. Since a percentage of UARIV operations are performed through service order contracts, there are people subject to threats or risks who cannot be covered by the National Protection Unit because they are not associated under an employment contract, even though their vulnerability is work-related.

⁴³ An example of this occurred with the release and placement under house arrest of Jesús Ignacio Roldan, alias "Monoleche," a former commander of the Bloque Calima of the *Autodefensas Unidas de Colombia* (AUC).

⁴⁴ This situation has been reported by various MAPP/OAS regional offices, including those conducting monitoring in the departments of Córdoba, Antioquia, Cesar, Nariño, Cauca, and Meta, among others.

continues to be marked by a low level of policy implementation in comparison with the estimated figures for dispossession and forced abandonment of land. This has given rise to a generalized negative perception of the land restitution process amongst the civilian population, which is tied to three general issues:

1. The large discrepancy between the time specified in Law 1448 for administrative proceedings (registration in the Register of Dispossessed and Forcibly Abandoned Land)⁴⁵ and judicial proceedings⁴⁶ and the time these phases actually take.⁴⁷ This situation becomes even more complex when the judgment is handed down, because it is at this time that the lack of institutional coordination becomes apparent and policy noncompliance is greatest in terms of comprehensive reparation. The foregoing strengthens the perception of revictimization, since some orders essential to exercise the right to land restitution (e.g. titling of the property to the victims) have in some cases taken up to three years when the period set by the judgment was only one month.

On this subject, the IACHR agrees with the MAPP/OAS that there has been persistently slow progress on providing comprehensive reparation for subjects of collective reparation recognized by the Victim Attention and Comprehensive Reparation Unit, as well as a lack of institutional coordination during the various phases of the reparation process. In addition, the Commission has been informed of persistent obstacles to the implementation of the ethnic decrees.

2. Despite the countrywide mapping and information-gathering exercise (macro-focalization) conducted in April for the purpose of implementing the Register of Dispossessed and Forcibly Abandoned Land, of the 100,792 requests filed to date, only 56,497 (56 percent) have been approved for macro-focalization by the Ministry of Defense, which is a regulatory prerequisite for initiating administrative review of requests.⁴⁸ This situation has deepened the sense of pessimism in regions where no progress has been made on returning land despite a considerable volume of requests.

Also of concern is the high percentage of registration requests denied during the administrative phase, which the URT handles. Of the 42,982 cases processed, 57.49 percent (24,712 cases) were denied.⁴⁹ Also, 24.51 percent of all requests filed have been rejected by the URT and, as a result, theoretically do not meet the admissibility requirement for submission to a land restitution court. These figures create a perception among victims that the URT is prejudiced and unaware of the *pro victima* principle of jurisprudence, which dictates that the victim should receive the benefit of the doubt.

3. The corruption scandals surrounding officials responsible for implementing the comprehensive victim reparation program⁵⁰ and the specialized civil land restitution

⁴⁵ Sixty business days, extendible for 30 additional days

⁴⁶ Four months. The time periods are established in Article 91, paragraph 1, of Law 1448/11.

⁴⁷ In some cases, it has taken a year for the administrative phase and two years for the judicial phase.

⁴⁸ Register of Dispossessed and Forcibly Abandoned Land, Land Restitution Statistics, accessed April 2017, <https://www.restituciondetierras.gov.co/estadisticas-de-restitucion-de-tierras>

⁴⁹ Register of Dispossessed and Forcibly Abandoned Land, Land Restitution Statistics, accessed April 2017, <https://www.restituciondetierras.gov.co/estadisticas-de-restitucion-de-tierras>

⁵⁰ In November 2016, the director and two officials of the Victims Unit Territorial Directorate in Antioquia were arrested during the implementation of an interinstitutional anti-corruption strategy. According to the Victims Unit press release, the

courts⁵¹ deepen public skepticism about the objectivity and impartiality of the justice imparted. Although this does not afflict the specialized land restitution courts exclusively, it nevertheless has a devastating impact on the transitional justice model by attacking it at its base.

In addition, despite the efforts of the URT and the specialized land restitution courts to effectively implement a differentiated, gender-sensitive approach to the land restitution process, the GS/OAS has corroborated through MAPP/OAS data the persistence of structural patterns of discrimination, exclusion, and marginalization of women. This situation inhibits women's effective enjoyment of their rights to the use, tenure, and administration of their property. The GS/OAS urges Colombian institutions to implement more initiatives to promote women's empowerment, entrepreneurship, and cooperative farming and to encourage major changes in cultural patterns that discourage them from participating in public spaces and expressing their ideas outside the home. These initiatives should encourage women to engage in self-reflection about the importance of their ideas, expressing them publicly, and having them taken seriously in the public sphere, which would lead to a strengthening of spaces for dialogue and would also contribute to the recognition of their rights in connection with properties subject to restitution.⁵²

In view of all of the above, the MAPP/OAS has reiterated the vital need for the URT and the UARIV to plan, prioritize, and take action in the zones designated as high priority under the return plans and comprehensive plans for collective reparation (PIRCs).

5.1.1 Low implementation of land restitution

A clear example of weak implementation and government coordination can be seen in the restitution of territorial rights, i.e. the rights of ethnic minority individual and community victims of territorial infringements in the context of the armed conflict. Five and a half years after the rollout of this public policy, only five judgments have been issued, and another 26 are in the judicial phase. In at least three judgments,⁵³ the specialized land restitution court urged the UARIV and the URT to prepare damage description reports, which they had failed to prepare as required under Article 139 of Decree 4633/11.⁵⁴ From this, it is clear that orders in judgments are being issued generally in the absence of

Unit has filed 1,044 reports of possible acts of internal and external corruption and fraud with the Office of the Attorney General. See <http://www.unidadvictimas.gov.co/es/institucional/comunicado-de-prensa/28260>.

⁵¹ In June 2016, the Office of the Attorney General arrested the second judge of the Tierras de Villavicencio land restitution court and three other court employees involved in corruption relating to a property subject to restitution. See <http://www.elespectador.com/noticias/judicial/condenada-siete-anos-de-prision-desviar-proceso-de-rest-articulo-656037>.

⁵² The IACHR has pointed out that women continue to be at a particular disadvantage in land restitution processes despite efforts to implement a gender perspective. Like the MAPP/OAS, the IACHR notes the persistence of structural patterns of discrimination, exclusion, and marginalization of women that interfere with their effective enjoyment of their rights to the use, tenancy, and administration of their property.

⁵³ Cases of Upper Andágueda Community, Renacer Negro Community Council, and Embera Dobida Eyákerá Community

⁵⁴ Decree 4633 of 2011, issuing measures for assistance, attention to, comprehensive reparation, and restitution of territorial rights to victims belonging to the indigenous peoples and communities, Article 139. Comprehensive description of damages and effects: "For the purposes of formulating and implementing the Comprehensive Plans for Collective Reparation of Indigenous Peoples and Communities (PIRCPCI) and/or carrying out the territorial restitution process, the Special Administrative Unit for Victim Attention and Comprehensive Reparation and the Special Administrative Unit for Dispossessed Land Restitution shall jointly prepare a comprehensive description of the damages and infringements suffered by the indigenous people or community requesting measures of support and reparation and measures for protection or restitution of territorial rights.

any gender and ethnic breakdown of the infringements and their effects, which diminishes the effectiveness of the judgments.

In the course of its monitoring of the Embera Dobida-Dogibi indigenous reserve, an Eyákera ancestral territory in the municipality of Ungía, Chocó, in April 2016 the MAPP/OAS noted a restitution judgment recognizing territorial infringements in the context of the armed conflict and issuing a series of orders aimed at comprehensive restitution. However, more than eight months later, scant progress has been made on implementing it. Thus, we see weak coordination among the entities responsible for carrying out the orders, ignorance of the differentiated, ethnically sensitive approach that should be applied to the measures, and a negative community perception of the effectiveness of the restitution process.

Another issue of concern, raised repeatedly by both the Colombian Constitutional Court and the MAPP/OAS, is attention to the secondary occupants of properties to be adjudicated by the land restitution courts, which the URT addressed in its Agreement 029 of April 20, 2016, an instrument regulating attention to this population.^{55 56}

The GS/OAS is concerned that one of the criteria which secondary occupants must meet under the above administrative agreement is that, to be recognized as such, they must have established a relationship or connection with the property before macro-focalization.⁵⁷ Given that the entire country was “macro-focalized” only eight days later,⁵⁸ legally speaking, anyone establishing a connection with a property subject to restitution after April 28, 2016, would not be protected as a secondary occupant. Thus, in a context of ongoing conflict with other armed players and its possible consequences, the criterion stipulated in Agreement 029 runs counter to the goal of mitigating the possible negative effects of property restitution, especially in terms of reconciliation, repairing of the social fabric, and respect for the rights of vulnerable *campesino* families.⁵⁹

In its decision C-330 of June 23, 2016, the Constitution Court required land restitution judges to pronounce on secondary occupants, objecting parties, and third parties with vested or inchoate rights who are occupying a property subject to restitution. It ruled that it is the land restitution judge who determines secondary occupant status and therefore indicates the protection measure for which the URT is responsible. However, there continue to be omissions in the specialized courts (and thus delays in action by the UARIV), as well as deficient legal representation of secondary occupants by the Public Defender Unit of the Office of the Ombudsperson.

“‘Comprehensive description’ is understood to mean identification of the events, context, and factors involved in violations of rights of indigenous peoples and communities resulting in damages and infringements pursuant to this decree for the purpose of establishing criteria, measures, procedures, and actions for their attention, protection, reparation, and restitution.”

⁵⁵In general terms, “secondary occupants” are understood to mean individuals who, in good faith and for a variety of reasons associated with the dynamics of armed conflict, are exercising their right to housing in a property subject to restitution.

⁵⁶ The rescinded administrative instruments are Agreement 018 of 2014 and Agreement 021/15. Obviously, measures have been adopted as the situation evolved to comply with national and international standards for the protection of secondary occupants (Pinheiro Principle 17).

⁵⁷ Macro-focalization is the first of four land restitution phases (macro-focalization, micro-focalization, administrative phase, judicial phase). Macro-focalization and micro-focalization criteria are based on the principles of progressivity and graduality established in Law 1448/11 for the restitution of land.

⁵⁸ Land Restitution Unit, press release of April 28, 2016, accessed at <https://www.restituciondetierras.gov.co/historico-de-noticias/-/noticias/663753>

⁵⁹ See Pinheiro Principle 17 on secondary occupants. It should be noted that, according to the Colombian Constitutional Court, the Pinheiro Principles on the restitution of the housing and property of refugees and displaced persons are broadly implicit in the constitution inasmuch as they are developments of fundamental law on comprehensive reparation for damages that have become part of international doctrine. See for example decision C-715/12.

In addition, institutional cooperation on land use, access, distribution, protection, and formalization continues to be weak. Although Colombian legal procedures for providing attention and reparation to victims contain mechanisms for harmonious cooperation and articulation between the national entities and the territorial entities, these mechanisms have been notoriously ineffective during their five and a half years in use. Furthermore, the GS/OAS is concerned that, following the closure of the Colombian Institute for Rural Development (INCODER),⁶⁰ new institutions⁶¹ have been created that still do not mesh effectively with the already complex institutional web, which could slow the protection, formalization, and restitution of land and territories.

5.1.2 Awareness of participation mechanisms and accessibility of mechanisms

Victims now have an official mechanism for interacting with the institutions implementing the public policy⁶² in the form of victim participation roundtables at the municipal, departmental, and national levels. This represents progress. However, a number of problems, including weak victim and administrator awareness of the mechanism, controversies about the allocation and use of resources, and disputes among and within victims organizations, mean that communications with the local authorities are not always fluid. This situation helps to make the victim participation roundtables susceptible to being used for financial or political purposes rather than as true spaces for advocacy.

To influence and generate proposals for effective participation, the GS/OAS recommends launching education campaigns on how the roundtables work; strengthening and renewing community and organizational leadership in the victim population and incorporating the differentiated approach in this area; and emphasizing comprehensive reparation, not just the indemnification measure.

The GS/OAS receives a steady stream of information about the problems experienced by victims submitting the Assistance, Attention, and Comprehensive Reparation Plan (PAARI). Connectivity and communications are not optimal in all regions of Colombia, which means that it may not be possible to complete the entire process because of a dropped line or a bad telephone connection.⁶³ Victims also have had problems with common administrative formalities such as updating information, requesting proof of victim status, or including a person in the immediate family. In our view, these problems are important because they remain issues to be resolved six years after the law was enacted.

Currently, victims are having trouble submitting the statement of eligible events for registration in the Single Victims Register (RUV) because some members of the Office of the Public Prosecutor will not accept them. Even though the regular legal submission period for eligible events that occurred prior to June 2011 closed in mid-2015, the statements should be accepted by the Office of the Public Prosecutor if late submission is justified by a *force majeure* event.⁶⁴ In this connection, the National Commission of the Public Ministry for Transitional Justice has issued a circular underscoring

⁶⁰ Decree 2365 of December 7, 2015

⁶¹ The National Land Agency, the Rural Development Agency, and the Agency for Territorial Renewal

⁶² Victims Unit. Resolution 0388/13, Protocol for Effective Participation of Victims of the Armed Conflict, available at <http://www.unidadvictimas.gov.co/es/protocolo-de-participaci%C3%B3n-efectiva-de-las-v%C3%ADctimas-del-conflicto-armado/15529>

⁶³ The PAARI is submitted by telephone, which has implications for the rural population.

⁶⁴ The statement must clearly describe the *force majeure* event for the legal exception to apply. Once the problem caused by the *force majeure* event has been overcome, the victim has two years to submit the statement.

the obligation of the Office of the Public Prosecutor to accept statements, independently from the assessment made by the UARIV with respect to inclusion in the Single Victims Register.⁶⁵

Lastly, during the period covered by this report, the National Center for Historical Memory (CNMH) published seven reports.⁶⁶ However, although the compilation and publication of this information represents progress, the Center will continue to confront the challenge of increasing awareness and appropriation of these publications by the communities and ensuring that their accounts and memories are collected through potentially healing processes. The Center should also work to provide victims with more information on the comprehensive reparation measures and to promote regional historical memory processes with the participation of victims and victims organizations as a dignifying element. In that connection, the GS/OAS wishes to highlight the Center's decision to take a participatory approach to the *¡Basta Ya! Catatumbo* project in order to contribute to the dignity, recognition, and visibility of the region's communities.

In addition, the GS recognizes and underscores the challenge that the Colombian State faces for ensuring political and financial coherence in the context of implementing the public policy on victim attention and comprehensive reparation, the potential increase in the as yet undetermined number of victims of FARC violence, and increased budget allocation. We make this observation from the vantage point offered by MAPP/OAS data, which show a gradual decrease in the Colombian budget for comprehensive reparation of victims. From the standpoint of the principles of comprehensive reparation and of achieving effective, sustainable results from the reparation policy, this shrinkage represents an obvious risk, particularly during the current political and transitional moment in the implementation of the peace agreement with the FARC.

6. TRANSITIONAL JUSTICE MECHANISMS

The GS/OAS positively views the legislative strides made as part of the final agreement between the Colombian government and the FARC. Adoption of Legislative Act 02/2017 is one of the most significant advances Colombia has seen in terms of transitional justice, in that it provides legal stability and certainty to the processes called for in the Final Agreement to End the Armed Conflict.

Against this backdrop, the challenge for Colombia is to consolidate a comprehensive transitional justice system, in which the system for truth, justice, redress, and non-repetition (SIVJRNRR)⁶⁷ is interlinked in practice and conceptually to other mechanisms, such as Law 975/2005,

⁶⁵ Circular issued by the National Commission of the Public Ministry for Transitional Justice on July 14, 2015 (Circular CNIVPJT 003-2015)

⁶⁶ The reports produced over the period are *La maldita tierra* [The cursed land], published September 1, 2016; *La justicia demanda memoria* [Justice calls for memory], published November 4, 2016; *Granada. Memories of war, resistance and reconstruction*, published November 4, 2016; *Until you find them. The drama of enforced disappearance in Colombia*, published November 24, 2016; *Cartillas: Desde el Carare, la niñez y la juventud siembra cultura de paz* [Early readers series: From the Carare: Children and young people sow a culture of peace], published November 24, 2015. From <http://www.centrodememoriahistorica.gov.co/informes-2016?limitstart=0>

⁶⁷ As regards the guarantees of non-repetition in the peace agreement, the IACHR held a hearing in March 2017, in which organizations noted the right of victims and society for structural measures to be established to prevent the commission of new crimes. They explained the factors that impede guarantees of non-repetition in the peace agreement: the persistence of paramilitary groups; the need for security policy reform, using a more civilian, not military, approach; and the purging of public officials involved in human rights violations, paramilitarism, and corruption. They underscored that the dismantling of the paramilitary groups begins with the state acknowledging their existence. The state indicated that the first guarantee of non-repetition is peace itself and that Colombia currently has the lowest homicide rate in the last 41 years. It noted that the presence of the military throughout Colombian territory is crucial and pointed to the outcomes of the Justice and Peace processes.

Law 1424/2010, Law 1448/2011, and those adopted as part of the talks between the Colombian government and the ELN.⁶⁸

Bearing this in mind, the GS/OAS highlights the importance of securing the greatest complementarity and standardization possible among transitional justice instruments. As part of the implementation of the Justice and Peace Law, regional issues relating to the armed conflict have emerged and should be considered in developing the documents for the Special Jurisdiction for Peace (JEP) framework. To that effect, in the event that some or all of the JEP procedural standards are applied to the ELN process, the procedures should be standardized, such that the conditions arising from international criminal law standards include the actions of the FARC, ELN, and other actors in the internal armed conflict.⁶⁹

In parallel, the Transitional Justice Division of the Office of the Attorney General has certified more than 15,000 copies to be reviewed, particularly for those cases that were shelved, but which could be key for the JEP or organized-crime fighting mechanisms created based on Point 3.4 of the agreement between the FARC and the Colombian government.

The GS/OAS further recognizes the possibility of omissions occurring due to shortcomings in the process for configuring the JEP lists of beneficiaries. This could be the case for people not admitted to the list or those having committed crimes against humanity while belonging to the guerrilla and who did not demobilize because they had already dissociated themselves for other reasons. It is, thus, necessary to create a mechanism making it possible to be included in the JEP and complete the list provided by the FARC.

Moreover, due to the exclusion of special procedures, victims of the armed conflict are those who have been most affected. This is due to the fact that their cases have migrated from transitional processes, based on the perpetrators' willingness and contribution to the truth, to regular criminal proceedings in which the perpetrator has procedural guarantees to not testify against himself, thus diminishing possible reparation for victims. When a person subject to the JEP is excluded for having committed a new crime, according to Legislative Act 02, it is important for the civilian justice system to fulfill the rights of victims to truth, redress, and guarantees of non-repetition.⁷⁰ Similarly, the GS/OAS believes that, in the framework of Article 2 of Law 1709/2014, although the person excluded from the JEP process must serve his sentence in regular prison sites, a differentiated resocialization approach should be adopted when the person has belonged to illegal armed groups. This becomes important with the understanding that by subjecting these persons to the current system, they could

⁶⁸ The IACHR is concerned that the Special Jurisdiction for Peace (JEP) will not achieve the necessary coordination with the Justice and Peace process to elucidate events, contexts, collusion, and serious third-party human rights violations, like massacres—whose true magnitude has not been understood—if only applicants (former paramilitaries suspected of crimes that are to benefit from the Justice and Peace Law) are included, leaving the investigation of crimes committed by third-parties to the civilian justice system. As the state has reported, the JEP will not admit the statements of applicants having confessed to the relationship of paramilitary groups with third parties.

⁶⁹ As a follow-up to the implementation of the comprehensive system for truth, justice, redress, and non-repetition (hereinafter, “comprehensive system”), the IACHR, in a March 2017 hearing on the state’s obligations to combat impunity and the Special Jurisdiction for Peace (JEP), underscored the fact that civil society organizations had voiced concerns about the comprehensive system’s ability to combat impunity in cases of serious human rights violations and war crimes, as well as its ability to address the rights of victims. In this context, the organizations indicated that the principle of victim participation was not present throughout the entire system. They also noted that the legislation passed on differentiated criminal treatment for state agents omits the reference to international human rights law and international criminal law relating to command responsibility. Lastly, the organizations noted that the concurrent conditions provided for under this law makes it impossible to establish said responsibility in the JEP.

⁷⁰ The IACHR agrees with guaranteeing the participation of victims in proceedings before the JEP, even when victims are not organized. The IACHR agrees with the recommendation of the MAPP/OAS regarding the Mechanism for Memory and Truth, to implement social and community outreach throughout the territories to provide forums for open dialogue and participation.

perpetrate further violence through additional crimes if effective and adequate conditions are not put in place for their resocialization.

In this context, allowing for jurisdictional autonomy that takes into consideration the diverse worldviews of indigenous peoples and communities will contribute to the success of these mechanisms. It is, thus, vitally important for coordination between the JEP and the Special Indigenous Jurisdiction (JEI) to consider the mechanisms developed in the framework of the Interjurisdictional Coordination Committee. These mechanisms help ensure that decisions relating to jurisdiction and competence are as pluralistic as possible, respecting the particularities of all indigenous peoples and avoiding generalizations.

The GS/OAS also deems important the implementation of measures that promote the effective participation of all victims in the judicial system, without the need for organization or association. To this end, expanding procedural, substantive, evidentiary, and access guarantees for victims is necessary, such that their rights are fulfilled in an effective and appropriate fashion. The SVJRN must, thus, guarantee that all victims, without exception, enjoy the same rights. As such, all legislation must provide special protection and ensure access to procedural and substantive rights to child and adolescent victims, as well as those subjected to sexual violence in the context of the conflict. A mechanism providing for clear access and guarantees to access and participation should be devised.

The GS/OAS further reaffirms the importance of a successful conclusion to the Justice and Peace process, with the strongest possible terms of legal certainty, ensuring that the largest number of victims attain their rights, as they have committed to obtaining truth and redress through the special Justice and Peace judicial process.

The GS/OAS positively views the efforts of the Ministry of Justice and Law to coordinate institutions addressing incidents of comprehensive reparations. Of note is the coordination to provide reparations to victims of the Mineros Bloc of the AUC. Similar efforts should be made to provide special redress in cases of “early termination,”⁷¹ thus guaranteeing the largest number of victims receive legal reparations.

Lastly, in relation to the early terminations, the GS/OAS has observed that this could be a strategy for easing the procedural bottleneck for Justice and Peace cases, bearing in mind that Law 1592/2012 established this mechanism to prevent procedural backlog and to streamline the issuing of judgments for those who were not the highest-level perpetrators. In this case, the GS/OAS deems it necessary for the Office of the Attorney General and the judiciary of the JEP to determine which structures need to reinforce the definition of macrocrime patterns, such that all or the vast majority of applicants can participate in this process.

7. PRISON MONITORING

In keeping with the mandate, the MAPP/OAS carries out monitoring and accompaniment related to the processes to bring members of illegal armed groups to justice, including judicial and prison monitoring. The latter has been conducted, in some cases, at the request of the Collective for Persons Deprived of Liberty, whose members are associated with or are members of the ELN, to monitor the detention and livability conditions in penitentiaries and prisons, the institutions’ ability to meet the needs of inmates, and other situations posing a risk to these persons.

Given the need to evaluate the detention conditions of this population and in order to positively influence the provision of adequate assistance for cases necessitating a direct intervention due to their

⁷¹ Early termination is a special proceeding through which ex-members of a demobilized structure can obtain an expedited sentence, provided that their conduct fits the pattern of macrocrimes detailed in a judgment preceding their application.

humanitarian nature, the GS/OAS initiated, through the MAPP/OAS, a series of visits to detention centers administered by the National Penitentiary and Prison Institute (INPEC). As of the date of this report, it had visited 18 facilities, all with the presence of ELN members.⁷²

When analyzing detention conditions, it bears noting that in February 2017, there were 172,192 inmates, not including the 3,753 inmates held in territorial facilities and those in the detention centers for members of the security forces or “harmonization” centers for indigenous peoples. This notwithstanding, the INPEC only has capacity for housing 78,417 persons.

Against this backdrop, it has been found that overcrowding in detention centers adversely affects those on the inside, both inmates and guard staff. Although guards are affected to a lesser degree, they are impacted given the official duties they perform and the precarious conditions in which they must work. Overcrowding diminishes institutional capacity, such that even the most basic standards for respecting human rights are invalidated. Prison overcrowding, which exceeds the housing capacity of these facilities several times over, is growing due to the extremely high number of persons deprived of liberty under pretrial detention.⁷³

Furthermore, as part of the on-site mechanisms to observe prison conditions, the GS/OAS has received complaints regarding subjection to cruel, inhuman, or degrading treatment. They have learned of isolation practices, in which members of GAOs and GDOs are placed in separate wards, and physical torture to prevent complaints, reports, or disobedience as part of acts of legitimate protest. In this vein, the Working Group to Call Attention to and Monitor Alleged Cases of Cruel and Inhuman Treatment was resumed in January of this year. Its first meeting was held in the high-security penitentiary in Valledupar with ELN-member inmates.

In relation to health care, the GS/OAS urges forums for cooperation among the entities responsible for providing such care, such as INPEC, the Penitentiary and Prison Services Unit (USPEC), and Health Fund for Persons Deprived of Liberty Consortium, comprised of FIDUPREVISORA S.A. and FIDUAGRARIA S.A. They should create health care brigades as a course of action to mitigate the notorious health care crisis. The penitentiary health system still demonstrates the same shortfalls noted in the twenty-second half-yearly report. As a result, the GS/OAS, through the MAPP/OAS, issues an average of three weekly alerts to institutions regarding specific cases requiring urgent medical treatment. These alerts have been well received by the institutions.⁷⁴

⁷² Medium-security penitentiary and prison (EPMSC) in Popayán, Cauca; EPMSC in Cali, Valle del Cauca; EPMSC in Medellín, Antioquia; Metropolitan Complex in Bogotá – National Penitentiary System (ERON) in Bogotá, Capital District; EPMSC in Cúcuta, Norte de Santander; Women’s penitentiary in Bogotá, Capital District; EPMSC in Villavicencio, Meta; EPMSC in Arauca, Arauca; Medium- to high-security penitentiary and high-security prison (EPAMSCAS) in Valledupar, Cesar; EPAMSCAS in Combita, Boyacá; Penitentiary and prison complex in Jamundí, Valle del Cauca; Women’s Penitentiary and prison (EPC) in Pasto, Nariño; EPAMSCAS in Palmira, Valle del Cauca; Women’s penitentiary in Bucaramanga, Santander; EPC in Yopal, Casanare; EPMSC in Quibdó, Chocó; EPMSC in Istmina, Chocó; and Medium- to high-security penitentiary (EPAMS) in Girón, Santander.

⁷³ For example, Ward 4 of the EPMSC in Cali has a capacity of 120 inmates, yet there are currently 928 detainees, or a rate of overcrowding and capacity exceedance of 773.3%. This problem impacts not only prison overpopulation in the dormitory spaces, but also the conditions and capacity in the spaces reserved for collective and family activities.

⁷⁴ As regards persons deprived of liberty, the IACHR has identified concerns similar to those stemming from MAPP/OAS monitoring of prisons, particularly in relation to the overcrowding rate, other detention conditions, and the use of pretrial prison. The Commission is concerned that the centers are unable to house FARC members who will be admitted to the JEP. The high rate of pretrial prison use in Colombia is incompatible with its nature as a tool meant for exceptional use. The IACHR agrees with the MAPP/OAS regarding the need to tailor the conditions required for female inmates, to ensure that they are able to enjoy their human rights.

The MAPP/OAS convened the first meeting of the *Working Group on Health Care and Assistance for Persons Detained Due to Their Association with or Membership in the ELN Insurgence* in October 2016. It was held in the high-security penitentiary in Palmira, Valle del Cauca. The facility was selected because of the numerous reports that no health care is provided there. At this first meeting, the group scheduled a series of meetings to be held in detention centers requiring enhanced health care intervention.

In relation to legal proceedings, the process seeks to identify detainees who experience difficulties in accessing the justice system and due process, as well as identify the types and nature of problems, and establish the courses of action for potential applications for release if the sentence has been served and/or vacated due to anomalies in the judicial process.

In relation to the FARC inmate population, in addition to instruments like amnesty and pardon, the GS/OAS believes it important to continue evaluating and monitoring the prison and penitentiary conditions of insurgents set to be admitted to the JEP system.^{75 76} Following the clustering of FARC members in certain prisons in preparation for the JEPs, some ELN members sharing spaces with these guerrilla members have expressed increased levels of insecurity.

Lastly, it is concerning that, following closure of the “justice and peace” wards in the medium-security penitentiary and prison (EPMSC) in Cúcuta and the transfer of applicants to the Bucaramanga prison last December, the *versiones libres* (spontaneous accounts) and legal proceedings for applicants having filed their applications in Cúcuta have not been resumed. This has negatively impacted, in particular, proceedings in their advanced stages, in which the victims were being prepared for reparations, such as in the case of proceedings against applicants from the Catatumbo Bloc and the *Ejército Popular de Liberación* [Popular Liberation Army, EPL].

7.1 Analysis of prison conditions for members of insurgent groups

In addition to coordination efforts with judicial, administrative, and oversight authorities through the monitoring of detention centers, the GS/OAS, through the MAPP/OAS, is conducting a diachronic analysis of prison conditions for members of insurgent groups, to determine inadequate institutional conduct patterns and make recommendations to the state to mitigate and prevent such conduct.

The GS/OAS has identified alleged practices of some INPEC administrative officials and guards towards inmates belonging to insurgent groups, especially the ELN, which inmates describe as discriminatory. These practices entail disqualification based on supposed risk factors, insubordination, and anarchy in the centers. ELN inmates have notified the competent authorities of various acts carried out in alleged collusion between guards and inmate groups belonging to the “Casas.”⁷⁷

In this same vein, during the visits it made through the MAPP/OAS, the GS/OAS received information that persons deprived of liberty have been subjected to undue pressure due to their

⁷⁵ For example, the transfer and clustering of inmates in the Chiquinquirá, Barne, and La Picota prisons is a positive effort. However, FARC member inmates who have not yet been transferred to these detention centers should be clustered as soon as possible as the overcrowding in these prisons declines, resulting from the releases granted in the framework of Law 1820/2016.

⁷⁶ The IACHR is also closely observing whether the JEP’s implementation of the Amnesty Law in practice is being conducted in respect of human rights and international humanitarian law. It will continue monitoring decisions arising from the JEP.

⁷⁷ Group of inmates that coopts the governance of detention centers for criminal purposes, from charging inmates for all activities to extortion from inside the prisons to incriminate guerrilla groups. These groups take orders from a leader called “Cacique” or “Pluma.”

association with or membership in the ELN, as well as to force them to join the demobilization program, give information on the structure of their organization, provide information on their commanders and camp locations, among other types of requests. The pressure is leveled under the threat of denial of health care and access to natural justice, unjustified transfers, or harsher conditions in high-security facilities. According to ELN inmates, this occurs while they are housed in the detention centers.

The GS/OAS also learned of cases in which administrative transfers were repeatedly used as punishment or as a deterrent to prevent inmates from reporting cases of rights violations. The cases reported refer to violations of the right to freedom of association, in which their rights were repeatedly revoked due to their background as insurgents, as well as being banned from creating groups comprised of inmates belonging to insurgent groups, and pressure to dismantle such groups. This has occurred in the prisons in Villahermosa, Cali and San Isidro, Popayán. Likewise, the GS/OAS has learned of heavy restrictions on access to information from non-commercial media, radio, books, and educational material from alternative press outlets.

Inmate concerns also include the great distances between the detention centers and where their families reside or their places of origin. According to the GS/OAS, this situation directly impacts their right to be close to their families.⁷⁸

In relation to the accompaniment requests from inmates belonging to the ELN who are housed at the Palmira facility, the GS/OAS, through the MAPP/OAS, is developing a permanent working group to prevent cruel and inhuman treatment, in view of the fact that as FARC members leave the wards, organized power structures comprised of other inmates pose extreme security risks to ELN inmates.

According to the dynamics evidenced and analysis of the findings, it is notable that women are more severely impacted by incarceration—penitentiary and prison confinement do not provide for the necessary conditions and particular needs of women to guarantee the wellbeing of their children. When the children are under the age of three, they accompany their mothers in prison, thus aggravating violations against them.

8. REINTEGRATION AND GUARANTEES OF NON-REPETITION

The MAPP/OAS studied the possible causes of criminal recidivism of demobilized actors having satisfactorily completed the reintegration route, based on a factual, legal study of the case files of persons selected by the Colombian Agency for Reintegration (ACR).

Upon culmination of the reintegration process, these persons were unable to assimilate the change and demands of the legal system, to such a degree that, in order to financially support themselves and their families, they resorted to illegal activities, like drug trafficking. In other words, it was determined that the criminal recidivism of demobilized individuals could be associated with meeting their economic needs, the desire for a better standard of living, the lack of employment opportunities, the culture of illegality to which they are accustomed, among other factors.

⁷⁸ In Cúcuta, inmates formed an association comprised of both social and political prisoners, through which they rented a house close to the prison. The house had beds and kitchen items and served as a temporary home for families of inmates coming from different regions of the department or the country. They only pay a fee of COP\$5,000 for this benefit. It also bears noting the positive effect of the accompaniment provided by some indigenous communities to members of their community who are ELN insurgents and are deprived of liberty under the civilian justice system. Such is the case of the La Montaña reservation authorities who provide support for inmates at Ipiales and Pasto who belong to the reservation.

Against this backdrop, the GS/OAS underscores the importance of improving and monitoring the reintegration process for demobilized individuals to prevent criminal recidivism. Ongoing monitoring and follow-up of the cases of demobilized individuals could prevent recidivism caused by their susceptibility to being recruited, challenges to accessing employment, the desire to maintain the military lifestyle, etc.

Although the Justice and Peace Law stipulates a maximum eight-year prison sentence, the average incarceration is nine-and-a-half years. This statutory maximum is exceeded in some cases due to administrative delays within the legal offices of detention centers, delays caused by judges in the civilian justice system who should issue orders addressing the backlog of cases in the Justice and Peace process, and the backlog of cases in supervisory judiciaries for the Justice and Peace process.

As of the date of this report, 544 individuals have completed their prison sentences in the framework of the law and have been released under the mechanism to substitute preventive measures and probation. Of these, 479 are participating in the special reintegration route for Justice and Peace. In terms of background, most of the released applicants belonged to paramilitary groups, while the minority (58 to be exact) were ex-guerrilla members. Two hundred are expected to request release in 2017.

One of the GS/OAS's concerns in this area, as previously noted, is the challenges persons released from prison face in accessing employment opportunities. Often times, these challenges are permanent due to stigma and the rigidity of employment requirements. Furthermore, these individuals are particularly worried about their personal safety, given their confessions that involved other members of the group and which led to the bringing of proceedings and their respective punishments against persons who did not have open cases in the justice system previously.

Lastly, the MAPP/OAS has identified 36 potential cases of recidivism among applicants after having been released. Some of the most salient findings pertain to the following situations:

- 1) Several individuals released from prison have returned to the area where they previously operated or have gone to the areas of operation of the Gulf Clan and other GAOs.
- 2) Several have stated that they are between “illegality and death,” as they were called on to join the GAOs; by not joining, they could bring actions against themselves or their families.
- 3) In the Llanos Orientales, the release of the main applicants operating in the area coincided with the escalation of violence and the arrival of the Gulf Clan.⁷⁹
- 4) In the Urabá region, there has been an increase in complaints by land claimants, who assert that released applicants have contacted victims to threaten them.
- 5) In Magdalena Medio, the release of Arnubio Triana Mahecha, alias *Botalón*, the former commander of the *Autodefensas Campesinas de Puerto Boyacá* [Campesino Self-Defense Forces of Puerto Boyacá] has coincided with reports of the resurgence of the armed group he commanded and increased social control of psychoactive substance users, by means of disappearances.⁸⁰

⁷⁹ This situation is particularly notable in the municipalities of Granada, Vistahermosa, and San Martín, Meta.

⁸⁰ It is worth noting that Triana Mahecha was recaptured and is currently in the Itaguí prison, facing charges on drug trafficking and conspiracy to commit a crime.

- 6) Esneider Santiago González, alias *Jhon* or *Medio Kilo*, was demobilized and an applicant from the Northern Bloc of the AUC. He was captured March 17, 2017 in the municipality of Curumaní, Cesar while collecting COP\$3,000,000 from extortion activities.⁸¹
- 7) There is information on the arrival in Tumaco of applicants not native to the area. The arrest of two individuals having no relationship to the area warns of potential recidivism in the Pacific coastal region of Nariño.

9. ADMINISTRATION OF JUSTICE IN THE POST-CONFLICT PERIOD

9.1 Barriers to access to justice

Guaranteeing that citizen's legal needs are met on equal footing plays a key role in rebuilding public trust and the legitimacy of the state, both of which are indispensable for multilevel peacebuilding processes. Thus, in the context of this certitude, one of the GS/OAS's concerns is that the MAPP/OAS has identified the existence of various types of barriers to access to formal justice in many of the monitored territories. These barriers can be grouped into the following categories: 1) weak institutional presence in the territories; 2) weak infrastructure and human and physical resources in the territories; 3) mistrust and the perception of impunity and ineffective judicial operators; 4) insecurity due to the law enforcement situation; and 5) the public's lack of knowledge of their rights.

The first category on institutional weakness refers to the physical absence of local and national institutions to represent a legitimate administration of justice. This absence is evidenced in two concrete facts: the lack of offices in urban centers, which forces the public to travel to other municipalities to access institutional judicial services;⁸² and the ineffectiveness in rural areas of institutions that do have a physical presence in urban centers, thereby leaving a large swathe of the population without services.⁸³

The second category on weak infrastructure includes factors such as the remoteness of rural areas, complicated mobility due to lack of or the poor state of roadway infrastructure and the resulting high transportation and lodging costs, *inter alia*. These factors hinder or even render impossible the public's access to formal justice. Examples of this situation were observed in rural areas in Southern Bolívar, in the municipalities of Morales and Arenal, where there is deficient roadway infrastructure, which should be addressed immediately. Similarly, in the Southern Pacific region, most travel is conducted by river, due to the precarious infrastructure conditions.

In terms of the third category regarding the barrier caused by mistrust of authorities, the Mission indicated that there is a deeply-rooted, general perception among the civilian population as to the incapacity of institutions to effectively conduct and conclude judicial proceedings. This, in turn, discourages any attempt to resort to the formal justice system. Furthermore, in some cases, the feeling of mistrust is added to a perception that some public officials are colluding with illegal groups. This is representative of cases in Turbo and Apartadó in Antioquia, in which segments of the public link the actions of various officials to the Gulf Clan's infiltration into the political realm.

Another factor driving this mistrust is the perception of impunity in the formal administration of justice. The GS/OAS, through the MAPP/OAS, has learned of specific cases of dissatisfaction

⁸¹ This situation occurred less than one month after his release through the mechanism substituting preventive measures for a non-custodial sentence.

⁸² This is particularly notable in the municipalities of Labranzagrande and Pajarito, Boyacá; Olaya Herrera, Nariño; and Piamonte, Cauca, where the Attorney General's Office has no units.

⁸³ Such as the urban areas of Arauca and Southern Bolívar.

among the people in Riosucio, Chocó, where individuals have committed violent acts like homicide and are still free today. The situation of impunity is added to other factors that discourage the national police from acting, such as the rigidity of the accusatorial criminal justice system and the statutory terms for formalizing arrests and issuing preventive measures. In this same vein, the perception that judicial operators are inefficient also creates mistrust in the justice system.⁸⁴

In terms of the fourth category on insecurity due to the law enforcement situation, the GS/OAS observes the creation of a twofold impact, first, by preventing institutions from acting and, second, by discouraging the civilian population from filing complaints. Of note is the case of the village of Jordán de Güisía en Valle del Guamuez, Putumayo, which has not had an active inspector for more than nine years, as the previous officials holding the post were disappeared and persecuted by illegal armed groups. Similarly, Llorente, the largest village in the township of Tumaco, Nariño, does not have an inspector, administrator, or any medical personnel, as the three figures were murdered at different times by different armed actors.⁸⁵

Lastly, the Mission has observed that there is a lack of awareness among social leaders and the public at large as to how the justice system and mechanisms for enforcing rights work in several of the monitored territories. This translates into an additional limitation to strengthening adequate conditions for accessing formal justice. To this end, in order to overcome this barrier and at the request of the social leaders in Antioquia, the Mission is developing a training initiative called *Escuela de Líderes Constructores de Paz* [School for Peacebuilding Leaders], designed for board members of the *Juntas de Acción Comunal* [Community Action Boards] (JACs), social leaders, and student representatives, in partnership with the Office of the Governor of Antioquia, Office of the Ombudsperson, Colombian Agency for Reintegration, and some city governments. The program is devised to enhance knowledge of these mechanisms and improve access to justice and participation.

9.2 Parallel or *de facto* justice systems

The current landscape in which illegal armed groups in the country are administering a parallel or *de facto* justice system poses enormous challenges to peacebuilding, particularly in territories where there is a state power vacuum and where groups that have historically overseen administration of justice are withdrawing, thus leaving this institutional vacuum open.

The GS/OAS, through the MAPP/OAS, has shown that this phenomenon manifests different characteristics in each territory, where each area has developed heterogenous conditions. Thus, in some areas, illegal groups have taken on the role of providing the services of security, justice, and conflict resolution by leveraging the institutional weakness and the welcome they receive from the people. This is fueled by the negative perception of formal justice mechanisms. In many of the cases, the GAOs continue to coopt social organizations, such as the JACs, as an instrument to execute their justice. Meanwhile, their participation in these entities legitimizes their power and enforces their agreements.

In this same vein, the progressive decrease in the presence of and influence wielded by the FARC in other regions has diminished their role as the ultimate decision-making body and as an active actor in the territory. This, in turn, has encouraged inhabitants of these areas to use the institutions and

⁸⁴ For example, a specific case was reported to the Mission indicating procedural errors in the Attorney General's Office in Barbacoas.

⁸⁵ There is an abundance of cases serving as examples for this situation. A similar case worth noting is the township of El Caracol, Arauca, where the national police does not have the capacity to effectively control the territory, given the intense presence of armed groups. For this same reason, there are no other civilian figures, beyond the community action boards (JAC) and council members, to fulfill the duties of authority figures, like police inspectors or administrators. In other townships in the municipality of La Paz, Cesar, the precarious security conditions are not only a danger to police inspectors, but also obstruct them from fulfilling their duties.

tools of the formal justice system.⁸⁶ In other sectors, their retreat from the administration of justice has been slower, but still palpable.

These transformations have engendered disparate reactions from the people. In some areas, such as the police inspection division in Piñuña Negro, in the municipality of Puerto Leguízamo, Putumayo, for example, everyday daily life remains a holdover from the control mechanism enforced by the guerrilla. Even though the impacts caused by the guerrilla group have subsided, communities still adhere to the rules they imposed, out of habit or out of historic fear of breaking these guerrilla rules. In other areas, such as the police inspection division of Jordán de Güisía in Valle del Guamuez, Putumayo, community leaders have made the unanimous decision to no longer consult the group as the ultimate decision-making entity for resolving neighborhood conflicts.

The GS/OAS has observed that the relationship between institutions and civil society and the way in which people interact with authorities have also varied in some respects. In point of fact, the people in some territories have begun visiting state institutions charged with administration of justice with greater frequency and without fear or restrictions. Yet, in other areas, the transition has caused tensions between communities and authorities, given the paltry trust in and credibility of the state.

Furthermore, the gradual disappearance of the FARC's punitive power has led to concerns regarding the emergence of new actors in the territory bringing their own justice systems. In this context, the people have expressed doubt as to the ability of the JACs and other community organizations to reconcile community conflicts. Added to this is the low credibility of law enforcement and its ability to resolve problems. As justification for these concerns, several areas across the country have expressed the perception that, with the withdrawal of the FARC, other armed groups have intensified their presence and influence by enforcing administration of justice mechanisms. In other territories, although there is no evidence of a parallel justice system, the community perceives that justice will gradually be taken over by a new armed actor.⁸⁷

There have also been cases in which communities seek out another actor to guarantee security and justice as the FARC have exited the territory. Such is case in the rural areas of Tame, Arauca, and Puerto Valdivia, Antioquia, which have turned to the ELN to address the increase in common crime incidents. This situation has been especially present in rural areas in the municipalities of the subregion Abades, Nariño.

Given this diversity of situations, the GS/OAS believes that strengthening the presence and capacity of state institutions and community organizations; building trust with communities; and consolidating informal justice mechanisms to cut down the backlog in the formal justice system and bring judicial services to rural communities could play a crucial role in facilitating this transition and offsetting the risks stemming from power vacuums. Moreover, to bolster community acceptance, it is advisable for the formal justice system to be implemented in the territories gradually, including a pedagogical approach and bearing in mind the specific characteristics of these territories that are not accustomed to this type of institutionalized rule of law.

The GS/OAS also deems necessary establishing nimble mechanisms to receive complaints, such as mobile justice units. This would allow those living in rural areas to avoid incurring expenses in their pursuit of justice, thus facilitating the progressive outreach of institutions into the community.

⁸⁶ An example of this can be found in municipalities like Cartagena del Chairá, Caquetá and Cumbitara, Nariño.

⁸⁷ In this context, the following cases are noteworthy: Ituango, Antioquia, where tensions have arisen between the people and authorities; El Concello, Caquetá, where the legitimacy of the community justice system has been challenged; Puerto Leguízamo, Putumayo, where the community perceived increased criminality; and Vista Hermosa, Meta, where different armed groups appear to be looking to position themselves in the territory.

Likewise, it is imperative to provide expedited procedures to resolve complaints in a swift and timely fashion, such that the people will have no excuse to resort to violence or take justice into their own hands.

As the GS/OAS has suggested, in the framework of the ceasefire, cessation of bilateral hostilities, and pre-grouping points for the FARC, there are four concrete challenges relating to the *de facto* and informal justice systems in rural areas previously controlled by this guerrilla group. Both the state and the territorial communities must tackle these challenges. The still-relevant challenges are: 1) preparing for the justice vacuum once the *de facto* justice systems are withdrawn; 2) addressing new *de facto* justice systems imposed by new actors positioning themselves in the territory; 3) charting an effective course between formal and informal justice systems in the event of serious human rights violations carried out against the rural population by the new actors operating in the area; and 4) renewing the legitimacy of the formal justice system in the eyes of the civilian population in areas in which justice was previously imparted by the guerrilla group.

10. STRATEGY FOR INTERJURISDICTIONAL STANDARDIZATION

The right of indigenous peoples to autonomy encompasses the collective right to dictate their own rules of conduct and resolve conflicts, according to their own procedures and under a regime of standards and values based on their own cosmogony and worldview. This right is expressly recognized nationally and internationally; it entails not only recognition of these systems of rules, but also full respect for the development of these legal systems devised in each territory. Against this backdrop, and in the framework of its monitoring and accompaniment duties, the GS/OAS, through the MAPP/OAS, believes it timely to have a conversation about standardization and co-existence of legal systems: the state legal system, the legal systems for each separate indigenous population, and the special provisions proposed as part of a transitional justice process.

In this context, the Superior Council of the Judiciary requested support from the MAPP/OAS to promote the interjurisdictional standardization strategy between the Special Indigenous Jurisdiction (JEI), civilian justice system, and transitional justice mechanisms. Accordingly, the Mission has worked to strengthen and call attention to the departmental interjurisdictional coordination working groups, as legitimate spaces for dialogue between indigenous authorities and other justice operators. These spaces aim to identify the various problems arising from jurisdiction conflicts, as well as address aspects relating to the handling and treatment of members of indigenous peoples and/or communities who have formed part of illegal armed groups—either recruited by force or voluntarily. They will also work to understand the impact this phenomenon has on the territories and jurisdictional autonomy of indigenous peoples.

Once the various scenarios in conflict have been determined, actions must then be identified to standardize the overlap between the JEI, national or civilian jurisdiction, and transitional justice mechanisms. While they are three separate jurisdictions, coordination among them is essential to prevent discrepancies in the framework of legal standards.

Accordingly, the Mission has been supporting the National Table for Interjurisdictional Coordination since mid-2016, to study and make interjurisdictional-related decisions, based on analysis or regulatory and institutional frameworks, national and regional contexts, and coordination dynamics between the civilian jurisdiction and the JEI.⁸⁸ As part of its efforts, the Mission conducted visits to 35 indigenous reservations and 16 harmonization centers between October 2016 and January 2017. Additionally, in October 2016, the Mission supported the Intercultural Workshop to Exchange

⁸⁸ This has also provided conceptual, regulatory, and factual elements regarding the relationship between the JEI and human rights; the state and possible legislative coordination initiatives between the JEI and the national judicial system; the justice situation in Colombia; and interjurisdictional coordination spaces and experiences underway.

Experiences on Independent Rights, which worked on concrete steps to coordinate between the national judicial system and the JEI, in the framework of the Interjurisdictional Council of Nariño.⁸⁹

Another important aspect to consider in the standardization process is indigenous communities in territories with two separate national jurisdictions. In this case, although political borders are the geographic and geostrategic foundation of a state, it is undeniable that these borders remain a barrier to the social and political processes for these communities. Accordingly, the GS/OAS has demonstrated the need to create spaces for interjurisdictional dialogue with the peoples occupying binational territories and the host states of these peoples. This situation applies to the cases of the Kofán, Camentsa, Awá, Kichwas, Esperara Siapidara, Pastos, and Ingas (present in Ecuador and Colombia); Murui-Muina (present in Peru and Colombia); and Barí, Yukpa, and Wayuú (present in Venezuela and Colombia).

In this same vein, given the prosecution of indigenous community members belonging to illegal armed groups, the GS/OAS deems it imperative to work with indigenous organizations to create and grant legal recognition to the harmonization centers as physical spaces where members of indigenous peoples and/or communities, who have been prosecuted and punished by the JEI and the national or civilian jurisdiction, can serve their sentence in indigenous territory. This is key, especially to prevent these convicted individuals from being uprooted from the customs and practices of their communities. Moreover, these conditions will allow these individuals to provide community service, thus ensuring true resocialization and harmonization, as well as alleviating the prison overcrowding problem currently faced by the Colombian state.

In light of the foregoing, the GS/OAS notes with concern the lack of awareness among many public defenders of the JEI. These are generally the figures who undertake the legal cases of members of indigenous peoples and/or communities being prosecuted by the civilian justice system. Consequently, in most cases, the defenders erroneously advised their clients, by recommending they accept early judgments to avoid going to trial. To address this situation, the Office of the Ombudsperson should oversee interjurisdictional coordination efforts, through an effective, committed effort focused on training its officials and contractors as custodians of the respect for the rights of indigenous peoples and communities.

The GS/OAS further recommends promoting intercultural and interjurisdictional training processes as strategies to strengthen traditional authorities and institutions. These strategies create spaces to work with indigenous authorities to review internal manuals or regulations. The purpose of these spaces is to analyze the extent to which these instruments represent their worldview and identity, particularly in terms of the criminalization of offenses, adoption of custodial sentences, and the use of the penitentiary and prison system.

Lastly, the GS/OAS finds that it would be advisable to create an information repository compiling decisions made by indigenous authorities as part of the JEI. This system would ensure the collection and periodic update of and access to information for indigenous and jurisdictional authorities. The system could operate through the creation of regional observatories with local universities, which would, in turn, enable the centralization of information in the Rodrigo Lara Bonilla Law School.

11.RECOMMENDATIONS

⁸⁹ The Mission is currently contributing to the creation of interjurisdictional departmental councils in the departments of Northern Santander, Putumayo, Vaupés, Amazonas, and Guainía. It is also supporting efforts to strengthen the departmental councils in Cauca and Nariño, which will boast coordination with the respective Chair of the Sectional Council of the Judiciary and the Rodrigo Lara Bonilla Law School.

11.1 Security conditions in the territories

- A. Expend the full capacity of the state to control the expansion of the Gulf Clan and other illegal actors into areas from which the FARC is withdrawing. This would be based on an approach designed to protect and respect the communities, their rights, customs, and traditions.
- B. Comprehensively adjust and strengthen the security conditions in the areas that have historically been subject to conflict with the FARC. This requires prioritizing the comprehensive presence of the state in the areas subject to the territorial expansion of these groups, in an effort to fill the void left by the armed group in many territories across the country, through the implementation of social, infrastructural, and security programs to curb other groups from moving in.
- C. Address the consequences affecting communities, identify risk prevention mechanisms defined by institutions present in the territories, and narrow the trust gap between communities and the state.
- D. Develop comprehensive measures to reduce the humanitarian impacts on communities, particularly rural communities and ethnically-differentiated peoples who are at the mercy of illegal armed groups and newly emerging criminal phenomena.
- E. Promote and support the implementation of strategies to prevent the forced recruitment of children, adolescents, and youth, and that these strategies be perceived by the communities as efficient.⁹⁰
- F. Bolster strategies that guarantee the full exercise of the right to lodge complaints and to social mobilizations. To this end, institutions are encouraged to strengthen preventive practices that ensure the physical safety of social leaders, human rights defenders, social movements, and political parties. The adoption of measures to dismantle social and cultural patterns that foster discrimination and/or stigmas due to political association or complaints is recommended, as it is a right of the people to actively participate in the decisions governing their lives.
- G. Strengthen differentiated institutional assistance to respond to complaints and enhance implementation of strategies to prevent the effects suffered by women and girls in the context of the armed conflict. In the framework of monitoring, provide facilities equipped with spaces to ensure confidentiality, as well as the technical and economic capacity to handle cases, and appropriate staffing to properly handle complaint situations.

⁹⁰ In the opinion of various communities, an example of effective strategies is the project on *campesino* boarding schools and shelters in rural areas, activities to prevent psychoactive substance use in urban centers, or programs connecting students with technical or professional education prior to graduation from high school, *inter alia*.

- H. Strengthen prevention tools and the creation of direct warning instruments in communities to ensure they have a direct point of contact in the relevant institution to take prompt action in any risk situation.
- I. Concerning eradication and illicit crop substitution policies, the national government must act nimbly at both ends of the drug trafficking chain:
 - i. First and foremost, develop a comprehensive policy to address all links in the drug trafficking chain, such as money laundering, control of chemical inputs, interdictions, and the pursuit and prosecution of the primary, most representative leaders managing the drug trafficking networks.
 - ii. Second, regarding social matters, provide assistance and access to goods and services, as well as profitable and sustainable productive projects geared toward rural populations, with adequate infrastructure for production. The projects should discourage growing illicit crops to meet socioeconomic needs in the rural areas of Colombia.

To this end, decisions regarding these projects must be made in conjunction with the communities, through flexible, highly-skilled technical interlocutors, who are trained in agricultural, commercial, and logistics matters and skilled in administrative implementation. This is essential, with the understanding that this space for dialogue is where projects will be deemed feasible or unfeasible as a livelihood option for the community. This condition is also viewed as a remedy to what is currently happening in several communities claiming they do not get along well with the government liaison.

11.2 Territorial preparation for peace

- A. Promote the culture of dialogue and respect for diversity by strengthening and leveraging existing citizen organization and participation forums, either formal or informal, to settle differences, share territorial visions, dialogue, analyze, and debate priority issues in each territory.
- B. Implement comprehensive processes with a rural, urban, ethnic, gender, and age differentiated approach to disseminate and promote understanding of the *Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace*. It is important to scale up the attention given to the agreement's participation mechanisms and, in general, the structural transformations included in the agreement approved by the Colombian congress.
- C. Develop similar dissemination processes, such that the Colombian society at large can identify on the public agenda current negotiations being conducted by the Colombian government with the ELN, as well as identify and strengthen effective mechanisms so that the various segments of the population can express their interests and views, not just about what they expect from the process, but also what they can contribute to peace.
- D. Design and implement processes to identify and strengthen regional and/or national cultural patterns or practices that foster conditions promoting reconciliation.
- E. Achieve greater dissemination, understanding, and ownership among communities of the products published by the National Center for Historical Memory. The GS/OAS also

recommends promoting a greater number of historical memory processes within the territories, with the participation of victims and their organizations, as a factor for strengthening the dignity of these communities.

11.3 Comprehensive reparations for victims

- A. Tap all of the state's institutional potential to speed up land titling and tenure formalization processes, as well as the titling, reorganization, and extension of the collective territories of ethnic communities. Undoubtedly, the main flashpoint for current social conflict is access to land and territories.
- B. Adopt measures to provide access to participation opportunities for diverse types of civil society, *campesino*, indigenous, and Afro-descendant organizations, in order to establish scenarios for dialogue and accompaniment. This will both alleviate existing tensions and allow for the coordination of inclusive proposals for all segments of society and restore advocacy in public policy.⁹¹
- C. Implement a dialogue and outreach mechanism to reach the entire social and community base, spearheaded by the Monitoring and Verification Mechanism (MMV), offering scenarios for open dialogue and widespread participation. The purpose is to not only provide for the participation demands of some social organizations, but also meet the bulk of the social demands in the area in question.
- D. Strengthen the organization of collective groups, communities, sectors, and platforms present in the territories, in order to invigorate the composition of the key social and political actors, who are diverse and even in opposition to each other, under conditions that actively contribute to both the implementation of the agreements signed between the Colombian government and the FARC and the deliberative bodies that have announced the negotiation process with the ELN.
- E. Promote specific monitoring mechanisms, such as national and regional human rights observatories, particularly the Office of the Ombudsperson's early warning system (SAT), and also ensure that the Offices of the Inspector General and Attorney General take the respective actions to comply with and monitor the recommendations issued by early warnings.
- F. Foster, from within the Presidential Human Rights Advisory Council and the Ministry of Interior's Human Rights Division, coordinated preventive—not reactive—actions in the High Commission for the Protection of Human Rights and the National Security Guarantees

⁹¹ The IACHR agrees with the MAPP/OAS: it is essential to bolster the culture of dialogue and respect for diversity of opinion by strengthening and leveraging local citizen organization and participation forums, as well as strengthening the state's presence and implementation of policies in the territories. The IACHR further agrees with the need to strengthen and support the Office of the Ombudsperson's monitoring and early warning system, as well as human rights observatories.

Commissions for Human Rights Defenders, and Social and Community Leaders,⁹² in order to guarantee non-repetition relating to the following:

- i. Attacks on the life and integrity of members of community organizations, human rights defenders, and subjects and collective claimants for land restitution.
 - ii. The perception of social movements and human rights defender organizations, which indicate that the detention of social leaders accused of collaborating with the guerrilla are a tool for persecution and political stigma.
- G. Secure the resources that guarantee implementation of the public policy on victim assistance and comprehensive reparation, given that the growing population receiving assistance and reparation does not yet include the still-undetermined number of victims living in areas where the FARC presence, though undergoing demobilization, has hindered access to relevant institutions.
- H. Strengthen the assistance and information mechanisms with a differential approach for victims, provided by the UARIV, specifically regarding access to institutional services and knowledge of the public policies providing for victim assistance. In that same vein, the procedures for verifying, amending, and making corrections to family units registered with the RUV, as well as PAARI procedures, should be streamlined. The Mission urges a redoubling of efforts to remedy the still limited presence of the entity in the territories and promote the enforcement of ethnic decrees.
- I. Prioritize technical and human efforts carried out by the UARIV to assist victims living in areas in which the development programs with a territorial-based approach (PDETs) established in the final agreement signed between the Colombian government and the FARC-EP will be implemented.
- J. Design action plans, through the UARIV and the Ministry of Health and Social Protection, to effectively guarantee the right of victims to adequate psychosocial care.
- K. Expedite the comprehensive reparation processes for collective subjects by designing the PIRCs and implementing those that have received approval from the Transitional Justice Committees (CJTs). Accordingly, the Office of the Public Prosecutor is urged to exercise—as part of its monitoring duties—careful control in terms of the design, planning, and financing to ensure that responsible entities are meeting their obligations by properly implementing the plans in a timely fashion.
- L. The GS/OAS reaffirms the need for the URT and UARIV to plan, prioritize, and develop their intervention, through a territorial-based reparation strategy for each micro-focalization area, return plans, and the PIRCs.
- M. The URT, judges, and magistrates in the civilian jurisdiction specialized in land restitution are urged to accept and respect the terms set forth in Law 1448/2011 and its regulatory

⁹² The IACHR underscores the important strides taken in January 2017 to establish the National Security Guarantees Commission for Human Rights Defenders, a necessary coordination forum to strengthen the protection guarantees for the defenders and their work.

decrees, in both the administrative and judicial stages of the land restitution process for victims of forced abandonment and/or dispossession.

- N. Through the Office of the Public Prosecutor (to the benefit of the Inspector General's Office and the judges and magistrates in the civilian jurisdiction specialized in land restitution), and in the execution of duties to monitor land restitution judgments, guarantee swift compliance with orders, particularly those decreeing reinstatement of territorial rights to ethnically-differentiated communities and assistance for second occupants.
- O. Amend the standard for macro-focalization, established by the URT, as a temporary condition for assisting second occupants, as provided for in Agreement 029/2016 and/or administrative instruments that replace it. To this end, the GS/OAS recommends studying replacing it with the standard for micro-focalization. It further recommends, more generally, that the administrative instrument issued be aligned with Colombian Constitutional Court Judgment C-330/2016 and Order 373/2016.

11.4 Transitional Justice

- A. Reiterate the importance of transitional justice mechanisms, like the JEP, taking into consideration the lessons learned from previous national and international processes, to minimize the extent of power vacuums and ambiguity on various matters.⁹³
- B. Create a dialogue mechanism so that the progress made in the Justice and Peace process can be leveraged by other mechanisms; this includes a review of the certified copies sent from the Justice and Peace jurisdiction to the civilian jurisdiction. Furthermore, all transitional justice tools should take into account the lessons learned in the Justice and Peace process, Law 1424/2010, and other tools, in substantive, procedural, and administrative terms, in order to minimize the extent of power vacuums and ambiguities.⁹⁴
- C. Create legal mechanisms to resolve involuntary omissions on the lists of those who will disarm and potentially be admitted to the special jurisdiction for peace (JEP).
- D. Create forums for discussion, analysis, and decision making to highlight best practices regarding the procedural participation of victims, in order to guarantee broader engagement in scenarios like the JEP. Regulation on victim participation should favor all victims, not just those that are organized or belong to an association.

⁹³ The IACHR agrees with this recommendation. A dialogue mechanism is necessary for the progress made in the Justice and Peace process to be leveraged by other jurisdictions or mechanisms, including sending certified copies to the civilian jurisdiction.

⁹⁴ Similar to the MAPP/OAS recommendation on national and international lessons learned, as well as those learned from the Justice and Peace process, the Commission believes that, as part of this new process for implementing the comprehensive system, the state should, where relevant, consider the recommendations issued by the Commission in its reports regarding the AUC demobilization process and the implementation from 2004 onward of the transitional justice framework created by the Justice and Peace Law. It should also take note of the lessons learned, both achievements and challenges faced, with a view to optimizing implementation of a functional, coordinated, participatory, and effective comprehensive system, whose central pillar is to provide for effective victim rights.

- E. Generate effective resocialization mechanisms framed in the particularities of each population segment, for those who do not confess to acts punishable in the JEP and, thus, lose JEP benefits.
- F. Incorporate the worldviews of all indigenous peoples to avoid generalizations and to obtain the greatest possible degree of pluralism, in the framework of standardizing indigenous jurisdiction processes with transitional justice tools.
- G. Enhance dialogue between the various judiciaries of the Justice and Peace process, to regularly implement early terminations to streamline the process, in respect of the substantive and procedural rights of the applicants and, especially, the victims.
- H. Execute ACR expansion of corporate social responsibility programs and intensify efforts to destigmatize the demobilized and Justice and Peace applicant population, with a view to ensuring their inclusion in society and preventing recidivism.
- I. Conduct a wide-ranging review of penitentiary and prison standards to ensure that they are fully aligned, subject to modification, with the enforcement of transitional justice tools and that they promote achieving peace.
- J. Study and implement the lessons learned from the peace process between the government and the FARC regarding prison and penitentiary readiness, as applied to the process with the ELN; prioritize enabling rapid responses to health issues for incarcerated persons.
- K. Develop procedures to help INPEC administrative officials and guards avoid conduct that could be characterized as prejudiced or discriminatory by members of insurgent groups deprived of their liberty.
- L. Review penitentiary and prison standards to adapt them to the needs of women inmates, including standards on maternity-related matters, to guarantee their constitutionally-protected rights.
- M. Continue the Ministry of Justice's support and efforts to strengthen the ten-year justice plan and the local justice systems initiative, in recognition of the progressive nature of the relationship between the provision of justice in the territories and building a stable, lasting peace. These efforts must go hand-in-hand with prioritizing rural territories, so that expanding provision of justice mechanisms focus on territories with weaker infrastructure and those that report higher levels of mistrust of authority.
- N. Progressively implement formal provision of justice mechanisms with a pedagogical and participatory approach to empower and involve local leadership. This implementation should be focused on territories where *de facto* administration of justice still persists, thereby aiming to renew the people's trust in the state and regain the state's legitimacy, as priority matters.
- O. Strengthen the national social harmony and conciliation committees through training and awareness campaigns on their role as conflict resolution mechanisms.

- P. Strengthen and implement legal pluralism, by means of concrete interjurisdictional legal agreements, in the framework of recognition of and respect for special indigenous jurisdictions, in order to facilitate the delivery of resources from the civilian justice system, in keeping with transitional justice tools. These strengthening efforts should prioritize the legal systems of indigenous peoples, including those who, due to political borders, have been divided between two or three states.

- Q. Bolster forums that promote coordination and standardization between the national legal system, special indigenous jurisdictions, and the JEP.

- R. Promote intercultural and interjurisdictional training for traditional authorities and Colombian state officials, thus fostering conditions for a more plural pursuit of justice.