

TRUTH, JUSTICE & REPARATION



The SWEDISH FOUNDATION
for HUMAN RIGHTS

**The rights of the victims in the Justice and Peace process,
with a focus on female victims and Medellín.
Report from a Mission in Colombia.**



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Editors: Linda Robertsson and Ulrika Strand (Swedish Foundation for Human Rights)

Authors: Inmaculada Barcia, Ariela Peralta, Alejandro Silva, Linda Robertsson and Ulrika Strand

Cover: Jakob Robertsson

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Contact: The Swedish Foundation for Human Rights, +46-(0)8-54 54 99 70 or info@humanrights.se

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I. INTRODUCTION

This report is the result of a mission carried out in Colombia in April of 2007, organised by the Swedish Foundation for Human Rights (hereinafter “the Foundation”). The topic addressed by the mission is the protection and guarantee of victims’ rights to truth, justice and reparation within the framework of the so-called process of demobilisation of the paramilitary groups. This topic was defined with the Foundation’s partners, who are experts on Colombia, and with Swedish institutions, both state bodies and NGOs. It was further supported by a preliminary study carried out by the Foundation in late 2006, which particularly focused on women victims so that their experiences and opinions would be heard and their particular rights and needs guaranteed. The mission’s geographical focus was limited to Medellín and the surrounding area along with Bogotá. However, most of the observations and recommendations contained in this report apply nationally.

The delegation consisted of a Spanish attorney, the coordinator of the Human Rights Defenders’ Program at the International Service for Human Rights (ISHR) in Switzerland, a Uruguayan attorney who is the deputy director of the Center for Justice and International Law (CEJIL) in the United States, a Peruvian attorney who is the human rights and international humanitarian law professor at the Universidad San Martín de Porres, Peru, and two representatives from the Swedish Foundation for Human Rights in Sweden.

The mission took place between April 16 and 27, 2007, in Bogotá, Medellín and the surrounding area. The objective was to directly hear the voices of those involved: victims, NGOs involved in human rights, women and victims’ representatives, Colombian state institutions with responsibility in this field at the national and municipal levels, international organisations and other experts and protagonists of the current situation in Colombia. A total of approximately 120 people were interviewed. At the end of the mission, the Foundation organised a seminar in Bogotá with 30 participants from Bogotá and Medellín, the majority of whom had already been interviewed or represented organisations that the delegation had visited. The mission’s tentative conclusions were presented at the seminar and participants were given the opportunity to voice their opinions and comments regarding those conclusions. In May, a seminar was held in Stockholm, Sweden with the same objective.

The Foundation’s headquarters are in Stockholm and the organisations that govern it are the Swedish Red Cross, Diakonia, the Swedish Church and the Raoul Wallenberg Institute. The Foundation’s work is divided into three thematic areas: 1) promotion of women’s human rights, 2) promotion of economic social and cultural rights and 3) the rule of law. Its main focus is the fight against impunity and the existence of guarantees for the respect and protection of human rights in situations of conflict, post conflict and transition. All of the Foundation’s activities are based on respect for and promotion of human rights, as defined in universal and regional declarations and treaties, with particular emphasis on regional systems for human rights protection. The perspective of gender and the rights based perspective crosscut the Foundation’s work. Within its thematic programs, the Foundation applies the following methods: international cooperation, education, information, monitoring and political advocacy, which includes the missions.

Until now, the Foundation has carried out 11 missions, 7 of which were in Colombia (1995, 1996, 2000, 2001, 2002, 2004 and 2007), 3 in Peru (2001, 2002 and 2003) and 1 in Haiti (2003). The Foundation is currently planning its first mission to Africa, which will take place in the Democratic Republic of the Congo in early 2008. All of these missions have consisted of a study in the field with interviews and the publication of a report that has been disseminated in Sweden and in the respective country followed by lobbying activities as follow-up to the report and its recommendations. In most cases, seminars have been organised in connection with the missions to make the topics addressed during each mission visible and debate them in greater depth and to contribute to finding solutions. All of the missions carried out in Colombia have addressed the topic of impunity with different specific focuses.

This report is the result of interviews and seminars carried out in Bogotá and Stockholm. It does not refer to individuals to avoid compromising those who so generously shared their experiences, knowledge and opinions with the delegation. At the end of the report, there is a list of the organisations that were interviewed. The delegation does not attempt through this report to offer a complete picture of the current Colombian situation and problems, but rather an analysis based on the information gathered and constructive reflections on how to solve the problems that were identified.

The mission's conclusions correspond to the analysis made by the members of the delegation and do not necessarily represent the opinions of their respective organisations. The Foundation bears exclusive responsibility for the contents of this report.

The Foundation, as an actor in the international community, will continue to seek constructive paths in dialogue with Colombian institutions and with Colombian civil society as a whole so that human rights will be respected, protected and guaranteed in Colombia. An important objective for the Foundation continues to be the creation of approaches between the civil society and state representatives in Colombia. In particular, the Foundation will follow-up on the mission and on this report through activities in Colombia and Sweden as well as at diverse international fora to give greater visibility to the victims' voices and the challenges they face in exercising their legitimate rights to truth, justice and reparation. These activities aim to contribute to the search for concrete solutions so that the Colombian State will guarantee that the victims have full enjoyment of these rights.

The Foundation wishes to express its profound gratitude to the persons and organisations who have contributed to this mission and this report through their experiences, opinions and knowledge. We would particularly like to thank the Foundation's Colombian partners and the Swedish Embassy in Bogotá for the indispensable support they gave us in order to carry out this mission.

Stockholm, November 9, 2007.

II. LEGAL FRAMEWORK AND CONTEXT

A. International standards

The delegation did not aim to carry out an exhaustive analysis of the international or national legal frameworks, nor of the country's history, but rather to examine the reality based on the victims' perspectives and experiences. In this sense, the delegation used international law on human rights, both universal and regional, as its legal framework of reference. At the same time, it made use of reports drafted by national and international bodies, the emerging principles of international law and the jurisprudence of regional organisms along with the supported opinions of distinguished jurists, academicians, organisations and institutions that have observed the current Colombian reality with concern and commitment.

The United Nations system as well as the Inter-American system for the protection of human rights have in recent years developed a series of guarantees to ensure victims' rights to justice, truth and comprehensive reparation and guarantees of no repetition for society as a whole. Therefore, the United Nations *Principles against Impunity*,¹ (hereinafter "the Principles" or "Principles against Impunity") establish the above-mentioned obligations to respect and guarantee, along with the need to adopt appropriate measures to impede violations, through court protection and effective appeals for the victims, including reparations (Principle 2).

In this regard, the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") has stated that "no internal law or provision can impede a State from fulfilling its obligations to investigate and sanction those responsible for human rights violations. In particular, provisions for amnesties, statutes of limitation and the establishment of exclusions of responsibility that aim to impede the investigation and sanction of those responsible for grave human rights violations - such as extra judicial executions and disappearances in the present case - are unacceptable. The Court reiterates that the State's obligation to properly investigate and sanction those responsible must diligently be fulfilled to avoid impunity and the reoccurrence of this kind of events"².

After the visit to Colombia and while this report was being drafted, the Inter-American Court handed down a ruling that addresses certain aspects of the legal framework in the demobilisation process in Colombia, in the *Case of the Massacre in La Rochela*. The principle of proportionality of punishment was recently upheld by the Court in that ruling, in which they stated that "the State's response to the illicit conduct of the perpetrator of the transgression must be proportionate to the legal property that was affected and the culpability with which the perpetrator acted"³. In that same ruling, the Court analysed the victims' right to justice, establishing that:

¹ Based on a report by Diane Orentlicher (Human Rights Commission, 61st period of sessions. Topic 17 of the provisional program). United Nations Commission on Human Rights, *Updated set of principles for the protection and promotion of human rights in the struggle against impunity*, E/CN.4/2005/102/Add.1.

² Inter-American Court, Case of the Massacre at Mapiripán vs. Colombia, paragraph 304; Case of the Massacres of Ituango vs. Colombia. Ruling of July 1, 2006 paragraph 402; Case of the Moiwana Community vs. Suriname. Ruling of June 15, 2005. Series C N° 124, paragraph 206.

³ Inter-American Court, Case of the Massacre at La Rochela vs. Colombia, paragraph 196.

1. The Colombian authorities must exercise the greatest due diligence before providing the benefits (pardons and similar concepts) contemplated in Decree 128 of 2003, ensuring that the beneficiaries have not committed grave human rights violations⁴.
2. In order to guarantee the right of access to justice and knowledge of and access to the truth, the Colombian State must fulfill its duty to investigate, judge, sanction and repair grave human rights violations. To do so, the State must observe guarantees for due process, the principle of reasonable time and the principle of proportionality of punishment among others.⁵
3. The victims must have the opportunity to participate in “all phases” of judicial proceedings, and their claims must be “completely and seriously” considered by the judicial authorities before determining the facts, responsibilities, punishments and reparations⁶. This right to participate obligates the State to effectively protect the victims⁷ and guarantee that they may seek reparation without facing excessive complications or trial costs.⁸

With respect to international standards in the field of women’s rights, their right to live free of discrimination and violence has been enshrined and established in human rights protection systems at the regional and international levels.⁹

The Inter-American Convention to prevent, sanction and eradicate violence against women, known as the Convention of Belém do Pará¹⁰ has special relevance for women victims in the context of this report. The Convention establishes the need to adopt comprehensive strategies to prevent, sanction and eradicate the discrimination historically suffered by women¹¹. Article 1 defines violence against women as “any action or conduct based on their gender that causes death, injury or physical, sexual and psychological suffering to women, in both the public and private spheres”¹².

Article 9 of that same Convention establishes that the signatory countries must particularly take into account the situation of vulnerability in terms of the violence that could affect women because of, among other aspects, their race or ethnic condition, status as migrants, refugees or displaced persons [...] the effects of an armed conflict or imprisonment. The State has an obligation to provide special protection to women who have been directly affected by a conflict, among others.

⁴ Id., par. 293.

⁵ Id., par. 193.

⁶ Id., par. 195.

⁷ Id., par. 194.

⁸ Id., par. 198.

⁹ Inter-American Commission on Human Rights report “Las mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia, Octubre 2006” (Violence against women in the armed conflict in Colombia).

¹⁰ Inter-American convention to prevent, sanction and eradicate violence against women, which entered into effect on June 9, 1994 and was ratified by Colombia on March 10, 1996.

¹¹ IACHR report “Las mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia, Oct. 2006” (Women faced with violence and discrimination deriving from the armed conflict in Colombia).

¹² Inter-American Convention to prevent, sanction and eradicate violence against women, article 1.

Colombia is also a signatory State to the CEDAW¹³, which establishes that the States must act to eliminate socio-cultural patterns and stereotypes that promote discrimination against women in all its forms.

The Statute of Rome of the International Criminal Court (ICC), which is applicable in armed conflict situations, includes rape, sexual slavery, forced prostitution, forced pregnancy and other comparably grave sexual abuses as crimes against humanity and war crimes.¹⁴ It should be pointed out, however, that the Colombian State ratified and incorporated the Statute of the ICC in 2002 and that the ICC's jurisdiction in Colombia began on that date, although the Government decided to adhere to the exception contained in article 124 of the Statute, pursuant to which the ICC is prohibited from exercising its jurisdiction with respect to war crimes for a period of 7 years (starting from the coming-into-effect of the Statute for the State that adheres to the moratorium), arguing the need to facilitate a strategy for a negotiated settlement of the armed conflict.

B. Context and regulatory framework of demobilisation by the paramilitary groups

In August 2002, once Álvaro Uribe Vélez had been elected for the first time as president of Colombia, the leaders of the United Self-defense Forces of Colombia (Autodefensas Unidas de Colombia - AUC), the organisation to which the great majority of the paramilitary groups belongs, declared their intention of negotiating the demobilisation of their forces. In July 2003, the AUC and the National Government signed the Santa Fé de Ralito Agreement and over the next three years more than 30,000 members of the AUC were collectively demobilised. The so-called demobilisation process was declared completed in August 2006¹⁵.

In order to provide incentives for that demobilisation, the Colombian Congress enacted a set of laws aimed at facilitating the negotiation and demobilisation of this group. This legislation includes Law 418 of 1997, amended and renewed by laws 548 of 1997, 782 of 2002 and 1106 of 2006, and Law 975 of 2005, known as the "Justice and Peace Law".

While this legal framework provides socioeconomic benefits and pardons to demobilised persons, only those insurgents who had not committed atrocious or grave crimes sanctioned by international law are eligible for those benefits¹⁶. Law 975 of 2005 was promulgated in this same legal context and aims to provide benefits to perpetrators of grave crimes and crimes against humanity that are not supported by the previously existing legal framework. Thus, in line with the Government's objective, the Law seeks to demobilise the remaining paramilitary groups by providing reduced punishments and diverse benefits, even when the demobilised persons may have been the perpetrators of grave violations of human rights and international humanitarian law.

As a result, Law 975 makes it possible to sentence perpetrators of crimes against humanity initially taking into account the ordinary punishment established in national criminal laws, which is then replaced by an alternative punishment, as

¹³ The Convention on the Elimination of all forms of Discrimination Against Women of 1979.

¹⁴ Statute of Rome, International Criminal Court, article 7.1 (g).

¹⁵ See *id.*, pars. 96.12, 96.16; information supplied by the High Commissioner for Peace, <http://www.altocomisionadopalapaz.gov.co/>. It must be pointed out that figures on the number of demobilised and reinserted persons vary quite a bit, even when they come from official sources.

¹⁶ Article 21.2 of Decree 128 of 2003.

long as the demobilised person fulfills certain requirements contained in the Law. The alternative punishments consist of a reduction of their prison terms to 5 to 8 years in special detention centers. In exchange, the demobilised persons make a commitment to dismantle their military apparatus, turn over their weapons, collaborate with the justice system and return to civilian life. They must also confess to their crimes and make reparation to their victims.

A number of actions alleging unconstitutionality were brought against Law 975 of 2005. Finally, the Constitutional Court handed down ruling C-370 of 2006, declaring the unconstitutionality of certain articles, considering them as contrary to the constitutional framework and international treaties signed by the Colombian State and conditioning the constitutionality of certain other norms. However, the ruling was not issued with retroactive effect. Therefore, a number of jurists have stated that the demobilised persons could solicit application of the principle of criminal favorability, requesting that they be judged under the law most favorable to them, which in this case would be the version of Law 975 prior to the constitutionality review.

The ruling signified important advances in the opinion of most governmental authorities, state operators, academics, human rights defenders and even the law's harshest critics. Some of these advances involve the demobilised persons' obligation to fully and truthfully confess their criminal activities and provide reparations to victims using their licit as well as illicit properties. Article 25 of the Justice and Peace Law was declared partially inapplicable by the Constitutional Court in its ruling. According to the initial text, demobilised persons who omit confessing all of the crimes that they committed would not lose their benefits if the omission had not been intentional. The Constitutional Court considered that maintaining their benefits under that condition would disproportionately affect the victims' right to the truth.

After ruling C-370, the Colombian Government issued a series of regulatory decrees for Law 975 that, among other things, reaffirm that the Constitutional Court ruling is not retroactive and attempt to re-establish some of the benefits awarded to the victimisers that the Court had declared unconstitutional. This has generated distrust in many sectors and confusion among operators charged with its implementation.¹⁷

C. Medellín – laboratory for the demobilisation process

Since the late 1990s, the paramilitary groups have maintained a strong presence in Medellín; first with the Metro Bloc and subsequently with the Cacique Nutibara Bloc. Successful consolidation of paramilitarism in many of the poorest neighborhoods of Medellín – and neutralisation of the guerrillas – made the city the ideal stage for the first large-scale demobilisation of paramilitaries, in that it helped to provide credibility to the national demobilisation process.

In 2005, Law 975 came into effect, which seeks among other objectives to socially reinsert the demobilised persons into society. According to information received, in the Medellín area this process framed within the Justice and Peace Law has led to the demobilisation of around 4,000 paramilitaries associated with groups linked to the AUC within the framework of the "peace negotiations" with the government of President Álvaro Uribe Vélez.

¹⁷ See for example article 20 of Decree 3391 of September 29, 2006, and Decree 315 of 2007.

The perception of the success of the demobilisation of the paramilitaries varies greatly among the actors of the civil society, victims' organisations and directly affected victims, various representatives of official organisations and representatives of international organisations with offices in Medellín whom the delegation interviewed. They have stated that the so-called demobilisation process frequently amounts to a change of face but not of the objectives of the paramilitary blocs.

During the visit, the delegation heard repeated affirmations that during the demobilisation processes, many of the blocs presented young people or unemployed civilians unassociated with the conflict as though they were part of their organisations with the clear aim of receiving the benefits of demobilisation, while the real members of these groups continue to act. There are also declarations to the effect that the weapons that these groups handed over to the authorities are a very small part of what they have and consist of the poorest quality, defective or unused weapons, which means that a large quantity continue to be found in those neighborhoods.

The majority insist that the paramilitary organisations continue to operate in the same areas in which they were present and active prior to their apparent demobilisation, although sometimes under other names. They confirmed that these groups have begun to attempt to co-opt popular organisations by forcing the true community leaders to step down or leave their areas. The paramilitaries' social, economic and political control continues in the neighborhoods and settlements surrounding Medellín where officially these groups have been reinserted.

The delegation understands that most local authorities have supported the Law 975 process and policies on behalf of reinsertion. In Medellín there are programs for reinsertion of demobilised persons in society and it is estimated that there are currently some 2,500 reinserted individuals who take part in programs promoted by the local government.¹⁸ Part of the complexity of the process is that the National Government assigned the regional government responsibility for initiating the demobilisation process in Medellín with the reinsertion of demobilised paramilitaries without consulting it so that the process could be applied to local conditions. The National Government allocated a certain amount of funds for the first stage of demobilization, but now the regional government must assume the financial burden of the related costs, which it must include in its development plan.

In the meantime, there are no shared visions on implementation of a policy to guarantee truth, justice and reparation for the victims of violence perpetrated by paramilitaries. The great majority of those interviewed said the perception is that there is a strong emphasis on attention for the victimisers instead of focusing on the rights of the victims.

In Medellín confusion persists both on the part of the institutions as well as among those affected regarding the rights of the displaced population and the rights of the victims of paramilitary violence. Those victims who have been displaced have the right to attention and reparations as internally displaced persons (IDPs) but they may also have rights within the justice and peace process. The responsible institutions frequently fail to provide clear information in that regard. Nor does there appear to be institutional clarity on how to deal with the IDPs. It is significant that an interviewee stressed that the municipality of Medellín

¹⁸ Office of the Governor of Antioquia.

allocated 18 billion pesos for the demobilised persons but only 1.4 billion for displaced persons.

Although homicide rates as a whole have fallen in Medellín during the period of implementation of Law 975, there are figures that show that murder rates in territories dominated by the demobilised persons remain high. Between January and February of 2007, there were 15 homicides in *Comuna* (area) 13 alone¹⁹. It should be pointed out that the area has a strong police and military presence consisting of around 1000 persons. According to testimonies, “security” in many *comunas* remains in the hands of demobilised persons/paramilitaries. One interviewee stated that:

“Homicides have fallen but it is not security that comes from state security but rather from non-state security.”

According to people from the civil society, certain state institutions and international representatives who were interviewed, the authorities have a tendency to stigmatise people and institutions that criticise Law 975 or question whether the paramilitaries have really been demobilised.

Faced with the situation described above, people are too afraid or mistrustful to come forward to the police and the Attorney General’s Office to denounce violations committed by the so-called demobilised persons. Therefore, the lack of trust and measures to protect the victims prevent them from demanding their rights. One result of their fear and lack of protection is that the victims do not participate in gatherings to declare themselves as victims, the so-called “sessions for attention to victims”. An additional obstacle to victims’ participation is lack of information of those sessions.

Even though Medellín is considered the city that is receiving the most resources to implement Law 975, no concerted efforts have been agreed upon with the regional government to promote and guarantee the victims’ rights. There are inter-institutional working groups and committees but - just like at the national level - there is a lack of effective coordination at those fora. There are no work plans to ensure continuation and follow-up on actions and decisions taken and frequently people with sufficient rank to make and implement decisions do not participate. The work of these inter-institutional fora to ensure victims’ rights sometimes seems ineffective from the delegations perspective. One example is that it took a great number of months to jointly prepare a chart of victims’ rights. The delegations impression is that there is a policy that has been formulated focusing on attention for the victims but there is no comprehensive or agreed upon response.

With few exceptions, such as the Permanent Unit for Human Rights of the Municipal Ombudsman of Medellín (Unidad Permanente para los Derechos Humanos de la Personería de la Medellín), the delegation did not find clear orientation and concrete actions being carried out by the institutions in Medellín that perform the work of providing attention and accompaniment to victims. The Unit assists victims of human rights violations in eight-hour shifts 24 hours a day. The dynamic and focus of their work has been recognised by diverse sectors of the civil society and victims’ organisations. Over the last year, the Unit has begun to incorporate a gender perspective within the framework of the conflict in its

¹⁹ Official figures provided at a meeting in Medellín.

work, which has provided it with knowledge of attention to women victims within the process of Law 975. The Unit is funded by the Office of the Mayor of Medellín, and its continuation will depend on the new administration that will come into office in January 2008, in the wake of local elections held in October 2007.

While it is true that Law 975 defines rape as a crime, in practice there are no policies on addressing the topic at most of the institutions participating in the process in Antioquia. There are no state programs that contain a perspective of gender or the rights of the women affected by paramilitary violence.

Testimonies taken from women who live in neighborhoods where there are paramilitaries/reinserted persons make it clear that sexual crimes committed by them are not taken seriously by the authorities even in the few cases in which women and girls dare to report the crimes. The problem of these crimes and violations remaining invisible persists at both the regional and national levels. Even though the Office of the Mayor of Medellín has programs to assist women in situations of domestic violence, these programs do not extend to effectively protecting and accompanying women victims of violence within the justice and peace process.

III. THE ROLE OF THE VICTIMS IN THE JUSTICE AND PEACE PROCESS

A. Obstacles to participation by the victims in the process

Many of the actors who were interviewed stated that Law 975 of 2005 did not take the victims into account as central players within the so-called justice and peace process. Although the Constitutional Court, in ruling on the suit alleging unconstitutionality brought against a number of the provisions of that Law²⁰, moderated this gap and awarded the victims a more relevant role, the delegation received many testimonies both from state actors as well as civil society members that make evident the numerous obstacles that victims face in exercising their rights in this process.

B. Lack of protection for the victims

A first concern is that the legal framework is based on a model of transitional justice; however, the paramilitary phenomenon persists. Therefore, the victims are afraid to actively take part in this process. In areas where victims and demobilised persons both live, it becomes very difficult for the victims to participate in the process, in the public gatherings (convocatorias) as well as the hearings of paramilitary leaders.

According to the Office of the High Commissioner for Human Rights and other actors, the paramilitaries' political and economic structures remain untouched, their midlevel commanders continue to act and new paramilitary structures have been developed. In this sense, victims who were interviewed expressed distrust in the Justice and Peace process because the illegal armed groups that forced them to leave their homes continue to live in the area and maintain control over the population. Many of those interviewed said that these groups rather than having demobilised were "legalised".

According to testimonies, the paramilitaries no longer wear uniforms nor carry weapons but they continue to maintain control over the communities, so that even though the killings have decreased, their social control remains. The victims claim that the illegal armed groups have always dominated their communities and that community members have been forced to obey whatever rules these groups impose. In these communities, people do not go to the authorities because it is the illegal armed groups that "settle disputes". Many also stated that the armed groups act in complicity with members of the Police or Army and that they are clearly on friendly terms.

In relation to demobilisation, the delegation received numerous testimonies from victims who said that the paramilitary groups in their particular areas recruited unemployed young people who did not actually belong to the groups but were presented as members for the purposes of the demobilisation process. In the same vein and in relation to handing over weapons, many of the victims said that it was a sham insofar as the paramilitary groups did not hand over all of their weapons. "They gave up the bad quality weapons and kept the best."

²⁰ Ruling C-319 of 2006.

The above situation comes in addition to the lack of an effective and immediate policy for protecting victims. Many of the state institutions with responsibility in this process agree that existing protection programs (that of the Attorney General's Office and that of the Ministry of Interior and Justice) are inadequate because they were not designed to attend to the vast numbers, characteristics and needs of the victims, especially taking in consideration that 80% are women.²¹ Even though article 38 of the law on protection for victims and witnesses obligates the diverse State institutions to adopt special measures in accordance with gender and the type of crime (for example rape in the context of political violence, among other specificities), there are no policies for protection that implement this differentiated treatment. At the same time, in areas where victims and demobilised persons both live, there are no plans for prevention and protection. The State did not carry out an analysis of the main risk factors, nor did it design adequate systems for preventive protection prior to implementation of the Justice and Peace process.

There is currently a presidential proposal that involves the creation of a committee to evaluate the topic of protection for victims, which drafted an institutional response protocol that has not yet been approved by the relevant authorities. Basically, it consists of a local protection system with involvement by the police, the female police and community police with appropriate coordination efforts. This team will have to recommend changes in the mechanisms, strict measures and other actions to reduce people's vulnerability.

This lack of protection shows how the Justice and Peace Law relegates the victims to a lower level of priority. In one of the testimonies taken by the delegation, a woman victim said that she had gone to the Attorney General's Office to report a crime and was told "we are not going to get ourselves killed defending you". Another woman victim told how she had gone to the Municipal Ombudsman's Office to ask for help because the paramilitaries had threatened her son and that the staff member advised her to flee from her community. She was told to "leave and save your son."

In general, most of the victims interviewed expressed opinions such as "people will not report crimes because there is so much fear" and reporting means "being brave enough to wait for them to come and kill you". Many said that there is great fear to speak out in their communities and that in some cases people have decided not to attend the victims' gatherings organised by the CNRR (National Council for Reparation and Reconciliation – Consejo Nacional para Reparaciones y Reconciliación) because they are held in very small towns where everyone knows each other. Some of the victims stated that demobilised persons from the area also attended these public gatherings. The demobilised persons publicly claimed that they were going to confess all of their crimes and intended to provide reparations, but in private conversations with the victims they threatened them, saying that "they had better keep quiet".

In this context, the requirement for full identification of victims who wish to take part in the process is a source of great concern.²² Abundant information and corroborating elements are asked of those who wish to be recognised as victims. The CNRR recommended that victims be able to take part in the process in a joint or collective manner because the logic of the process is not to investigate an event

²¹ Office of the Governor of Antioquia.

²² Law 975 of 2005, Article 23. Decree 4760 of 2005, Article 11. Decree 315 of 2007, Articles 3 and 5.

but rather to encourage voluntary confession by the perpetrators. However, in the questionnaire designed by the Attorney General's Office for victims who wish to take part in the hearings with the paramilitaries, they are required to include their first names, last names and other identifying information in order to be allowed to participate in this initial phase of the process.

The identification requirement is particularly problematic for displaced persons, in that the delegation was informed that more than 1.5 million of the 3 million IDPs lack identity documents. At the same time, the lack of confidentiality of identity in the Justice and Peace Law could have particularly negative consequences for victims of sexual violence as in many cases it could make them the victims of new attacks.²³

The Colombian press has reported that during the first two years following approval of Law 975, some 200 victims were threatened and 15 murdered²⁴. This reality places the victims in a very serious situation of vulnerability if they attend hearings where demobilised persons make their declarations. The problem has reached the point in which a member of the CNRR had to bring a *tutela* (legal action seeking immediate relief for the violation of a Constitutional right) before the Administrative Contentious Tribunal of Cundinamarca to protect the fundamental rights of victims. On August 13, 2007 the Tribunal ruled in favor of the victims and ordered the State to design, implement and execute a protection program on behalf of victims and witnesses with respect to Law 975 of 2005²⁵. In its ruling, the tribunal acknowledged that, as a result of the murders of people like Yolanda Izquierdo Berrio, a peasant leader who claimed lands taken over by paramilitary groups, other victims "began to withdraw from the process."²⁶ As a result, the ruling concludes that protective measures taken by the Government "continue to be insufficient" and orders the above-mentioned protection program²⁷.

C. The victims' right to justice

Law 975 establishes a series of victims' rights within the demobilisation process. The general principles and guidelines of these rights include receiving dignified and humane treatment during the entire procedure, protection for their privacy and security, guarantees of prompt and comprehensive reparation, and the right to be heard and to submit evidence during the proceedings²⁸. The law also establishes that, in adopting measures in guaranteeing victims' rights, the particular situation of each one will be taken into account (age, gender, health, type of crime, particularly when it involves sexual violence, etc.)²⁹. Although those rights are contained in Law 975, the implementation and application of measures aimed at guaranteeing them in practice generate a number of doubts and serious threats to

²³ In this regard, the CNRR established a series of criteria that legal operators must take into consideration in justice and peace processes. See paragraphs 82 to 107 and 109 in the criteria for reparations and restorative proportionality proposed by the CNRR.

²⁴ "70.000 víctimas han acudido a Comisión Nacional de Reparación y Reconciliación o a Justicia y Paz", *El tiempo.com*, July 24, 2007.

²⁵ Tribunal Administrativo de Cundinamarca (Administrative Tribunal of Cundinamarca), Case file No. A.T. 25000-23-15-000-2007-00876-01, Speaker Magistrate Stella Jeannette Carvajal Basto, August 13, 2007.

²⁶ *Id.*, Paragraph 23.

²⁷ *Id.*, Paragraph 33. After the mission, on September 18, Decree 3570 of 2007 was issued on the Protection Program for Victims and Witnesses with respect to Law 975 of 2005.

²⁸ Law 974 of 2005, Article 37.

²⁹ *Id.* Article 38.

the victims' dignity and personal safety and to the full exercise of the rights that the law itself recognises on their behalf.

One significant obstacle is the victims' lack of information on the different stages of the proceedings and their possible participation in them. Some interviewees stated that public information on the hearings only appears in nationally-circulated periodicals and on the State institutions' web sites. Many of the victims, especially those from rural communities where a great majority of the violations took place, lack access to this kind of information. This lack of information also applies to governmental institutions with responsibility in this process. Many state institutions interviewed by the delegation mentioned the need to clarify each institution's responsibilities and provide clear information to victims to ensure their participation and the exercise of their rights in the Justice and Peace process.

In the interviews carried out, the delegation could only corroborate the existence of one single brochure on legal guidance to assist victims published by the Ombudsman's Office³⁰. It should be pointed out that this brochure was published in early 2007³¹, one year after enactment of the Justice and Peace Law that placed the main responsibility for advising the victims in this process on the Ombudsman's Office. Similarly, representatives of the MAPP/OAS verification mission in Medellín pointed to the existence of an inter-institutional committee which were to draft a directory/booklet to provide victims with clear information on the responsibilities of the diverse governmental institutions and their respective obligations in this field. As of the date of publication of this report, the delegation has not been able to corroborate publication of that document.

This lack of information comes on top of the lack of trust in state institutions. Victims are afraid to report crimes before those institutions. Trust is particularly important for the victims of sexual violence to come forward.

There is great confusion about the possibilities available to the victims and their legal representatives to take part in the hearings. In most cases, the only way for them to participate in the hearings with the demobilised persons is to go to another room in the building where the confession is being received. This makes it difficult for many of the victims to gain access as most come from rural areas, live far from the urban centers where the hearings are being held and lack the money to travel there.

Decree 315 of February 2007, which regulates implementation of the Justice and Peace Law, limited the victims' possibilities to participate in the proceedings. Neither the victims nor their representatives may directly question the person making the confession; they can only submit questions to the prosecutor so that the latter may pose them. Thus there is no way to directly challenge the confession. Another of the victims' concerns is that only "direct victims" may enter the rooms set aside for the victims during the hearings. This means that in cases where there are victims who have been affected but are not members of the directly affected families, they are excluded from participating in the hearings.

Regarding the requirement for a direct link between the victim and the victimiser(s), the delegation had the impression that those affected by the conflict

³⁰ Guía de Orientación Jurídica y Psicosocial para la Atención a las víctimas de la Violencia generada por los Grupos Armados organizados al margen de la ley, Defensoría del Pueblo (Legal and Psychosocial Guidebook for attention to victims of the violence generated by the armed groups organised outside of the law, Ombudsman's Office).

³¹ Ombudsman's Office (Defensoría del Pueblo).

and who cannot demonstrate a direct link (causal nexus) cannot take part in this process. Currently, a majority of the victims who have come forward are victims whose victimisers remain unidentified. The delegation received testimonies from victims who stated that the authorities require that they identify the paramilitaries by their names whereas they do not know the names or the groups to which the perpetrators belong. Sometimes they are able to identify them but in other cases they do not know if they belong to paramilitary groups or are members of the Army. Many of the victims interviewed said that in order to register as victims, they have to have previously made a denunciation of the violations when they occurred. However, the great majority of IDPs could not fulfill this requirement because they were forced to abandon their homes under harassments and threats and therefore never had the opportunity to report these actions, which is why they would have difficulty proving direct damages.

The designation of displaced victims is especially problematic. Law 975³² defines victims as those persons who individually or collectively have suffered direct damages, emotional suffering, financial loss or violations of their fundamental rights as a result of actions prohibited by criminal legislation and committed by illegal armed groups. The victims' family members are also considered victims. However, according to article 1 of Law 387 of 1994, in order to qualify as displaced victims, they must submit a declaration before the Public Affairs Ministry. The authorities explained that this declaration is then sent to the Presidential Agency for Social Action and International Cooperation (Acción Social), the entity charged with verifying the condition of displacement. This designation is important for the victims, not just in the context of the Justice and Peace process but also to gain access to other types of governmental services.

However, many victims stated that in spite of their reiterated efforts and reporting before diverse entities, they still do not appear in the data bank as IDPs. Around 48% of applications to be declared IDPs have been rejected by Acción Social. At the same time, intra-urban displacement was not recognised by Acción Social until 2004, in the wake of a Constitutional Court ruling that recognises this problem³³.

Finally the Ombudsman's Office, responsible for legally representing victims who do not have their own representation and/or assistance, does not have the necessary human resources to properly perform this task, insofar as until the date of this mission, approximately 70,000 persons had registered as victims.

D. Judicial Truth for the victims

According to the Set of Principles of the United Nations for the Protection and Promotion of Human Rights through the Struggle against Impunity “[...] the victims and their families have the right, which is not subject to any statute of limitations, to know the truth about the circumstances in which violations were committed and, in case of death or disappearance, regarding the victim's fate”³⁴. These Principles establish the duty of States “to adopt appropriate measures, including necessary measures to guarantee the independent and effective operation of the judicial branch in order to make the right to know effective”³⁵.

³² Article 5.

³³ Colombian Constitutional Court Ruling T-268 of 2003.

³⁴ Report by Diane Orentlicher, independent expert responsible for updating the set of principles for the struggle against impunity, Principle 4, the Victims' Right to Know, E/CN.4/2005/102/Add.1. February 8, 2005.

³⁵ Report by Diane Orentlicher, independent expert charged with updating the set of principles for the struggle against impunity, Principle 5, the Victims' Right to know, E/CN.4/2005/102/Add.1. February 8, 2005.

In this same sense, both the Inter-American Court as well as other human rights bodies of the United Nations have established that the right to truth is part of the right that victims or their family members have to obtain clarification of human rights violations from the corresponding state bodies and bring those responsible to justice³⁶.

The Justice and Peace Law also establishes the victims' right to truth, however it does not expressly establish that non-fulfillment of this provision would result in the loss of legal benefits for the demobilised persons.³⁷ In this sense, the Constitutional Court ruling that examined the Law's constitutionality determined that confessions by the demobilised persons must be complete and truthful as a condition for them to receive legal benefits and also established the victims' right to take part in the proceedings starting from their initial phase. In this same sense, the Inter-American Commission has indicated that "the hearings of the demobilised persons who wish to receive the generous benefits of this law must be complete and truthful and must incorporate the right to know the causes and circumstances of time, modality and place in which the crimes were committed in order to ensure the right to the truth; [...]"³⁸.

In spite of this, real possibilities for reaching the truth in the proceedings are very limited. The confessions that have taken place until now have not effectively guaranteed the victims' right to truth. According to the Attorney General's Office, during the first phase of the proceedings, those rendering their preliminary declarations in the hearings are informed of their guarantees and rights and asked to list the facts that they are going to confess. The main objective of this initial phase is to encourage the demobilised persons to freely confess. That is to say, the truth regarding the events would be built during a subsequent stage. Once those making their declarations have had the opportunity to confess to all of the crimes that they committed, the Attorney General's Office would compare the crimes confessed with the investigations previously carried out by the Attorney General's Office and the reporting of crimes made by the victims and their representatives. During this phase, the victims would have the opportunity to present their version of the events and in a final stage the Attorney General's Office would formulate accusations of the charges. In order not to lose their legal benefits, those taking part in the hearings have the opportunity to confess to all crimes committed until the moment of formulation of charges.

In this sense, victims and their representatives stated that those making the declarations are using the initial phase of the proceedings to make a defense speech for paramilitarism and to justify the crimes committed as acts of defense against the guerrillas, without giving the victims any opportunity to question or contradict their declarations. There is no provision in the Justice and Peace process to permit or guarantee that victims be allowed to submit evidence. For example, according to testimonies, in the hearing of Salvatore Mancuso he referred to crimes committed as military operations, without the prosecutor in charge of the declaration making any objection. Equally, in the declaration given by Ramón Isaza, the authors of this report were present in the room set aside for

³⁶ Report on the demobilisation process in Colombia, para. 31, OAS/Ser.L/V/II.120. Doc. 60, December 13, 2004.

³⁷ Report by the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, para. 73, E/CN.4/2006/9, January 20, 2006.

³⁸ Annual Report by the Inter-American Commission on Human Rights 2006, para. 16, OAS/Ser.L/V/II.127. Doc. 4 rev. 1, March 3, 2007.

the victims and noticed that Isaza confessed only to having killed members of the guerrilla militia and that the only accomplices whose names he recalled were deceased. The prosecutor at the hearing did not cross-examine him about his declarations.

Until now, those making declarations have not confessed to sexual crimes and the prosecutors responsible for questioning them have not referred to these crimes when carrying out their investigations. During some of the interviews, the delegation received information from representatives of state institutions indicating that the prosecutors have received training on the importance of the topic of sexual crimes. However, this has not been evident from the questions during the hearings. As previously stated, one of the main limitations is that the process is not activated by the investigation of a criminal act but rather by the hearing of the accused. In this sense, the Attorney General's Office should assume absolute responsibility for bringing about confessions during the hearings. However, according to the Procurator General's Office, legal operators are not putting the Law into practice. According to them, a special jurisdiction should have been designed to implement application of the Justice and Peace Law.

In the delegation's interview with the Attorney General's Office, the latter argued that the victims and their representatives had not understood the dynamics of the process insofar as it is not an ordinary criminal proceeding. In this regard, the Attorney General's Office feels that it is desirable to limit the victims' participation during the first phase so as not "to fracture" the dynamics of the hearings.

Another significant obstacle to guaranteeing the victims' rights to the truth is the lack of sufficient resources to enable the Attorney General's Office to carry out their investigative work in this process. In the face of almost 70,000 existing denunciations at the time of the mission, the Justice and Peace Unit at the Attorney General's Office has around 20 prosecutors and a small group of investigators for each prosecutor in Bogotá. In this sense, many of the actors interviewed stated that unconfessed crimes will probably remain in impunity, because the Attorney General's Office lacks the capacity to carry out all of these investigations.

The victims who were interviewed voiced great skepticism about clarifying the truth in the hearings. According to one testimony:

"It's very difficult to get to the truth because it is being sought whilst the conflict is still ongoing."

In most interviews with victims, they said that what is most important for the families is to know what happened to their disappeared loved ones. It must be stressed that none of the victims who were interviewed is convinced that the hearings will help to determine the truth about disappearances.

E. The Historical Truth for the victims

The right to know the truth is not limited to the victims or their family members, because it also has a collective dimension. In this regard, both the Inter-American Commission and the Inter-American Court have stated that "societies affected by violence have, as a whole, a right that can not be renounced to know the truth about what happened as well as the reasons and circumstances in which aberrant

crimes were committed in order to avoid the future reoccurrence of those events.”³⁹

According to the Principles against Impunity, the means to guarantee that the right to truth may include measures of a non-judicial character, such as the creation of a truth commission or investigative committee aimed at establishing the truth about the facts of the violations⁴⁰.

Law 975 of 2005 charges the CNRR with the task of establishing proper conditions for the future establishment of a truth commission. Even though the CNRR is not technically a truth commission, many of its duties coincide with those historically assigned to this type of institution⁴¹.

In relation to the collective dimension of the right to the truth, Law 975 establishes that the CNRR shall “present a public report on the reasons for the emergence and evolution of the illegal armed groups.”⁴² The Law also refers to the State’s duty to preserve the historical memory and the archives to guarantee the right to memory.⁴³ At the same time, the Constitutional Court ruling that examined the law’s constitutionality also refers to preservation of the historical memory, non-repetition, public acceptance of the facts and reestablishment of the victims’ dignity. For those purposes, the CNRR has created an Historical Memory Area whose main objective is to produce a public report within three years in order to “[...] contribute to knowledge of the diverse truths and memories of the violence in this country, taking into account differences of gender, ethnicity and age; to promote a culture of legality and coexistence, and to have a positive influence on political resolution of the armed confrontation and national reconciliation”⁴⁴.

In spite of the legislative provisions and duties assigned to the CNRR regarding clarifying the historical truth, considerable limitations in carrying out this project are evident. One of the main obstacles is that the legal framework in which this process is being carried out is based on a model for transitional justice, however the current conflict in Colombia persists. In this sense, the necessary guarantees of protection to enable victims to participate in this process do not exist. According to testimonies taken by the delegation:

“What we have seen until now is that the paramilitaries say whatever they like and do not confess to the crimes.”

³⁹ Report on the demobilisation process in Colombia, par 32, OAS/Ser.L/V/ II.120 Doc. 60, December 13, 2004. See also the report by Diane Orentlicher, independent expert charged with updating the set of principles for the struggle against impunity, Principle 2, the Inalienable Right to the Truth, E/CN.4/2005/102/Add.1. February 8, 2005.

⁴⁰ Report by Diane Orentlicher, independent expert charged with updating the set of principles for the struggle against impunity, Principle 5, Guarantees to make the Right to know effective, E/CN.4/2005/102/Add.1. February 8, 2005.

⁴¹ Comisión Nacional de Reparación y Reconciliación, Elementos para la Construcción de una Hoja de Ruta <<http://www.cnrr.org.co/index.html>>. (National Commission for Reparation and Reconciliation, Elements for Building a Road Map).

⁴² Law 975 of 2005, Art. 52.2.

⁴³ Law 975 of 2005, Articles. 56 and 57.

⁴⁴ Comisión Nacional de Reparación y Reconciliación, Plan área de Memoria Histórica, page 8 <<http://www.cnrr.org.co/index.html>>. (National Commission for Reparation and Reconciliation, Historical Memory Area Plan).

“The victims feel frustrated and are afraid because there is no protection.”

“The people who are really seeking the truth are at risk.”

As stated previously, until now, the hearings are generating partial and incomplete versions that do not contribute to clarifying the paramilitary structures or the crimes committed by them. Without clarifying the truth, justice cannot be done, nor can proper reparations be made. Neither can paramilitarism be effectively dismantled.⁴⁵

Regarding gender violence, the IACHR has stated that: “both the state authorities and the civil society representatives voiced their concern over the absence of a comprehensive state policy that takes into account the specific impact of the conflict on women’s human rights, both at the national and local levels. This deficiency fosters impunity that perpetuates the treatment of women as war booty by the armed actors.”⁴⁶ As will be shown later, the delegation received numerous testimonies about how violence against women is being made invisible in the Justice and Peace process. In this regard, it is of the greatest importance that the project to clarify the historical truth must specifically contemplate the systematic violence perpetrated against women by paramilitaries and demobilised persons.

F. Invisibility of sexual violence in the process

In relation to mechanisms established to guarantee the victims’ rights to truth, justice and reparation, the Office of the United Nations High Commissioner for Human Rights has stated that “a high percentage of the victims are women and therefore their specific circumstances and needs must be considered”⁴⁷.

According to women’s organisations that were interviewed during the mission, sexual violence against women has been ignored for a long time, not only by the Colombian authorities but also by the general population, whose cultural tradition has considered them as something that belongs to the private sphere. Sexual violence goes beyond rape and involves systematic control by the armed actors over women’s bodies; sexual harassment, forced prostitution, the trafficking of women, domestic and sexual slavery, pregnancies of minors and rape as a weapon of war.

According to one testimony received, “the topic of sexual violence is absolutely taboo in this country”. In this context, sexual violence against women in the framework of the armed conflict has been rendered invisible, which has been fostered by the discrimination and existing impunity associated with this type of crimes.

Women’s organisations in Colombia attempted to ensure a gender focus during the drafting of the Justice and Peace Law and the subsequent decrees and in the application of that Law. For example, some of these organisations tried to ensure

⁴⁵ Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia*, par. 73, E/CN.4/2006/9, January 20, 2006.

⁴⁶ Las Mujeres frente a la Violencia y la Discriminación Derivadas del Conflicto Armado en Colombia, para. 152, OAS/Ser.L/V/II., Doc. 67, October 18, 2006. (Women faced with violence and discrimination deriving from the armed conflict in Colombia).

⁴⁷ Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia. 62nd Period of Sessions. E/CN.4/2006//009 January 20, 2006.

protection for victims by maintaining their identities confidential when reporting a crime, to ensure the existence of guarantees for a proper balance of women and men on the investigative teams and on the Justice and Peace Tribunals, and for investigating prosecutors to receive training on the problem of sexual crimes. However, very few of these recommendations have been taken into account in the legal proceedings.

During the mission, the delegation found that no policies have been designed to handle crimes of sexual violence committed by the illegal armed groups. In spite of the fact that according to testimonies, a pattern of sexual violence has been observed in some of the massacres, these violations have been made invisible. The CINEP databank has recorded only 44 cases of sexual violence against women committed by armed actors from 2001 until 2006⁴⁸. This demonstrates the scarcity of documentation on systematic sexual violence committed by the paramilitary groups.

One of the greatest difficulties expressed by many of those interviewed is the lack of training for operators of the justice system to deal with cases of sexual violence. At the time of the mission, there was just one person at the Attorney General's Office in charge of the area of gender and one single prosecutor was responsible for the sexual crimes unit. As a result, in the hearings, the prosecutors until now have not been encouraging those making the declarations to testify about sexual crimes. In general, there is a tendency to not consider sexual crimes as crimes, or to minimise their criminal reproachability compared to other crimes and thereby make this problem invisible. In addition, crimes of this nature have not been recognised as a war practice. The delegation had the impression that the Attorney General's Office has understood acts of sexual violence as isolated crimes and not as a pattern of conduct within the context of the conflict, which is why these crimes have been marginalised in the proceedings.

Although the CNRR has made recommendations to the Attorney General's Office urging it to investigate the subject of sexual violence in the context of the hearings for preliminary statements, as of the time of the mission there had been no institutional response to that recommendation. According to the CNRR, they have set up a roundtable group on gender within the Commission to provide technical assistance to the Justice and Peace Unit of the Attorney General's Office and thereby face the challenges stemming from this topic.

Another difficulty that helps to make these crimes invisible is that the women tend not to tell about and report this type of violation, whether due to the low degree of social condemnation that it has or the stigmatisation attached to those who report it. Many women prefer not to report this type of crime before the authorities out of fear of being excluded from the community and being re-victimised. To avoid the victims having to submit evidence in each individual case, the CNRR has stated that a strategy should be adopted to make it possible to prove the systematic sexual violence carried out by the illegal armed groups. One way would be for the armed bloc to admit to the practice of the violation in their particular case in order not to have to put each woman through the ordeal of providing personal testimony.

⁴⁸ CINEP databank and Noche y Niebla magazine 2006.

It is important to emphasise the increase in sexual crimes that is occurring in areas where groups of demobilised persons have settled. The reports by UNHCHR⁴⁹ and human rights organisations make it clear that the so-called demobilisation process is not generating the dismantling of all paramilitary structures and that new rearming processes are taking place along with common criminality. These situations are generating violations of women's rights to life, integrity, freedom and sexual and reproductive rights, such as:

- a) The obligation to enter into relations of coexistence without the women's consent, under the threat of physical harm;
- b) Increasing numbers of pregnancies among young women;
- c) Increased violence against women within families;
- d) An increase in cases of sexual violence;
- e) Continuity of sexual slavery among adult women, young people and girls;
- f) The subjecting of women sexual workers to high levels of indignity by being forced to carry out degrading practices;
- g) Threats against social leaders⁵⁰.

However, there is no documentation of the systematic sexual violence committed by these groups. For example, the mission to verify the demobilisation process, MAPP/OEA, does not handle indicators to measure the impact of this type of violence on the lives of women following reinsertion of demobilised persons in specific areas. The organisation Ruta Pacífica has compiled information on 285 rapes of women committed by members of demobilised groups. According to the same information, only one out of every 10 women rape victims report the crime.

Although no diagnosis has been made of the effect on women's leadership in areas where demobilisations had been carried out, the data indicates a growing deterioration of female representation in exercising power in the leadership of the communities and in public structures.

Finally, it seems important to emphasise the work of organisations for human rights, for women and for psychosocial support. In the great majority of cases, these organisations are the only places where victims find a space for trust that encourages them to speak out against the sexual violence they have experienced and that offers tools to handle the traumas they have suffered in the context of these experiences. These organisations provide valuable support when initiating legal actions or participating in recovery programs. At the same time, the lack of state programs to attend to victims makes these organisations replacements rather than supplementary bodies, so that they end up taking on many of the responsibilities that the State should assume.

G. Publicity in the process

Regarding publicity about the hearings, Decree 315 establishes: "pursuant to the law, the competent judicial authorities shall request that the National Television Commission (Comisión Nacional de Televisión - CNTV) broadcast the hearings carried out within the framework of Law 975 of 2005 live or prerecorded. The CNTV would be responsible for deciding whether or not to assign the necessary spaces required by those authorities to transmit the above-mentioned hearings."⁵¹

⁴⁹ Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia. 62nd Period of Sessions. E/CN.4/2006//009 January 20, 2006.

⁵⁰ The Red Nacional de Mujeres (National Women's Network) and Corporación Sisma Mujer, presentation in September 2006.

⁵¹ Article 11, Decree 315 of February 7, 2007.

Decree 315 appears to leave the decision on publicity and broadcasting the hearings in the hands of the National Television Commission.

Some of the actors consider that publicity creates numerous risks for the victims, particularly victims of sexual violence. At the same time, there is the risk that televising the hearings could be used to make a defense of the crimes and to present political justifications. On the other hand, other sectors stated that publicising the proceedings could help to guarantee the victims' rights to truth, justice and reparation.

In that sense, one would have to differentiate between broadcasting the hearings and broadcasting the entire proceedings. At the time of the visit of the mission to Colombia, only edited versions of the hearings were being transmitted, with the risk that those making the declarations could use the spaces for their own objectives while the public would have access only to the victimisers' statements. In contrast, according to some interviewees, it could be advantageous to broadcast the entire proceedings including the victims' testimonies because that could provide them with protection and legitimacy regarding their status as victims. However, publicising the victims' testimonies without guaranteeing their protection could place their physical integrity at risk.

H. The victims' right to reparation

Article 63.1 of the American Human Rights Convention establishes the States' obligation to make reparations for violations committed. All States that commit an internationally illicit act shall be internationally responsible for that act, without the obligated State being able to invoke internal law provisions to modify or fail to comply with the obligation to provide reparations⁵² The Inter-American Court has also stated that "when an illicit action imputable to a State occurs, that State's international responsibility for the violation of an international norm immediately arises, with the resulting duty to provide reparations and put an end to the consequences of the violation"⁵³.

In this context, the Inter-American Court has defined reparations as "(...) measures aimed at extinguishing the effects of violations committed. Their nature and amount depend on the damage caused in the material and immaterial levels. The reparations cannot imply enrichment or impoverishment for the victim or their heirs."⁵⁴ The National Commission for Reparation and Reconciliation (CNRR) has said that "reparation consists in dignifying the victims through measures to relieve their suffering, compensate the social, moral and material losses that they have suffered and restore their rights as citizens"⁵⁵.

According to previous definitions, it is evident that international standards demand much more than mere economic compensation to comply with the obligation to adequately provide reparations. In the opinion of the Inter-American Court, reparations for the violation of a right protected by the American Convention on Human Rights cannot be limited to paying a settlement to the victims; on the contrary, in order to satisfactorily comply with the right to reparation, it is fundamental to make a judicial statement establishing measures

⁵² Inter-American Court of Human Rights. Mapiripán Massacre Case, para. 304.

⁵³ Ruling of August 29, 2002 Case of Carachazo vs. Venezuela, para. 76.

⁵⁴ Cfr. Hermanas Serrano Cruz, Para. 136.

⁵⁵ CNRR, Definiciones Estratégicas (Strategic Definitions).

aimed at non-repetition, rehabilitation, truth, justice and preservation of the historical memory.⁵⁶

Article 50 of the Justice and Peace Law ordered the creation of the National Commission for Reparation and Reconciliation. The duties of the CNRR include following up on reparations to be made within the demobilisation process. For this purpose, the CNRR compiled a series of international and national standards to illustrate what comprehensive reparation covers⁵⁷. The CNRR concluded that comprehensive reparation consists of:

- a) Measures to restore the right;
- b) Measures for settlement or economic compensation;
- c) Rehabilitation measures;
- d) Measures for satisfaction;
- e) Guarantees of non-repetition.

While the criteria indicated by the CNRR for comprehensive reparation are not binding on the judges⁵⁸, they constitute an important hermeneutical guide to enable the courts to determine comprehensive reparations. These parameters have been supplemented by the Procurator General's Office, which suggested a series of criteria for comprehensive reparations both for individual victims and ethnic groups to assist victims and the organisations that represent them.⁵⁹ At the same time, The Procurator General's Office has organised working groups and published reports on the topic of land restitution among other aspects.⁶⁰

In the judicial realm, article 8 of the Justice and Peace Law defines the victims' right to reparation as the set of "(...) actions that work towards restitution, compensation, rehabilitation, satisfaction; and guarantees of non-repetition of the conducts".

Even though all of the above shows the need to apply the concept of comprehensive reparations, the debate until now seems to have focused on the impossibility that the State address the magnitude of the economic reparations. It must also be pointed out that most of the victims interviewed by the delegation spoke of the importance of other forms of reparation alongside economic ones. For example, they mentioned:

- That the truth be made known;
- That they be recognised as victims and that what happened be acknowledged;
- That the guilty be punished. "They must go to jail. We can forgive, but there has to be justice";
- That they be given a job and housing;
- That their work tools to be returned to them;

⁵⁶ Cfr. La Masacre de la Rochela Vs. Colombia, para. 216.

⁵⁷ CNRR Document "Recomendación de Criterios de Reparación y de Proporcionalidad Restaurativa", (Recommendation on Criteria for Reparation and Restorative Proportionality) April 2007.

⁵⁸ Decrete 3391 of 2006, Art. 17 part 2.

⁵⁹ See *Primero las víctimas. Criterios para la reparación integral de víctimas individuales y grupos étnicos*. Procuraduría General de la Nación, June 2007 (First the victims. Criteria for comprehensive reparation for individual victims and ethnic groups).

⁶⁰ See for example the presentation of the project entitled *Control preventivo y seguimiento a las políticas públicas en materia de reinserción y desmovilización*. <<http://www.procuraduria.gov.co/html/publicaciones/informesydocumentos.htm>>. (Preventive control and follow-up on public policies in the field of reinsertion and demobilisation).

- That they be able to recover their prospects;
- That their pain be respected;
- A comprehensive reparation program that would include psychological assistance;
- Restoration of their living environment to include alternatives to the demobilised groups: “I would feel a little better if the neighborhood changed and we could see that the children are not going to join the paramilitaries”; “Who will bring back tranquility; who will bring back hope?”

“No amount of money can pay for a life; let them tell me why they did it and that they are sorry.”

Equally, article 37.3 of the Justice and Peace Law establishes the victims’ right to “prompt and comprehensive reparations for the damages suffered, *under the responsibility of the perpetrator or participant in the crime*” (italics added). A suit against the italicised part of the article was brought before the Constitutional Court, whose ruling C-370/06⁶¹ conditioned the article’s constitutionality on establishing that while the demobilised person is the first to be called on to use their properties (both illicit and illicit) to provide reparations to the victim, the Colombian State shall jointly respond when its responsibility, whether by action or omission, is demonstrated, or when the responsible demobilised person’s resources are insufficient to cover the entire settlement.

The same ruling on constitutionality states that the victims’ right to reparation is of special relevance, particularly in peace processes that seek to reconcile the civil society. Therefore, the Court emphasised that the right to reparation must be certain and realisable and divorced from the ups and downs of the nation’s economic budget.⁶² The Inter-American Court made a pronouncement to the same effect in the case of *la Masacre de La Rochela vs. Colombia*.⁶³

The delegation’s impression is that the Colombian State expects funding for reparations for the victims to be guaranteed within the criminal proceedings with support from the international community. The Constitutional Court in its ruling C-370 of 2006 was emphatic in warning that, in all cases, the State cannot avoid its responsibility, even when the model selected in Colombia has placed primary responsibility on the victimisers. The Justice and Peace Law establishes an order of priorities in terms of responsibility to the victims: the victimisers respond first, followed by the illegal armed group to which they belonged and finally the State.

Some interviewees criticised the lack of policies for reparations for those victims who cannot or will not take part in judicial proceedings. They voiced their concern that the only way in which victims can obtain reparation is through a criminal proceeding. The process should not be an impediment to the victims’ enjoyment of their own rights, which according to human rights conventions must be guaranteed by the State itself.⁶⁴

⁶¹ Colombian Constitutional Court Ruling C-370/06, para. 6.2.4.1.12-13.

⁶² Colombian Constitutional Court Ruling C-370/06 6.2.4.3.1.3.

⁶³ Inter-American Court. Case of the Massacre of la Rochela vs. Colombia. Grounds, reparations and costs. Ruling of May 11, 2007. Serie C No. 163, para. 198.

⁶⁴ The IACHR published a special report on October 2, 2007, in which it recognised “the pretension by the Colombian State that those directly responsible for crimes assume the cost of economic reparations using their own licit and illicit properties”, but voiced its concern that “the role of the State [is] a secondary and almost marginal intervention” and reiterated that in cases of human rights violations the duty to provide reparations rests with the State. In that

According to declarations by victims' organisations, there is currently great confusion with respect to reparations. In this sense, it is important to distinguish between the reparations program stemming from Law 975 (which has not yet begun) and the economic assistance resulting from compliance with Law 418 of 1998. This Law established a program for attention (Solidarity Network/Red de Solidaridad) for victims of violence in the conflict. Currently, Acción Social is paying the backlog of unpaid assistance from this program. However, many victims mistakenly consider these payments part of the reparations within the framework of Law 975.

In this sense, the great majority of those interviewed agree that the Justice and Peace process places priority on the demobilised persons. The victims stated that it is mainly the victimisers who receive reparations in the Justice and Peace process and expressed their lack of faith in the possibility of exercising their right to reparation with comments such as:

“They give the demobilised persons resources even though they have done very ugly things while they don't give us anything.”

“There are resources for the victimisers but not for the victims.”

“The demobilised persons are receiving everything even though we lost everything. The Justice and Peace process takes care of the demobilised persons, not the victims.”

same report, the IACHR takes on a critical role regarding the Justice and Peace Law and its regulatory decrees, observing with concern that “the person forced to pay reparations would be the demobilised person and possibly the bloc of which they were a member, with the State remaining in a secondary situation and relegating any kind of responsibility in the field of reparations”. Informe sobre la implementación de la Ley de Justicia y Paz: Etapas iniciales del proceso de desmovilización de las AUC y Primeras Diligencias Judiciales. OAS/SER.L/V/II, October 2, 2007. (Report on implementation of the justice and peace Law: initial stages of the process of demobilisation of the AUC and preliminary judicial proceedings).

IV. THE CAPACITY OF STATE INSTITUTIONS TO IMPLEMENT THE JUSTICE AND PEACE PROCESS

Chapter VII of the Justice and Peace Law is dedicated to state institutions with designated responsibilities in implementing the Justice and Peace process. The Law also establishes public servants' duties to adopt "adequate measures and all actions relevant to protecting the security, physical and psychological welfare, dignity and private lives of the victims and witnesses [...] and establishes that those public servants shall receive special training."⁶⁵

Regarding the state institutions will and capacity to implement the Justice and Peace process, the lack of human and financial resources is a source of great concern. According to information received by the delegation, these institutions have not been allocated the necessary funds within the national budget. For example, at the time of the mission, there were some 70,000 reported complaints within the framework of this process.

However, according to what the mission was told, the Attorney General's Office has a very limited number of prosecutors (22) and legal operators to carry out the investigations.⁶⁶ This limited state investigative capacity could result in many violations remaining in impunity. The IACHR and UNHCHR among others have stressed the need to strengthen the support given to the Justice and Peace Unit of the Attorney General's Office. The varied nature of the Law's requirements demands not only great professional capacity but also strong logistical support to enable the delegate prosecutors to fulfill their work under conditions of security.

Similarly, the lack of funds allocated to other institutions to which a fundamental role has been assigned in this process, such as the Ombudsman's Office, has also become apparent. In this regard, the IACHR has expressed concern over "restrictions on access by the victims to legal sponsorship and representation in the judicial proceedings. Many victims face difficulties in obtaining representation in the hearings and in obtaining proper legal counsel"⁶⁷. The delegation found that if all of the victims of the conflict were to seek the aid of the Ombudsman's Office, that entity would not have the capacity to provide them with legal attention and assistance.

The need to provide technical capacity to all levels of public servants involved in this process was also detected. In this regard, particular weakness was observed in the application of conceptual contents, evidentiary techniques and an interdisciplinary focus in identifying and handling cases involving sexual violence within the framework of the conflict.

Finally, the lack of coordination between these institutions must be pointed out, which weakens the guarantee of victims' rights. Many interviewees noted the existence of a kind of "institutional improvisation" which indicates a lack of institutional strength.

⁶⁵ Law 975 of 2005, Article 38.

⁶⁶ Report on Implementation of the Justice and Peace Law: Initial Stages of the Process of Demobilisation of the AUC and Initial Judicial Proceedings, para. 73.

⁶⁷ Ibid. Para. 83.

The Inter-institutional Justice and Peace Committee that was created by Law 975 is responsible for promoting the articulation and coordination of the work of state bodies involved in applying that Law. When the mission was carried out, this Committee was not yet in operation, which is a clear example of the lack of coordination in the process⁶⁸.

A. Attorney General's Office

Article 33 of Law 975 of 2005 establishes the creation of the Justice and Peace Unit as the body “responsible for carrying out proceedings that fall under the jurisdiction of the Attorney General’s Office under the procedures established in this Law”. In other words, the Attorney General Office through that Unit is the main body in the investigatory phase of the proceedings. Its duties include receiving the preliminary declarations from those under investigation, beginning the investigation and proving the veracity of the information supplied while clarifying the facts that it investigates (see article 17).

The Justice and Peace Unit operates in a decentralised manner through its main office in Bogotá and branch offices in the cities of Barranquilla and Medellín. The Law also provides that the Attorney General office shall set this unit up with 20 delegate prosecutors and assigns a number of additional posts to the Attorney General Office, including criminal investigators and judicial assistants. The other prosecutors’ offices in the country must channel the demands of the victims to these three units.

The delegation’s observations regarding the Attorney General’s Office in the Justice and Peace process have already been provided in this report, but in general they involve victims’ lack of trust in the institutions, which means that victims tend not to report crimes, and the lack of capacity to provide protection insofar as the existing protection program is inadequate as it was not designed to deal with the numbers, characteristics and needs of the victims. The lack of incorporation of the specific rights of women victims within its work plans and the way in which sexual violence has been rendered invisible in various judicial stages of the Justice and Peace process were also observed. The delegation found that the number of prosecutors and investigators designated for the Justice and Peace process by the Attorney General’s Office is insufficient, however within that institution its priority compared to the allocation of existing resources has been questioned.

B. Procurator General's Office

In accordance with constitutional provisions in this field, the Public Affairs Ministry shall intervene whenever necessary in defense of the legal system, public patrimony or fundamental rights and guarantees (article 28). To fulfill the above, article 35 of Law 975 provided for the creation by the Procurator General’s Office within the framework of this law of a Judicial Procurator for Justice and Peace, with national jurisdiction.

⁶⁸ Decree 3391 of 2006. Art. 21. The Inter-institutional Committee is composed of the following entities: Vice President of Colombia, Ministry of the Interior and Justice, Ministry of Defense, Office of the High Commissioner for Peace, Presidential Agency for Social Action and International Cooperation (Acción Social), Attorney General's Office, Higher Council of the Judiciary, Supreme Court of Justice, Ombudsman's Office, Procurator General's Office, Colombian Family Welfare Institute, a representative of the National Commission for Reparation and Reconciliation and another of the regional commissions for property restitution.

The Judicial Procurator must protect all actors in the process, but with special emphasis on the victims. In this sense, it shall formulate and implement programs for legal and judicial advice and general orientation for the victims. Article 36 also establishes that the Procurator's Office shall promote mechanisms for participation by the victims and social organisations that represent them in Justice and Peace proceedings to guarantee their rights to the truth and to comprehensive reparation.

The Procurator General's Office has taken the position that the victim has the right to participate in proceedings from the very beginning, as stipulated in the Constitutional Court's ruling. In this regard, the Procurator General's Office required that the Ombudsman's Office take on the victims' defense.

The delegation has the impression that in general there is trust in the willingness and capacity of the Procurator General's Office to fulfill its duties regarding the Justice and Peace process, both among civil society organisations and state institutions. Very early on in the Justice and Peace process, the Procurator General's Office published various reports on the State's responsibility regarding the victims' rights. The Procurator General's Office in 2005 carried out a program for follow-up, monitoring, verification and preventive control over demobilisation and re-insertion policies to strengthen the Government and other public authorities in terms of comprehensive reparation for the victims and building a lasting peace.⁶⁹ In light of the delegation's impression regarding the lack of institutional coordination, it would seem appropriate for the Procurator General's Office to closely follow-up on its initiative.

C. Ombudsman's Office

Law 975 charges the Ombudsman's Office, as part of the Public Affairs Ministry, with the duty of intervening whenever necessary in defense of the legal system, public patrimony or fundamental rights and guarantees. More specifically, the Ombudsman's Office's duties are defined to include:

- Assistance, advice and protection for victims in exercising their rights (see article 34);
- Protection for witnesses and experts to be presented by the defense (see article 15).

In the accusatory system, the Ombudsman's Office has the obligation to legally assist those who are implicated, whereas the Attorney General's Office would be responsible for the victims' defense in criminal matters. However, the Justice and Peace Law established that the Ombudsman's Office should assume this responsibility. In this process therefore, the Ombudsman's Office take on two kinds of functions: judicial representation of the victimisers and guarantees for protection and reparation for the victims.

The delegation's observation is that the Ombudsman's Office until now has not fulfilled its important role in the Justice and Peace process as provided for in Law 975. The lack of leadership in coordinating state institutions has created a gap and paralysis that affects the victims' access to their rights.

⁶⁹ This program is based on articles 118 and 277, parts 1, 2 and 3 of the Colombian Constitution, which substantiate the preventive control function of the Procurator General's Office.

There is now a manual on victims' rights published by the Ombudsman's Office, but they took more than a year to produce it. In the meantime, the first stages of the hearings had begun without the availability of coordinated information and without a communications plan to enable victims to find out about their rights within the judicial proceedings and how to gain access to those rights.

The delegation's impression is that the Ombudsman's Office has begun to be more present at the hearings but still lacks sufficient manpower to duly attend to all victims. In the rural regions above all there is a lack of proportionate presence by the Ombudsman's Office to guarantee protection and reparation for the victims.

D. Justice and Peace Tribunals

Law 975 of 2005 establishes that the Higher Council of the Judiciary must designate the Judicial District Superior Tribunals that will have jurisdiction to carry out the judgment phase in the Justice and Peace process while overseeing compliance with punishments and obligations imposed on those found guilty.

Additionally, the Law assigns the respective tribunal's secretary the duty of "organising, systematising and preserving the files on the facts and circumstances associated with the conduct of persons in any way covered by any of the measures dealt with in this Law, in order to guarantee the victims' rights to the truth and safeguard the collective memory from being forgotten. They shall also guarantee public access to the records of cases that were processed and shall have a Communications Office to disseminate the truth about what occurred."⁷⁰

However, as of the date of the mission's visit, the members of the two tribunals in Barranquilla and Bogotá had not yet taken up their duties. The President of the Criminal Chamber of the Supreme Court has stated that lack of resources and logistical elements makes it impossible for the Court to take on these cases. The President of the Supreme Court wrote to the Minister of the Interior proposing that a commission be named to formulate proposals to resolve the Chamber's structural problems. These delays gravely affect the victims' rights to the truth.

E. Presidential Agency for Social Action and International Cooperation

While the Presidential Agency for Social Action and International Cooperation (Agencia Presidencial para la Acción Social y la Cooperación Internacional - Acción Social) is not expressly mentioned in Law 975 of 2005, it was actually created as a substitute for the Social Solidarity Network (Red de Solidaridad Social) that is mentioned in that Law. It can therefore be said that Acción Social has the following duties, among others:

- To administrate the Victims' Reparation Fund, which was created by that same Law 975 of 2005 and whose financial officer is the Director of the Red de Solidaridad;
- To liquidate and pay the court settlements dealt with in this Law;
- To carry out other reparation actions where needed.

⁷⁰ Law 975 of 2005, Art. 32.

Therefore, Acción Social is responsible, pursuant to the Justice and Peace Law, for administering the Victims' Reparation Fund. According to statements by staff members, it will administrate the Fund's assets, which will be made up of licit and illicit properties that the demobilised persons confess to possessing during the legal proceedings and funds from the State and from international cooperation. The judges will establish the terms of the reparations. As of now, the Fund has no assets. The Fund's assets are also intended to satisfy the reparations plan to be proposed by the CNRR.

According to Law 975, the director of Acción Social serves on the CNRR and is in charge of its Technical Secretariat.

Acción Social is to identify victims using the format applied for these purposes by the Attorney General's Office; however Acción Social must wait for a court ruling on reparations before considering a person as a victim and following the provisions of the judicial resolution regarding reparations.

Acción Social has great responsibility in clarifying the victims' rights to reparations as victims of the conflict within the framework of Law 975. The delegation wishes to stress the importance of that Acción Social apply a gender focus in its work to understand the particular needs and rights of the victims and adapt its programs accordingly.

F. National Commission for Reparation and Reconciliation (CNRR)

Law 975 of 2005 establishes the creation of the CNRR for a period of 8 years and assigns it the following duties:

1. To guarantee the victims' participation in judicial proceedings and materialisation of their rights.
2. To present a public report on the reasons for the emergence and evolution of the illegal armed groups in this country.
3. To carry out follow-up on the processes of reincorporation of ex-combatants into civilian life and on the policy of demobilisation of the illegal armed groups and regarding optimum functioning of the institutions in those territories. For this purpose, the CNRR shall invite foreign bodies or personalities.
4. To carry out periodic evaluation of reparation policies while making recommendations to the State for their proper implementation.
5. To present a report in two years to the Peace Commissions of the Senate and House of Representatives on the process of reparations for victims of the illegal armed groups.
6. To recommend criteria for reparations for the victims under the responsibility of the Victims' Reparation Fund.
7. To coordinate the activities of the Regional Commissions for Property Restitution.
8. To carry out actions for national reconciliation aimed at preventing the appearance of new violent events that disturb national peace.⁷¹

⁷¹ Law 975 of 2005, Articles 50 to 52. See also < <http://www.cnrr.org.co/index.html>>.

The CNRR has a mixed composition with participation by members of the executive branch (Vice President of Colombia, Ministries of the Interior and Finance, Acción Social), representatives of the Public Affairs Ministry (Procurator General's Office and Ombudsman's Office), five representatives from the civil society and two representatives of victims' associations. In the wake of the creation of the CNRR through Law 975, civil society participation on that Commission was intensely debated. Many organisations objected on the grounds that their participation would legitimise the demobilisation process that the great majority of them considered nonexistent.

This report emphasises a number of points regarding the role of the CNRR. In summary, criticism focuses on the failure to guarantee and/or clarify victims' access to judicial proceedings as well as their rights. This includes failure to ensure coordination between the relevant institutions and representatives in order to move forward in demanding victims' rights, above all regarding reparations.

V. THE ROLE OF THE INTERNATIONAL COMMUNITY

There is a strong international community presence in Colombia through the United Nations system, embassies, the European Union and a number of NGOs. Although the international community is by no means monolithic, it may be said that their responsibility as international actors towards the victims in the process of Law 975 of 2005 consists in evaluating and monitoring the grave crisis in human rights and humanitarian law, pointing out and explaining the Colombian State's international obligations, indicating the obstacles that the Government must surmount to comply with international standards, placing the victims' situation and how to guarantee their rights on the international agenda, strengthening civil society in its task of demanding the victims' rights and finally monitoring the application of Law 975 and its humanitarian impact.

International norms make it clear that the victims' rights cannot be compromised. At the same time, the international community plays an important role in avoiding polarisation between public institutions and the civil society while promoting relationships of trust between them.

A. European Commission

On October 28, 1992, the Government of the Republic of Colombia and the European Commission signed an agreement in Brussels to establish diplomatic representation of the Commission in Colombia. The objective has been to strengthen and deepen relations between the European Union and the Government of Colombia.

The fight against drugs, respect for human rights and protection of biodiversity are some of the basic topics that Colombian foreign policy has addressed in recent years. The priority has been the search for international support to establish a solid and lasting basis for peace. In this regard, the Colombian Government has received reiterated support from the international community and particularly the European Union.

Diverse declarations from both the Council of Ministers and the European Parliament demonstrate the European Union's deep concern over the increase in violence stemming from the internal armed conflict in Colombia. As a result, the European Union expresses its interest in supporting the ongoing peace process and insists on the urgency of respecting human rights in that country, while it urges the armed actors to respect International Humanitarian Law and achieve national reconciliation based on dialogue and negotiation.

The Council of Ministers of the European Union issued a statement on the Justice and Peace process on October 3, 2005, that contains the European Union's position regarding that Law. It stresses the importance of quickly achieving "a balance between peace and justice". However, the Council of Ministers makes no further clarifications or suggestions on how to make the truth known, provide reparations for the victims and punish those who have committed crimes against humanity.

The Office in Colombia has been allocated €160 million to strengthen activities involving "dialogue" in the Justice and Peace process between 2007 and 2013, but they are still resolving the details of the programs that will be part of this dialogue.

B. Mission in Support of the Peace Process in Colombia (Misión de Apoyo al Proceso de Paz – MAPP/OEA)

By means of an agreement signed by the Government of Colombia and the Secretary General of the Organisation of American States OAS (OEA), the Mission in Support of the Peace Process in Colombia of the Organisation of American States (MAPP/OEA)⁷² was created in January 2004.

The mandate of the MAPP/OEA consists of:

- 1) *Support*: Support for local initiatives in conflict areas, promotion of measures for trust and reconciliation to develop a culture of democracy, peace and peaceful resolution of the violence, along with the identification, formulation and development of initiatives and projects with social content in those areas.
- 2) *Advice*: To propose, monitor and evaluate measures for trust and security between the Government and organised illegal armed groups whenever the Colombian Government requests it. The Mission has no powers of decision within any aspect of the process.
- 3) *Accompaniment*: To provide accompaniment in all phases of the process of dialogue with members of the illegal armed groups.
- 4) *Verification*: To verify compliance with the agreements regarding cease-fire and cessation of hostilities, demobilisation and disarmament and the process of re-incorporation.

The creation of MAPP/OEA has been questioned by many Colombian and international human rights organisations as providing legitimacy to a demobilisation process that does not have that legitimacy. The delegation that wrote this report heard a number of comments that show that strong criticism continues to be aimed at the mandate and work of the MAPP/OEA.

Although the quarterly reports issued by MAPP/OEA have been improving in terms of the inclusion of victims' rights in the Justice and Peace process and concern over the lack of those rights and the lack of protection to make it possible to demand them, the delegation's feeling is that there is a difference between the language of the reports and the language on the ground. This is based on conversations with officials from MAPP/OEA as well as victims and organisations that have had contact with MAPP/OEA.

Above all, the focus on the rights of demobilised persons compared to the lack of respect and consideration for the rights and safety of victims in reinsertion areas is disturbing. The delegation heard comments from MAPP/OEA officials indicating that the victims exaggerate the lack of protection and that some were interested only in the financial aspect of reparations - to the point of falsely registering as victims to gain access to the funds.

As a number of sources have pointed out⁷³, MAPP/OEA still lacks a gender perspective, both in its verification work as well as when providing attention to victims, and above all fails to emphasise the strategic use of sexual violence by reinserted persons/paramilitaries.

⁷² < <http://www.mapp-oea.org> >.

⁷³ For example, the report by the Alianza de Organizaciones Sociales y Afines por una Cooperación para la Paz y la Democracia en Colombia, Secretaría Técnica de la Conferencia por la Democracia y Contra la Guerra, January 2006. (Alliance of Social and Similar Organisations for Cooperation for Peace and Democracy in Colombia, Technical Secretary of the Conference on Democracy and against the War).

Finally, as an international Mission MAPP/OEA has not taken its responsibility seriously to promote systematic and secure contacts to exchange information with the victims, their organisations or other civil society organisations to enlarge their sources about the reality of the cease-fire, disarmament and reinsertion process.

C. Inter-American Commission on Human Rights (IACHR)

The Inter-American Commission on Human Rights (Comisión Interamericana de Derechos Humanos - CIDH)⁷⁴ is one of two entities of the Inter-American system for the protection and promotion of human rights in the Americas, the other being the Inter-American Court of Human Rights. It is the principal and autonomous body of the Organisation of American States – OAS (OEA), whose mandate comes from the OAS Charter and the American Convention on Human Rights, and which acts in representation of all OAS member states.

In early 2004, an agreement was signed regarding the establishment of the Mission in Support of the Peace Process in Colombia (Misión de Apoyo al Proceso de Paz en Colombia - MAPP/OEA) with the mandate to verify initiatives involving cease-fire and cessation of hostilities, demobilisation, disarmament and reinsertion of the illegal armed groups operating in that country. The Standing Council's resolution authorised the establishment of the MAPP/OEA while stressing the need "to ensure that the OAS' role is completely in accordance with the obligations of its member States regarding full effectiveness of human rights and international humanitarian law". In its resolution, the Standing Council invited the IACHR to advise the MAPP/OEA.

The IACHR has indicated that it would continue to exercise its mandate to promote and protect human rights in Colombia pursuant to the American Convention on Human Rights and in tandem with its ongoing monitoring duties would carry out its role as adviser to MAPP/OEA, subject to provision of the necessary funds. It has also said that it would adopt measures aimed at establishing links and communications channels with members of MAPP/OEA in Colombia to provide advice; carry out follow-up on the demobilisation process both through channels established in cooperation with MAPP/OEA as well as independently; and periodically report to the Standing Council, the international community and public opinion.

In various communiqués and reports, the IACHR has commented on the justice and peace process in Colombia. According to information received during the Mission to Colombia, the impression is that Colombian civil society trusts in the support of the IACHR and the emphasis that the Commission places on the victims' rights to truth, justice and reparation. One disadvantage of the IACHR as adviser to MAPP/OEA is the distance between Colombia and Washington. It is evident that sporadic visits are not sufficient to guarantee monitoring of the Mission. An office of the IACHR in Colombia to fulfill its role as adviser to MAPP/OEA would more effectively guarantee compliance with international standards regarding the victims' rights.

The IACHR has an important role to play in placing the particular needs of women victims in the Justice and Peace process on the national and international agendas. The IACHR is already making significant efforts to draw attention to women's rights in reports such as *Las Mujeres frente a la violencia y la discriminación derivadas del conflicto*

⁷⁴ < <http://www.cidh.org> >.

*armado en Colombia*⁷⁵ (Women faced with violence and discrimination deriving from the armed conflict in Colombia). If the IACHR were to include this focus in its on-site reports, it would have a big effect on the rights of women victims in the Justice and Peace process.

D. Office of the United Nations High Commissioner for Human Rights (UNHCHR)

The Office of the United Nations High Commissioner for Human Rights in Colombia was established on November 26, 1996 through an agreement between the Government of Colombia and the United Nations High Commissioner for Human Rights. Pursuant to this agreement, the Office of the United Nations High Commissioner for Human Rights in Colombia has jurisdiction “to observe the situation of human rights and international humanitarian law in order to advise the authorities on the formulation and application of policies, programs and measures for the promotion and protection of human rights in the context of violence and internal armed conflict that the country is experiencing.”⁷⁶ In other words, the Office’s mandate includes activities of observation, advice, technical cooperation and promotion and dissemination. The agreement was renewed in September 2007, which will guarantee the presence of the Office of the United Nations High Commissioner for Human Rights in Colombia until 2010 with full renewal of all the dimensions of its mandate⁷⁷.

In the context of the Justice and Peace process, the Office of the High Commissioner issued a number of advisory documents promoting the victims’ rights to truth, justice and reparation during the process of drafting and debating Law 975 of 2005. In this respect, they have indicated the lack of “appropriate mechanisms to make effective the rights to truth, justice and reparation. In particular, the law does not require full cooperation by the demobilised persons with the justice system. The law does not demand their effective contribution to clarify the facts. It is impossible to have justice or guarantee reparation without clarifying the truth.”⁷⁸ At the same time, in accordance with its mandate for observation and advice, the Office has committed itself to continue to carry out follow-up on measures adopted for the application of Law 975⁷⁹.

⁷⁵ OAS/Ser.L/V/II. Doc. 67, October 18, 2006.

⁷⁶ Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, para. 1, E/CN.4/2006/9, January 20, 2006.

⁷⁷ Address by Mrs. Louise Arbour, United Nations High Commissioner for Human Rights during the signing ceremony to renew the mandate of her Office in Colombia (2007-09-09), <<http://www.hchr.org.co/publico/noticias/noticias.php3>>.

⁷⁸ Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, Annex V, para. 19, E/CN.4/2006/9, January 20, 2006.

⁷⁹ See La Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos reitera su posición sobre la “Ley de justicia y paz” (2006-10-13) <<http://www.hchr.org.co/publico/publico.php3>> (The Office in Colombia of the United Nations High Commissioner for Human Rights reiterates its position regarding the “Justice and Peace Law”).

VI. RECOMMENDATIONS

Based on the contents of this report, the delegation wishes to make the following recommendations mainly to Colombian State institutions but also to the international community.

General recommendations

- That the Colombian State ensure the victims' rights to justice, truth and comprehensive reparation as well as guarantees of non-repetition for society as a whole pursuant to international standards.
- That the Colombian State implement a policy for promotion and prevention in Justice and Peace proceedings regarding the aftereffects of violations of women's rights, especially rape.
- That the Colombian State protect and promote the strengthening of victims' organisations, human rights organisations and women's organisations.

Section III. B: Lack of protection for the victims

- That the Colombian State admit that until now real demobilisation has not taken place and that it take the necessary measures to ensure total and real demobilisation, including a prevention and protection plan in areas where victims and demobilised persons coexist.
- That in future stages of the Justice and Peace process, or in future processes with other illegal armed actors, the State carry out an analysis of the main risk factors along with appropriate preventive protection systems prior to implementation.
- That the Colombian State develop an effective and immediate protection program for victims who wish to participate in the Justice and Peace process that takes into account the particular needs of women victims.
- That victims of sexual crimes be protected, for example by maintaining their identities confidential when reporting crimes, that they be able to report these in a place other than where the crime occurred and that they receive psychological and legal accompaniment.
- That the Colombian State promote effective coordination and communications between organisms providing protection to victims to reduce their vulnerability.
- That mechanisms for confidentiality be established to guarantee the victims' right to privacy and protection in the light of certain public revelations by those taking part in the hearings.
- That the Colombian State design, implement and execute a protection program for victims and witnesses pursuant to Law 975 of 2005 and in accordance with the ruling of August 13, 2007.

Section III. C: The victims' right to justice

- That the Attorney General's Office and the peace and justice tribunals respect the victims' right to be heard and to provide evidence within the proceedings.
- That the requirement for reporting a crime by the victims be simplified and that they be guaranteed the possibility of denouncing before any body, especially those that inspire trust in the victims, particularly in cases of sexual violence.
- That the requirement for registration by the victims be made easier, especially the requirement to have already filed a report of the events constituting violations at the time in which they occurred in order to prove direct damage. This requirement is particularly problematic for the great majority of displaced persons because they have already been forced to flee their homes due to harassment and threats and therefore never had the opportunity to report those events.
- That effective mechanisms and secure spaces be established so that the victims and their families can actively take part in the Justice and Peace proceedings and make the truth known to society, for example by holding public hearings.
- That victims' access to the first stage of the hearings be guaranteed along with the possibility to directly challenge those declarations.
- That participation by victims who reside in rural areas in the hearings be facilitated.
- That the application of measures aimed at guaranteeing victims' rights take into account their particular situation, including age, gender, health and type of crime, particularly when sexual violence is involved.
- That there be compliance with article 67 of the Justice and Peace Law, which establishes the social obligation to assist victims through the Justice and Peace Tribunals and the Procurator General's Office.
- That the Ombudsman's Office fulfill its mandate to provide legal advice to all victims within the Justice and Peace process, including in regions where at the time of this mission there was insufficient staff in proportion to the number of victims.
- That the concept and methodology of the Permanent Human Rights Unit of the Municipal Ombudsman in Medellín be replicated and developed and made accessible to the victims at all hours.
- That access by the victims to information on the diverse stages of the proceedings and their possible participation in them be guaranteed, particularly taking into account victims' access to the communications media in rural areas and the language in which they communicate. That the victims be given clear information on the responsibilities of each institution within the Justice and Peace process to ensure participation by those institutions and the exercise of the victims' rights in the process.
- That clear information be provided to the responsible institutions as well as to victims who are in a situation of displacement regarding their right to attention and reparation as displaced persons, and as well as their rights as victims within the Justice and Peace process.

Section III. D: On Judicial Truth for the victims

- That the Colombian State comply with international obligations to guarantee the victims and their families the right to know the truth without being subject to any statute of limitations.
- That the Attorney General's Office and the control bodies ensure that the hearings be complete and truthful and incorporate the right to know the causes and circumstances of time, modality and place in which the crimes were committed, as a condition to receive the legal benefits and to ensure the right to the truth.
- That the Attorney General's Office ensure that the hearings include complete and truthful statements on specific violations committed against women, including the formulation of specific questions for the person making the declaration regarding sexual crimes.
- That the Attorney General's Office prevent those taking part in the hearings from using the initial stage of the proceedings to make an apology for paramilitarism and justify the crimes committed as acts of defense against the guerrillas, without giving the victims any opportunity to question or contradict what is stated in the hearing.
- That the Colombian State fulfill its duty to adopt the necessary measures to guarantee the independent and effective functioning of the judicial branch to make the right to know effective.

Section III. E: The Historical Truth for the victims

- That the right to know the truth not be limited to the victims and their families who are recognised within the judicial Justice and Peace proceedings but that it also must have a collective dimension so that the society that has been affected by the violence can know the truth to avoid recurrence of those events in the future.
- That it be ensured that not only victims who are recognised within the judicial Justice and Peace proceedings have the right to the truth but also all victims of paramilitary violence.
- That a wide-ranging process for consultation with women victims be ensured to guarantee their contribution to clarify the historical truth, and ensure that this truth incorporates the systematic violence perpetrated against women by paramilitaries and demobilised persons.
- That the public hearings be recorded for preservation of the historical memory and as a contribution to the truth.

Section III. F: Invisibility of sexual violence in the process

- That sexual crimes be considered war crimes pursuant to international human rights standards and that a policy be designed to handle crimes of sexual violence committed by illegal armed groups.

- That the Attorney General's Office understand acts of sexual violence as a pattern of conduct within the context of the conflict and not as isolated crimes, and that they be investigated as such.
- That the relevant state institutions gather evidence on systematisation of the practice of sexual crimes by paramilitary blocs to avoid the need for individual statements by victims of these crimes. If the armed bloc admits the practice of that violation, it will not be necessary to re-victimise each woman by making her provide individual testimony.
- That the Attorney General's Office establish guarantees for a proper balance between women and men on the investigative teams (so that, for example, sexual crimes may be denounced in the presence of a woman prosecutor) and on the Justice and Peace Tribunals to facilitate understanding of the consequences of this type of crimes.
- That the investigative prosecutors receive appropriate training on the complexity of sexual crimes.
- That MAPP/OEA develop indicators to measure the impact of violence on the lives of women following insertion of the demobilised persons.
- That the employees of Acción Social receive proper training on the complexity of sexual violence and take into account that these victims require particular attention and have the right to be treated in a special way.
- That MAPP/OEA and the CNRR, among others, highlight sexual violence as a systematic crime within the conflict in their public reports, as UNHCHR currently does in its yearly reports on the human rights situation in Colombia.
- That the Colombian State comply with the recommendations of the United Nations Special Rapporteur on violence against women in her mission to Colombia in 2001.
- That the Colombian State implement and comply with the recommendations of UNHCHR regarding women's rights.

Section III. G: Publicity in the process

- That the hearings with the demobilised persons be made in public, facilitating both direct and indirect participation by the victims.
- That the hearings be published in a diverse range of media so that all victims will have access to the information (radio, printed media, Web pages and television) and that they also be published in indigenous languages.
- That all of the hearings be broadcast live without editing so that they can be compared with the victims' testimony. That also the victims' testimonies be broadcast as long as the need to protect their identity where required is respected.
- That television coverage of the hearings be regulated in a transparent manner, respecting the victims' rights and preventing the National Television Commission (Comisión Nacional de Televisión) from having the power to decide what to disseminate and what to edit.

Section III. H: The victims' right to reparation

- That the relevant institutions, particularly the CNRR and Acción Social, guarantee full participation by the victims in the process of drafting, implementation and monitoring of reparation policies.
- That the CNRR and Acción Social consider the needs, petitions and proposals that the victims themselves express as guiding elements of the reparations process.
- That the relevant state institutions guarantee the comprehensive character of the reparations, combining measures for individual reparations with collective measures and measures for symbolic reparations with material ones. That it also be taken into account that reparations for the victims should not only be financial.
- That the Colombian State comply with its obligation to provide reparations to the victims, pursuant to its international obligations, which establish that every State that commits an internationally illegal act shall be internationally responsible for that act, without the obligated State being able to invoke internal law provisions to modify or fail to comply with the obligation to provide reparations.
- That when applying the Law, the Attorney General's Office and the control bodies consider the confession of licit and illicit properties as an integral part of the full, exhaustive and effective truth, whose omission leads to loss of the benefits.
- That the Colombian State guarantee that victims have access to reparations whether or not they are part of a judicial proceeding. That the State adopt a reparations program that functions in an optional manner with respect to the criminal courts channel and would complement other collective reparations and social services directed at those who have suffered from violence in Colombia.
- That the relevant state institutions take into account the collateral damage of rape of many of the victims, including sexually transmitted diseases, undesired pregnancies, abandonment by their spouse and social stigmatisation in order to proportionally establish measures for reparations.
- That the relevant state institutions implement reparations programs that include health and psychosocial assistance initiatives to address the particular needs of victims of sexual crimes.
- That in order to satisfactorily comply with the right to reparations, there be a judicial pronouncement establishing measures aimed at non-repetition, rehabilitation, truth, justice and preservation of the historical memory.

Section IV: The capacity of state institutions to implement the Justice and Peace process

- That state institutions, at inter-institutional fora, adopt appropriate measures to ensure effective coordination to guarantee the victims' rights to truth, justice and reparation.
- That state institutions ensure that their employees receive special training on the particular rights and needs of the victims of sexual violence.

Section V: The role of the International Community

- That the international community bring the situation of victims within the Justice and Peace process and how to guarantee their rights to the truth, justice and reparation to the international community's agenda. That the civil society be strengthened in its task of demanding the victims' rights.
- That the international community call particular attention to the rights of women victims within the Justice and Peace process.
- That the international community support the work and legitimacy of human rights organisations and women's organisations in Colombia.
- That the international community monitor the application of Law 975 and its humanitarian impact from the point of view of the victims' rights to truth, justice and reparation.
- That the international community, in monitoring the Justice and Peace process, ensure that the victims do not receive less attention than the victimisers, taking into account the large number of victims affected.
- That the European Union, through the Council of Ministers, clarify and suggest in greater detail how to guarantee the victims' rights to truth, justice and reparation in its policies and actions regarding Colombia, and that it base its analysis on experiences of the diverse affected actors.
- That institutions that carry out on-site visits also include consultations with directly affected victims on their agendas and not only with civil society organisations and state institutions.
- That MAPP/OEA widen its sources of information for reports regarding the reality of the cease-fire, disarmament and reinsertion process. That it base its information on systematic and secure contacts with victims, their organisations or other civil society organisations.
- That MAPP/OEA, among others, apply a gender focus in its reports, taking into account the particular rights and needs of women victims in the Justice and Peace process.
- That the IACHR open an office in Colombia to carry out its advisory role regarding MAPP/OEA.
- That the international community take into account that Colombia continues to be a country in a situation of armed conflict and that real and complete demobilisation of the paramilitaries has not occurred. Under the circumstances, it is particularly important that the international community's programmes and policies in Colombia be carried out in accordance with international standards for human rights and international humanitarian law.

VII. LIST OF INTERVIEWEES

The delegation interviewed representatives of the entities listed below. A number of interviewees also took part in the seminar held on April 27, 2007 in Bogotá, where the mission's preliminary conclusions were discussed and valuable additional contributions were made to this report. The participants were victims, representatives of NGOs, state institutions and other entities.

State institutions

Bogotá:

Attorney General's Office – Justice and Peace Unit (Fiscalía General de la Nación – Unidad de Justicia y Paz)
Constitutional Court (Corte Constitucional)
National Army (Ejército Nacional)
National Police (Policía Nacional)
Ombudsman's Office (Defensoría del Pueblo)
Presidential Agency for Social Action and International Cooperation (Agencia Presidencial para la Acción Social y la Cooperación Internacional – Acción Social)
Procurator General's Office (Procuraduría General de la Nación)
Vice President of Colombia - Presidential Program on Human Rights and International Humanitarian Law (Vicepresidencia de la República – Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario)

Medellín:

Departmental Procurator of Antioquia (Procuraduría Departamental de Antioquia)
Municipal Ombudsman of Medellín – Permanent Office for Human Rights (Personería de Medellín – Oficina Permanente de Derechos Humanos)
Office of the Governor of Antioquia (Gobernación de Antioquia)
Office of the Mayor of Medellín (Alcaldía de Medellín)

Non-governmental organisations

Bogotá:

Colombian Commission of Jurists (Comisión Colombiana de Juristas - CCJ)
Corporación para la Defensa y Promoción de los Derechos Humanos – Reiniciar
Corporación Sisma Mujer
Lawyers' Collective José Alvear Restrepo (Corporación Colectivo de Abogados José Alvear Restrepo – CCAJAR)
Ruta Pacífica de Mujeres

Medellín:

Grupo Interdisciplinario por los Derechos Humanos - GIDH
Asociación de Mujeres de las Independencias - AMI
Asociación de Mujeres Diciendo y Haciendo
Centro de Recursos Integrales para la Familia - CERFAMI
Corporación Con-vivamos
Corporación Jurídica Libertad
Corporación Penca de Sábila
Corporación Región
Madres de la Candelaria Caminos de Esperanza
Mujeres de San Antonio de Prado
Mujeres Que Crean

Sumapaz
Vamos Mujer

Others

Bogotá:

Embassy of Sweden

European Union Delegation for Colombia and Ecuador

National Commission for Reparation and Reconciliation (Comisión Nacional de Reparación y Reconciliación - CNRR)

Office in Colombia of the United Nations High Commissioner for Human Rights – UNHCHR (Bogotá)

Medellín:

Mission in Support of the Peace Process – Colombia (Misión de Apoyo al Proceso de Paz - Colombia - MAPP/OEA)

Office in Colombia of the United Nations High Commissioner for Human Rights – UNHCHR (Medellín)

Approximately 60 victims in Medellín and its surrounding areas

VIII. PRESENTATION OF THE DELEGATION

Inmaculada Barcia, Spanish attorney, coordinator of the Office of Human Rights Defenders of the International Human Rights Service, Geneva, Switzerland.

Ariela Peralta, Uruguayan attorney, Deputy Director of the Center for Justice and International Law – CEJIL, Washington, United States.

Alejandro Silva Reina, Peruvian attorney, Professor of Law and Political Sciences Faculty, Universidad de San Martín de Porres, Lima, Peru.

Linda Robertsson, logistical and administrative coordination, Secretary of the International Program at the Swedish Foundation for Human Rights, Sweden.

Ulrika Strand, responsible for the mission, coordinator for Latin America at the Swedish Foundation for Human Rights, Sweden



The SWEDISH FOUNDATION
for HUMAN RIGHTS
Drottninggatan 20, S-112 49 Stockholm, Sweden
Tel: +46(0)8 48 94 70 Fax: +46(0)8 48 94 81
E-mail: info@svedishrights.se www.svedishrights.se