

**Contribution to the examination of Colombia's seventh periodic report
to the United Nations Human Rights Committee**

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I. Introduction

1. Lawyers Without Borders Canada (LWBC) is a non-governmental international development organization, whose mission is to support the defence of human rights for the most vulnerable groups and individuals through the reinforcement of access to justice and legal representation. Since 2003, LWBC has been present in Colombia, and for over five years it has worked to promote the principles of the *Rome Statute (RS) of the International Criminal Court (ICC)*, offering support in emblematic cases, in particular cases of extrajudicial executions, sexual violence and forced displacement.

2. The work of LWBC is part of efforts to accompany and strengthen communities and populations that have suffered human rights violations, including the organizations and human rights lawyers who represent them. LWBC also actively participates in analyzing legislative or any other measures that have an impact on compliance with the obligations assumed by the State under the human rights treaties, with a special interest in guarantees universally recognized by the *International Covenant on Civil and Political Rights (Covenant or ICCPR)*.

3. In light of its commitment to victims and the lawyers who represent them, LWBC wishes to contribute constructively to the dialogue between the UN Human Rights Committee

(Committee) and the Colombian State, providing information about the conditions for access to an effective remedy (art 2, ICCPR) and the degree of respect of judicial guarantees (art 14, ICCPR) in criminal proceedings brought for extrajudicial executions, based on our knowledge of the Colombian legal system.

4. LWBC is also providing the results of the analysis conducted of the judicial measures for victims of serious human rights violations and/or serious infractions of international humanitarian law (IHL), adopted in compliance with the *Final Accord to End the Conflict and Build a Stable and Long-lasting Peace*, made public on 24 August 2016, and signed by the Government of Colombia and FARC-EP on 26 September (Final Peace Accord).¹ Last, LWBC wishes to draw attention to the high degree of vulnerability of displaced communities victim of armed conflict belonging to the Collective Territory of Curvaradó, located in northeastern Colombia. The case of these communities shows the challenges to accessing an effective remedy and brings elements to evaluate the State's progress and setbacks in fulfilling its obligations under the Covenant.

II. Executive summary

5. In the context of the examination of Colombia's Seventh Periodic Report, LWBC wishes to provide information to the Human Rights Committee in an attempt to contribute to the assessment of the progress and setbacks in terms of Colombia's fulfilment of ICCPR obligations undertaken by the Colombian State and to call attention to the conditions and degree of vulnerability of populations who are victims of violations of rights recognized by the Covenant.

6. Based on the analysis and monitoring conducted by LWBC of 11 criminal proceedings undertaken by the Colombian justice system for extrajudicial executions, it is found that the obligation of the State to ensure effective remedy in these cases was not satisfied (art 2, ICCPR), contravening the victims' right to a fair trial by an independent and impartial tribunal (art 14, ICCPR).

7. In the 11 criminal proceedings monitored by LWBC, similar obstacles were seen, such as delaying tactics, systematic turnover of officials, and obstruction by the military criminal

¹*Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera*, online: https://www.mesadeconversaciones.com.co/sites/default/files/24_08_2016acuerdofinalfinalfinal-1472094587.pdf (Spanish only).

justice system, among other conditions that result in unjustified delays and prevent victims from obtaining access to an effective remedy before the national criminal courts.

8. Furthermore, LWBC's observations show that the State does not guarantee the right of victims to be heard by an independent and impartial court, due to the high mobility of officials responsible for extrajudicial execution trials and the high level of risk experienced by judicial officials who move criminal proceedings forward.

9. Based on the results of LWBC's analysis of the Final Peace Agreement, , we present to the Committee concerns and recommendations to regarding compliance of judicial mechanisms accessible to victims of serious human rights violations and/or serious IHL infractions with the Colombian State's obligations under the ICCPR. This report focuses especially on the manner in which the selection and prioritization criteria of the criminal proceedings and the principle of legality should be addressed, the form in which the crimes associated with political crimes would be dealt with for the purposes of amnesties or pardons, the conditions for assessing the criminal responsibility of perpetrators, as well as proposed alternative punishments.

10. Based on monitoring conducted by LWBC in displaced communities of the Collective Territory of Curvaradó, we present to the Committee the serious precariousness in which the inhabitants find themselves, and the obstacles they encounter in accessing an effective remedy. In particular, the Colombian State has not guaranteed the return of victimized communities, the territory is occupied by third parties, and claimants report that death threats and attacks against them continue.

III. Information about the investigations conducted regarding extrajudicial executions

Article 2, ICCPR – Right to effective access to justice

11. In light of the serious crimes committed during the Colombian armed conflict, the Colombian State has an obligation to investigate the alleged violations within a reasonable period of time, in a thorough and effective manner, and by means of independent and impartial bodies. As holders of rights recognized under the Covenant, the victims merit effective protection of their rights, including accessible and effective remedies to

determine the rights breached (art 2, para 2). These remedies should be adequately adapted to take into account the particular vulnerability of certain categories of persons.²

12. Access to an effective remedy includes a series of rights now broadly recognized for victims of serious human rights violations and/or serious IHL infractions, including the right to truth, to prosecution of the perpetrators, to imposition of appropriate punishments and to compensation for harm suffered. Furthermore, the State has an obligation to take an array of measures to ensure that the atrocities committed are not repeated.

13. In April 2016, LWBC published a report entitled *Estudio de casos a la luz del principio de complementariedad del Estatuto de Roma: Mecanismos de impunidad en la Justicia colombiana (Cases Study in the Light of the Principle of Complementarity of the Rome Statute: Impunity Mechanisms in Colombia's Justice System, or LWBC Cases Study)*,³ which was the product of monitoring and analysis of 15 cases of serious human rights violations heard before Colombian courts. Of the trials observed and analyzed, 11 pertained to alleged extrajudicial executions, of which eight bore features of so-called “false positives”.⁴ These occurred in the departments of Santander, Cundinamarca, Nariño and Cauca between 2005 and 2013. The victims all belonged to vulnerable populations, such as members of indigenous communities, young people from destitute families or with addiction issues, and farmers.

14. LWBC concentrated its analysis on criminal proceedings, with a focus on the principles of the *Rome Statute*, the rights of victims to justice, to truth, and to genuine trials. The qualitative investigation revealed that the dynamics of the trials, conduct of the various players as they carried out investigations, and unjustified delays had the effect of shielding individuals from criminal responsibility and prevented victims from receiving a timely and appropriate response regarding the events and the perpetrators.

15. The cases monitored for over two years, while not constituting a significant sample in terms of the total number of serious human rights violations that occurred in Colombia

² United Nations Human Rights Committee, *General Comment No. 31*, UN doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004).

³ *Estudio de casos a la luz del principio de complementariedad del Estatuto de Roma: Mecanismos de impunidad en la Justicia colombiana* (2016), online: http://www.asfcanada.ca/uploads/publications/uploaded_2-diagramacion-final-libro-asf-impunidad-web-pdf-108.pdf (Spanish only).

⁴ So-called “false positives” are homicides of civilians systematically perpetrated by members of the Armed Forces, which resulted in slain bodies being disguised as enemy combatants and presented as such to their hierarchy and the public to bolster their record. See: LWBC *The Principle of Complementarity in the Rome Statute and the Colombian Situation: A Case that Demands More Than a “Positive” Approach* (2012), online: http://www.asfcanada.ca/uploads/publications/uploaded_asfc-rapport-complementarite-anglais-2012-05-29-pdf-34.pdf.



during the reference period of this review, nonetheless made it possible to identify obstacles and mechanisms likely to perpetuate impunity common to these trials and, as such, to assess the quality of the trials and the will to investigate, prosecute and punish the perpetrators of these acts.

16. In evaluating progress and setbacks in the area of ICCPR compliance, the analysis of the criminal proceedings undertaken in connection with alleged extrajudicial executions helps to determine if there is compliance with the obligation to ensure access to an effective remedy, and whether the investigation, prosecution and punishment of alleged perpetrators are progressing in a manner that is compatible with the rights recognized under the Covenant.

17. This obligation is not restricted to the existence of a legal framework adequate to ensure access to justice; it also extends to the availability of accessible and effective remedies to substantiate the rights breached. Furthermore, as stated by the Committee, the objectives of the Covenant will not be achieved without fulfilling the obligation included in article 2 to adopt measures to prevent a violation from occurring. According to the Committee, the fact that violations continue is likely because the remedies do not function effectively in practice, and for this reason it asks States that are party to the Covenant to indicate *“the obstacles to the effectiveness of existing remedies”*⁵ in their periodic reports.

18. In its response to the list of questions prepared by the Committee, the Colombian State indicates only that the extrajudicial executions are categorized by the Attorney General’s Office as homicide of persons protected under IHL in compliance with Colombian criminal law, and reports that *“[t]here are 3,348 cases of homicides associated with acts by the public security forces for which proceedings are underway; 7,567 victims have been identified and 1,199 members of the public security forces have been convicted in these cases. According to information provided by the Attorney General’s Office, at least 2,154 cases are related to homicides falsely presented as combat deaths by members of the security forces.”*⁶

19. According to the Guidelines adopted by the Committee to assist States in preparing their reports, these documents should not be limited to legal standards: *“the factual situation and the practical availability, effect and implementation of remedies for violation*

⁵United Nations Human Rights Committee, *General Comment No. 31*, UN doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004), para 20.

⁶United Nations Human Rights Committee, *List of issues in relation to the seventh periodic report of Colombia – Addendum – Replies of Colombia to the list of issues*, UN doc. CCPR/C/COL/Q/7/Add.1 (18 August 2016), para 31.



of each relevant Covenant right should be explained and examples provided.”⁷ In view of the foregoing, in assessing criminal proceedings for extrajudicial executions, LWBC considers that by limiting itself to indicating a number of active cases without addressing the quality or effectiveness of these trials, the Colombian State is failing in its obligation as a State party to the ICCPR. For this reason, LWBC presents to the Committee the following information with the aim of contributing to the evaluation of setbacks regarding compliance with the obligation to investigate, prosecute and punish those responsible for serious human rights violations and/or serious breaches of IHL.

20. In the analysis conducted of the 11 cases of extrajudicial executions cited earlier, various elements were observed that indicate a lack of measures to ensure that criminal proceedings were effective and complied fully with the victims’ rights. These elements include similar practices of **i)** obstruction, delay, interference with or deviation of investigations, such as military custody; **ii)** maintenance on duty of Armed Forces personnel suspected of committing crimes; **iii)** concealment of information or delays in granting access; **iv)** the lodging of conflicts of jurisdiction and simultaneous opening of multiple investigations on the same offences; **v)** delay on the part of military criminal courts in handing over investigations to the ordinary courts, including omission in fulfilling writs ordering their delivery.⁸

21. Furthermore, the unjustified delays in conducting investigations and commencing criminal trials impede real and effective access to justice for victims. Of the 11 cases of extrajudicial executions monitored in the LWBC case study, only three were in the initial stages of oral proceedings for events that occurred between 2005 and 2008. The remaining eight cases, which dealt with events that occurred between 2006 and 2013, were only in the investigative or preparatory hearing phase, and two of these were still under military jurisdiction.

22. To illustrate the grave situation of the victims reported, in the case of one young man from the city of Bucaramanga who was killed by the armed forces and presented as a guerilla killed in combat in 2008 according to the confession of an army informer, the holding of the preparatory hearing was postponed 21 times from 2014 to 2015. As of

⁷United Nations Human Rights Committee, *Guidelines for the treaty-specific document to be submitted by states parties under article 40 of the International Covenant on Civil and Political Rights*, UN Doc. CCPR/C/2009/1 (22 November 2010), para 26.

⁸LWBC, *Estudio de casos a la luz del principio de complementariedad del Estatuto de Roma: Mecanismos de impunidad en la Justicia colombiana* (2016), online: http://www.asfcanada.ca/uploads/publications/uploaded_2-diagramacion-final-libro-asf-impunidad-web-pdf-108.pdf (Spanish only).



September 2016, the oral proceedings had not begun, despite the fact that the preparatory hearing had ended in December 2015.

23. Suggested questions

i) In light of the failures noted in the criminal proceedings for alleged instances of extrajudicial executions, such as unjustified delays, what concrete measures has the State taken or is it considering to improve the situation?

ii) Is there a strategy or institutional policy at the national level to investigate, prosecute and punish those responsible for extrajudicial executions in a genuine and independent manner? If one exists, what concrete measures are being taken or are being contemplated to implement that strategy or policy?

iii) Given the delays observed in cases of extrajudicial executions and the lack of access to information for victims generated by the conflicts between the ordinary justice system and the military criminal justice system, what directives or regulatory changes could be adopted by the State to avoid this type of dispute and improve the effectiveness of remedies?

24. Suggested recommendations

i) The State, particularly the Public Ministry, should actively intervene to avoid unjustified delays in cases of extrajudicial executions caused, for example by systematic requests for postponement lodged by the defence, and by changes and absence of the defendants.

ii) The Office of the Attorney General should have a strategy or national policy to investigate, prosecute and punish those responsible for extrajudicial executions in a genuine and independent manner, and provide training and tools for its application by judicial officials.

iii) The State should ensure restrictive application of penal military jurisdiction, ensuring that only crimes committed in active service and related to said service are heard by the military criminal justice system, thereby ensuring that cases of extrajudicial executions defined as “false positives” are referred to the ordinary justice system without requiring recourse to remedies to resolve conflicts of jurisdiction.



Article 14 ICCPR – Right to a fair trial and judicial independence

25. The right to be heard by an independent and impartial court is guaranteed under paragraph 1 of article 14 of the Covenant. This right includes guarantees pertaining to the security of tenure for serving judges; the conditions governing promotion, transfer, suspension and cessation of their functions; and the actual independence of the judiciary from political interference by the executive and legislative branches of government. To these ends, states should take specific measures to guarantee the independence of the judiciary as investigators, prosecutors and judges.⁹

26. One difficulty noted in the analysis of cases of extrajudicial executions is the discontinuity of criminal proceedings due to changes in prosecutors and judges, who are promoted, or transferred to other cities or jurisdictions at critical junctures in the proceedings. For example, in one “false positive” case that occurred in the department of Santander in 2008, the preparatory hearing was postponed for over a year due to a change of prosecutor and judges.¹⁰ In another case, involving the extrajudicial execution of an Awa indigenous man in the municipality of Tumaco in 2006, the file was reassigned three times within the Attorney General's Office, which resulted in delays in charging those allegedly responsible, despite repeated requests from the victim's representatives and the representative of the Public Ministry, the preliminary hearing still has not commenced, even though over a decade has passed since the events.¹¹

27. In Colombia, protection of judicial officials is generally a major challenge for the State. During interviews conducted with prosecutors responsible for extrajudicial execution cases in the cities of Cali, Bogotá and Bucaramanga for the purpose of the LWBC Cases Study, various threats, patterns of intimidation and aggression, as well as a lack of measures to guarantee security were underscored. The precarious situation in which judicial officials find themselves is not limited to persons in charge of cases of extrajudicial executions; it significantly affects the independence of the judiciary as a whole. According to the Corporación Fondo de Solidaridad con los Jueces Colombianos (Solidarity Fund with Colombian Judges – FASOL), at least 35 judicial officials were assassinated between 2010 and 2015.¹²

⁹ United Nations Human Rights Committee, *General Comment No. 32, Right to equality before courts and tribunals and to a fair trial*, UN doc. CCPR/C/GC/32 (23 August 2007).

¹⁰ LWBC 2016. Case study, op. cit. at note 3 above 96.

¹¹ *Idem* 107.

¹² See www.corpofasol.org.



28. In summary, although it is acknowledged, as the Colombian State indicates in its response to the list of questions prepared by the Committee, that there are a good number of cases of extrajudicial executions before the criminal courts or under investigation, these figures are not sufficient to demonstrate fulfillment by the State of its obligations pertaining to the rights found in the Covenant. The processes must be genuine, respect judicial independence and impartiality, and take place within a reasonable period of time that makes it possible to ensure equal and effective access to justice for victims. With all respect, LWBC feels that these requirements have not been fulfilled.

29. Suggested questions

- i) In light of the high risk experienced by judicial officials who are assigned to cases of serious human rights violations allegedly committed by armed groups, what concrete measures have been implemented by the Colombian State to ensure these professionals are able to perform their duties freely and without fear of reprisals?
- ii) Repeated changes in officials assigned to extrajudicial execution cases, both prosecutors and judges, are significant obstacles to an effective remedy for victims and affect judicial independence. How can the State, in particular the Office of the Attorney General and the Ministry of Justice, intervene to prevent this phenomenon and ensure better continuity in trials?

30. Suggested recommendations

- i) The State should provide judicial officials with remedies, institutional support and security measures appropriate to the particularities of each case and the associated level of risk in order to ensure the free exercise of their profession.
- ii) The Office of the Attorney General and the Judiciary should avoid repeated changes of officials or the transfer between judicial offices of files of extrajudicial execution cases in order to ensure the good development of investigation strategies. They should also take measures to mitigate the negative effects of administrative changes on criminal proceedings.

III. Measures adopted to guarantee that the agreements reached comply with Covenant obligations (art 2, ICCPR)

31. On August 24, 2016, delegates of the Colombian government and FARC-EP reached a Final Peace Agreement. Arrangements agreed upon include common mechanisms of transitional justice for serious crimes; non-custodial punishments in cases where criminal responsibility is acknowledged and the truth revealed; amnesty or pardon for political and related crimes; disarmament, demobilization and reintegration into Colombian society of members of the FARC-EP guerrilla, as well as guarantees allowing its participation in the political debate.

32. It is deduced from the obligation of the State to adopt the measures necessary to render the rights of the Covenant effective that the Colombian State will have to guarantee that the Final Peace Agreement complies with the Covenant obligations. If, once formally approved and implemented, the measures agreed upon in the Final Peace Agreement maintain the impunity of serious human rights violations and/or serious IHL infractions, the State would be in breach of the general obligation to guarantee the rights set forth in the ICCPR. For this reason, it is relevant to identify the challenges that could arise in implementing the measures agreed upon.

33. The measures aimed at upholding the rights of victims of serious violations of rights and/or serious IHL infractions were included in the Agreement on the Victims of the Conflict, pre-agreed on 15 December 2015 (Agreement on victims), and subsequently included in the Final Peace Agreement. These measures seek to uphold the rights of victims in a comprehensive manner and emerge as a limit to what is agreed upon in the Final Peace Agreement. They include creation of the Comprehensive System for Justice, Truth, Reparations and Non-Repetition (Sistema Integral de Justicia, Verdad, Reparación y No Repetición – SIVJRNR), the justice component being represented by the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz – JEP).¹³

34. Although the jurisdiction of the JEP has yet to be clearly defined, at a minimum, it could identify misconduct committed in the context of, due to and in direct or indirect relation to the armed conflict, especially with respect to conduct considered to be serious IHL infractions or serious human rights violations. At a minimum, the JEP could summon to appear guerrillas and agents of the State who have committed crimes related to and in the context of the conflict, and third-party civilians for financing or collaborating with paramilitary groups, for those people who played a determining or continuing role in committing crimes that fall within the possible jurisdiction of the JEP.¹⁴

¹³Final Peace Agreement (24 August 2016), 112–167.

¹⁴Final Peace Agreement (24 August 2016), 131, 134 and 135, paras 8, 32 and 33.



35. On the other hand, the parties have agreed to grant amnesty and pardon political and related crimes committed by people belonging to rebel groups, as well as any people who have been accused or convicted of political or related crimes by means of decisions handed down by the ordinary justice system.¹⁵ To guarantee that the agreements reached comply with Covenant obligations, the Colombian State is obliged to regulate actions related to political crime, in accordance with the prohibition of amnesty for serious human rights violations and/or serious breaches of international humanitarian law.

36. The JEP shall perform a specific legal assessment of the conduct that will differ from that done by the judicial or administrative authorities. The legal frameworks of reference will include primarily International Human Rights Law (IHRL) and International Humanitarian Law (IHL).¹⁶ To comply with the rights recognized in the Covenant, it will be necessary to pay attention to the due criminalization of conduct within the competence of the JEP. To this end, it will be important to define which crimes are considered to be serious human rights violations and/or IHL infractions, and to establish the manner in which the principle of legality would be encompassed in the criminalization of acts or omissions that, at the time they were committed, were not criminal under national law. The aim of this exercise is to guarantee the rights of defendants by the special court (art 14 and 15, ICCPR).

37. The JEP will be able to determine the order of the investigation and could waive prosecution in some cases by adopting selection and prioritization criteria.¹⁷ To ensure that adoption of the criteria indicated would be compatible with Covenant obligations, it would be necessary **i)** in cases selected and not selected by the JEP, to ensure effective access to out-of-court mechanisms that incorporate SIVJRN; **ii)** the selection and prioritization criteria should be defined in a restrictive sense as an exception, including the broadest possible application of criminal justice; **iii)** furthermore, impartiality and independence in the selection and prioritization of cases will have to be ensured, and the choice of cases will have to meet clear and exhaustive criteria that cannot aim at diminishing the responsibility of perpetrators of serious human rights violations and/or serious IHL infractions.

38. The JEP will be able to impose non-custodial sentences in cases of recognition of the truth and responsibility, and reduced prison sentences in cases of absence or belated

¹⁵ Ibid, 135–137, paras 37–44.

¹⁶ Ibid, 133, para 19.

¹⁷ Ibid, 142, para 50.c).

recognition of truth and responsibility.¹⁸ To ensure adoption of sentences that are compatible with the Covenant obligations, it will be necessary to evaluate the effective conditions for compliance of the sentence and the degree of compliance with the right of the victim to the truth, redress and guarantees of non-repetition. Furthermore, it will be necessary to ensure that the penalties proposed fulfill the restorative and reparative functions proposed.

39. To ensure the evaluation of criminal responsibility in the JEP is compatible with the Covenant obligations, **i)** the evaluation of criminal responsibility should not be more restrictive than that mandated in international law; **ii)** in cases of evaluation of criminal responsibility of agents of the State, there would have to be convergent and complementary application of IHL and IHRL¹⁹ that ensures an adequate legal framework to guarantee access to an effective remedy; **iii)** to the same end, the evaluation of criminal responsibility of agents of the State and evaluation of the legitimacy of the use of force will have to include the principles of distinction, proportionality and precaution, and ensure that the burden of proof to demonstrate the legitimacy lies on the party who committed the attack.²⁰

40. Suggested questions

- i) What measures are proposed to guarantee the transparency of the case selection and prioritization process falling within JEP jurisdiction?
- ii) What is the procedure for cases not selected that involve the commission of serious human rights violations and/or IHL infractions?
- iii) What powers would the victims have in criminal proceedings brought before the JEP, and what are the mechanisms to ensure said participation?
- iv) How would the principle of legality be encompassed in the criminalization of acts or omissions that, at the time they were committed, were not criminal under national law?

¹⁸ Ibid, 151–155.

¹⁹ United Nations Human Rights Committee, *General Comment No. 31*, UN doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004), para 11. Also see LWBC, *Negociaciones de Paz. Observaciones a los acuerdos parciales sobre víctimas en Colombia* (Peace negotiations: observations on the partial agreements on victims in Colombia) (2016), 34–35 (Spanish only).

²⁰ United Nations Human Rights Committee, *General Comment No. 31*, UN doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004), para 11. Also see LWBC, *Negociaciones de Paz. Observaciones a los acuerdos parciales sobre víctimas en Colombia* (2016), 40.

v) Does the JEP include forms of evaluation of criminal responsibility that are more restrictive than those applicable under international law?

41. Suggested recommendations

i) Criteria for selecting and prioritizing cases within JEP jurisdiction should be established in an exhaustive manner and justified to ensure the transparency of the selection process.

ii) The State should guarantee that the effective conditions of compliance of the alternative punishment to prison comply with the restorative functions proposed by the Final Peace Agreement.

iii) The State should ensure that, in the JEP, the evaluation of criminal responsibility is not more restrictive than under international law.

iv) In both cases not selected and selected by the JEP, the State should ensure an effective access to out-of-court mechanisms that incorporate SIVJRNRR.

IV. Internally displaced persons (arts. 2 and 12, ICCPR)

42. For the purpose of evaluating progress and setbacks in compliance with Decree 005 of 2009,²¹ with regard to the adoption of comprehensive prevention, protection and care of the Afro-Colombian population, and in relation to the measures adopted by the State of Colombia to prevent new cases of displacement, these issues will be addressed from the specific case of the Afro-Colombian communities displaced in the Collective Territory of Curvaradó.

43. In its response to the list of questions, the Colombian State indicated that it had worked, among other things, to build *Planes Específicos de Protección y Atención de las*

²¹ In the face of the highly vulnerable conditions and the repeated omission of State authorities to give timely and effective protection of the rights of the displaced population, the Constitutional Court of Colombia, through judgement T-025 of 2004, declared the existence of massive, prolonged and repeated violations of rights of internally displaced persons, attributable to a structural problem of the care policy, declaring an unconstitutional state of affairs ("*estado de cosas inconstitucional*"). To confirm that the authorities adopt the measures necessary to ensure effective enjoyment of fundamental human rights for the displaced population, the Court has issued a series of follow-up decrees. Decree 005 of 2000 is one of these decrees, the objective of which was to recognize the grave situation of displaced communities of African descent and to take specific actions to seek their protection.

Comunidades Negras (Specific Protection and Care Plans for Black Communities) and, in formulating the *Ruta Étnica de Protección para Comunidades Negras* (Ethnic Route of Protection for Black Communities), without specifically addressing the situation of vulnerability of communities belonging to the Collective Territory of Curvaradó.

44. The communities of Curvaradó were the subject of a series of interim measures adopted by the Inter-American Court of Human Rights (IACHR).²² These measures included a requirement that the Colombian State adopt mechanisms to protect life and personal integrity.

45. Throughout the process to follow up on the displacement situation by the Constitutional Court, the case of the community of Curvaradó has been pointed to as emblematic of the gravity of the situation of the displaced population in Colombia. By means of Decree 005 of 2009, the Constitutional Court ordered the Government of Colombia to adopt the measures mandated by the IACHR interim measures and established the obligation to submit bimonthly reports regarding actions taken, among other measures.

46. To develop its mandate in Colombia, LWBC has accompanied the displaced population of Curvaradó²³ and has monitored the criminal proceedings brought against several of the perpetrators of the forced displacement. As a result of visits to the community, LWBC has demonstrated the vulnerability and precariousness of the situation to which men, women and children of the Curvaradó are subject. Despite the existence of criminal sanctions against soldiers, politicians, businessmen and agents of the State responsible for the displacement of these communities,²⁴ the State has not guaranteed the conditions for return, including the conditions of security and effective participation of all people in the restitution process of the Collective Territory of Curvaradó.²⁵

²² Inter-American Court of Human Rights. Resolutions of 6 March 2003, 7 November 2004, 15 March 2005 and 7 February 2006, online: http://www.corteidh.or.cr/docs/medidas/jiguamiando_se_111.pdf (Spanish only).

²³ LWBC delegates travelled to the area on two occasions, on 5 and 6 September 2015, and on 27 and 28 August 2016.

²⁴ LWBC, *Una mirada al desplazamiento forzado, persecución penal, aparatos organizados de poder y restitución de tierras en el contexto colombiano* (An overview on forced displacement: penal prosecution, organized power apparatus and land restitution in the Colombian context) (2015), online: http://www.asfcanada.ca/uploads/publications/uploaded_informe-asfc-desplazamiento-forzado-2015-09-17-pdf-62.pdf (Spanish only).

²⁵ Inter-Church Justice and Peace Commission, *Ocupantes ilegales plantan para Unibán y Banacol, financiados con proyectos gubernamentales* (Illegal occupants plant for Unibán and Banacol, financed by government projects) (2 September 2016), online: <http://justiciaypazcolombia.com/Ocupantes-ilegales-plantan-para-Uniban-y-Banacol-financiados-con-proyectos> (Spanish only).



47. During the visit conducted by LWBC on 27 and 28 August 2016, together with other national and international human rights organizations and the victimized population, a meeting was organized in the hamlet of Cañamanso in Curvaradó to follow up on the land restitution process. According to testimony from villagers, the presence of commercial companies continues, as does their use of the land to develop agro-industrial projects, such as banana plantations and livestock farming. Furthermore, the communities present reported the persistence of s post-demobilization paramilitary groups, and attacks and death threats against inhabitants who reclaim their land.

48. Suggested questions

- i) What measures have been adopted by the Government of Columbia to guarantee effective participation in the restitution process for people belonging to the Collective Territory of Curvaradó?
- ii) What type of follow-up has there been by the State on the interim measures ordered by the ICHR?
- iii) In light of the situation of risk for communities belonging to the Collective Territory of Curvaradó, what measures have been taken to guarantee the life and integrity of its inhabitants?

49. Suggested recommendations

- i) The State should provide effective protection measures for the communities of Curvaradó and ensure the conditions for return, including effective participation in the land restitution process for all persons belonging to the Collective Territory of Curvaradó.