



## Situation in Colombia

### Interim Report

- November 2012 -

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## **Executive Summary**

1. The present interim report provides an overview of the Office of the Prosecutor's ("OTP" or "Office") preliminary examination of the Situation in Colombia. The report summarizes the analysis undertaken to date, including the Office's findings with respect to jurisdiction and admissibility, and outlines the key areas of continuing focus. It should be noted that the Office's interim reporting on preliminary examinations is generally presented under the rubric of the annual Report on Preliminary Examination Activities. The present, more detailed report is therefore exceptional in nature, in recognition of the high level of public interest generated by this examination. This interim report reaches no conclusion on whether an investigation should be opened: preliminary examination of the situation continues.

2. The Situation in Colombia has been under preliminary examination since June 2004. The OTP has received 114 communications under article 15 in relation to the situation in Colombia. Of these, 20 were manifestly outside the Court's jurisdiction and 94 are analysed in the context of the preliminary examination. On 2 March 2005, the Prosecutor informed the Government of Colombia that he had received information on alleged crimes committed in Colombia that could fall within the jurisdiction of the Court. Since then, the Prosecutor has requested and received additional information on (i) crimes within the jurisdiction of the International Criminal Court ("ICC" or "Court") and (ii) the status of national proceedings.

### *Jurisdiction*

3. The Court may exercise its jurisdiction over ICC crimes committed in the territory or by the nationals of Colombia since 1 November 2002, following Colombia's ratification of the Statute on 5 August 2002. However, the Court only has jurisdiction over war crimes since 1 November 2009, in accordance with Colombia's declaration pursuant to article 124 of the Rome Statute.

4. The Office has received and gathered information on a large number of alleged crimes within the jurisdiction of the Court, including murder, rape and other forms of sexual violence, forcible transfer of population, severe deprivation of physical liberty, torture, and enforced disappearance. The allegations, in particular, include targeted attacks against human rights defenders, public officials, trade unionists, teachers as well as members of indigenous and afro-colombian communities.

5. On the basis of the available information, and without prejudice to other possible crimes within the jurisdiction of the Court which may be identified in the future, the Office determined that there is a reasonable basis to believe that from 1 November 2002 to date, at a minimum the following acts constituting crimes against humanity have been committed by non-State actors, namely the

FARC, ELN and paramilitary groups: murder under article 7(1)(a) of the Statute; forcible transfer of population under article 7(1)(d) of the Statute; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law under article 7(1)(e) of the Statute; torture under article 7(1)(f) of the Statute; rape and other forms of sexual violence under article 7(1)(g) of the Statute. The required elements appear to be met for each group taken individually.

6. There is also a reasonable basis to believe that from 1 November 2009 to date, at a minimum the following acts constituting war crimes have been committed by the FARC and the ELN: murder pursuant to article 8(2)(c)(i) and attacking civilians pursuant to article 8(2)(e)(i); torture and cruel treatment pursuant to article 8(2)(c)(i) and outrages upon personal dignity pursuant to article 8(2)(c)(ii); taking of hostages pursuant to article 8(2)(c)(iii); rape and other forms of sexual violence pursuant to article 8(2)(e)(vi); conscripting, enlisting and using children to participate actively in hostilities pursuant to article 8(2)(e)(vii).

7. Because paramilitary armed groups demobilized as of 2006, they are not considered a party to the armed conflict during the period over which the ICC has jurisdiction over war crimes. Nonetheless, the Office continues to analyse whether so called 'successor paramilitary groups' or 'new illegal armed groups' could qualify as organised armed groups that are parties to the armed conflict or would satisfy the requirements of organisational policy for the purpose of crimes against humanity. The Government of Colombia refers to these groups as criminal bands (*bandas criminales* or BACRIM), and does not consider them as organized armed groups that are parties to the armed conflict.

8. State actors, in particular members of the Colombian army, have also allegedly deliberately killed thousands of civilians to bolster success rates in the context of the internal armed conflict and to obtain monetary profit from the State's funds. Executed civilians were reported as guerrillas killed in combat after alterations of the crime scene. Allegedly, these killings, also known as '*falsos positivos*' (false positives), started during the 1980s and occurred with greatest frequency from 2004 until 2008. The available information indicates that these killings were carried out by members of the armed forces, at times operating jointly with paramilitaries and civilians, as a part of an attack directed against civilians in different parts of Colombia. Killings were in some cases preceded by arbitrary detentions, torture and other forms of ill-treatment.

9. There is a reasonable basis to believe that the acts described above were committed pursuant to a policy adopted at least at the level of certain brigades within the armed forces, constituting the existence of a State or organizational policy to commit such crimes. As Chambers of the Court have found, "a State policy does not need to have been conceived at the highest level of State machinery but may have been adopted by regional or local organs of the State. Hence, a policy adopted by regional or even local organs of the State could satisfy

the requirement of a State policy.”<sup>1</sup> The Office continues to analyse information on whether such a policy may have extended to higher levels within the State apparatus. Accordingly, on the basis of the available information, and without prejudice to other possible crimes within the jurisdiction of the Court which may be identified in future, the Office determined that there is a reasonable basis to believe that, since 1 November 2002, at a minimum the following acts constituting crimes against humanity have been committed by organs of the State: murder under article 7(1)(a) of the Statute; enforced disappearance under article 7(1)(i) of the Statute. The Office continues to analyse whether there is a reasonable basis to believe that torture was committed in ‘false positive’ cases in a systematic or widespread manner and as part of an organizational policy.

10. The available information further provides a reasonable basis to believe that in the period from 1 November 2009 to date, members of State forces have committed at a minimum the following acts constituting war crimes: murder pursuant to article 8(2)(c)(i) and attacking civilians pursuant to article 8(2)(e)(i); torture and cruel treatment pursuant to article 8(2)(c)(i) and outrages upon personal dignity pursuant to article 8(2)(c)(ii); rape and other forms of sexual violence pursuant to article 8(2)(e)(vi).

#### *Admissibility*

11. The Colombian authorities have been and are currently conducting a large number of proceedings against members of different groups identified above for conduct which constitutes a crime within the jurisdiction of the Court. Proceedings have been initiated and convictions have been issued against leaders of the FARC and ELN guerrilla armed groups, senior paramilitary leaders, army officials, and politicians with alleged links to armed groups. The proceedings concerned have been conducted under the ordinary criminal justice system as well as under Law 975 of 2005, popularly known as the Justice and Peace Law (*Ley de Justicia y Paz*, hereinafter “JPL”) – a transitional justice mechanism designed to encourage paramilitaries to demobilize and to confess their crimes in exchange for reduced sentences. Accordingly, the focus of the Office’s preliminary examination and interaction with the Colombian authorities has been to ascertain whether proceedings have been prioritized against those who appear to bear the greatest responsibility for the most serious crimes within the jurisdiction of the Court and whether such proceedings are genuine.

12. The information available indicates that the national authorities have conducted relevant proceedings against those who appear to bear the greatest

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<sup>1</sup> *Situation in the Republic of Kenya*, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya,” 31 March 2010, ICC-01/09-19-Corr, para. 89; *Situation in the Republic of Cote d’Ivoire*, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Cote d’Ivoire,” 3 October 2011, ICC-02/11-14-Corr, p. 20, para. 45. See also ICTY, *Prosecutor v. Blaskic*, Judgement, 3 March 2000, IT-95-14-T, p. 69, para. 205.

responsibility for the most serious crimes from among members of the FARC and ELN. According to the information available, a large number of FARC and ELN members, including senior leaders, have been the subject of national proceedings under the ordinary criminal justice system in Colombia. Thus far, 218 FARC and 28 ELN members have been convicted of conduct that constitutes a crime within the jurisdiction of the Court, including killing, forcible displacement, hostage-taking, torture and child recruitment. A number of senior leaders, including the first and second in command of the FARC and the ELN, were also convicted *in absentia*. The information available indicates that eight current or former members of the FARC Secretariat, its highest leadership body, and four current members of ELN's Central Command, have been convicted *in absentia*. Subject to the appropriate execution of sentences of those convicted *in absentia*, the Office has no reason at this stage to doubt the genuineness of such proceedings.

13. Many demobilized members of paramilitary groups have also been the subject of national proceedings, including a significant number of senior leaders. At the time of writing, 14 individuals have been convicted and sentenced under the JPL framework, of whom seven were leaders or commanders of paramilitary units. In addition to proceedings under the JPL system, 23 paramilitary leaders have been convicted under the ordinary justice system. Available information indicates that out of 57 leaders or commanders of paramilitary armed groups, 46 are still alive, of whom 30 have been convicted in respect of conduct which constitutes a crime within the jurisdiction of the ICC, including murders, forced displacement, enforced disappearances, abductions and child recruitment. At least 15 of the 30 convictions are for crimes that also fall under the ICC's temporal jurisdiction, i.e., since 1 November 2002. Of the 30 paramilitary leaders convicted, 26 were convicted for murder, 11 for forcible displacement, six for abductions, three for child recruitment, and two for rape. Another 13 are the subject of ongoing proceedings (eight under JPL and five under the ordinary system).

14. Although the progress made in investigations under the JPL framework has been slower than might have been expected in a confession-based process, the Office does not at this stage consider that the delays in reaching a conclusion to criminal proceedings necessarily indicate a lack of willingness or ability. The Office recognizes the complexity of the endeavour in the particular circumstances of demobilization. Acknowledging that the determination of how to prioritize cases is not straightforward, the Office welcomes the issuance of Directive 0001 of 2012 by the Colombian Attorney General. The Office continues to assess whether cases have been prioritized against individuals who contributed to the emergence, consolidation and expansion of paramilitary groups, taking into account the above-mentioned directive.

15. In this regard, the Office also notes the efforts of JPL Chambers and the Supreme Court in uncovering and investigating agreements between paramilitaries and certain members of the national congress and other public officials – a phenomenon also known as *parapolitics*. For instance, by August 2012

over 50 former congressmen had been convicted by the Supreme Court for promoting illegal armed groups pursuant to an agreement with an illegal armed group.<sup>2</sup> In a few cases, the Colombian Supreme Court has found that some former public officials were also responsible for violent crimes or has ordered further investigations. The nature of these agreements continues to be assessed by the Office in the context of principal and accessory liability for alleged crimes committed by paramilitary armed groups.

16. In relation to allegations against State security forces, the Office notes that numerous members of the armed forces have been subjected to disciplinary measures and criminal proceedings, including convictions and prison sentences issued, and that prosecutions and trials are ongoing. The OTP will continue to examine whether these proceedings ultimately focus on the alleged responsibility of those at senior levels for the occurrence of such crimes, either as perpetrators or in respect of their liability as commanders.

17. Information submitted by the Colombian authorities indicates that 207 members of the armed forces have been convicted for murder of civilians within ICC temporal jurisdiction with sentences ranging from nine to 51 years of imprisonment. In addition, the Office has information about 28 convictions for abetting and concealment of murder of civilians, with sentences ranging from two to six years of imprisonment. The Office of the Attorney General's Human Rights Unit is investigating 1,669 cases of false positives, in which the number of victims could reach 2,896.

18. With respect to commissioned officers of the armed forces, the Office has gathered information on 52 convictions rendered in regard to alleged false positives incidents with sentences between 24 months and 51 years of imprisonment. The convictions are against one colonel, three lieutenant colonels, eight majors, 16 captains and 24 lieutenants.

19. There have also been a limited number of proceedings concerning rape and other forms of sexual violence committed in the context of the armed conflict, despite the scale of the phenomenon. The available information indicates that to date only four individuals (including two paramilitary leaders) have been convicted for rape or other forms of sexual violence. Both the Colombian Constitutional Court and United Nations Human Rights Committee have noted the inadequacy of prosecutorial and judicial activity in relation to these crimes. The same holds true for the crime of forced displacement in spite of efforts by the Office of the Attorney General to follow-up on injunctions by the Constitutional Court.

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<sup>2</sup> The main criminal offence charged is *concierto para delinquir*, defined in article 340 of the Colombian Penal Code.

20. On 19 June 2012, the Colombian Senate approved the Legal Framework for Peace (*Marco Legal para la Paz*), a bill establishing a transitional justice strategy that includes the prioritization and selection of cases against those bearing the greatest responsibility for crimes against humanity and war crimes. The bill also enabled the conditioned dropping of all other non-selected cases and the suspension of selected sentences. The Office notes the recent publication of Directive 0001 of 2012 of the Colombian Attorney General on prioritization of cases. The Office continues to follow closely the implementation of these measures.

21. The Office will pursue its exchange of communications with the Government of Colombia in regard to the issues identified above and will follow closely the issuance of bills attendant to the Legal Framework for Peace and their implementation. Likewise, the Office will also seek additional information on the reform of the legislative framework pertaining to the jurisdiction of military courts.

22. From this point onward, the preliminary examination of the Situation in Colombia will focus on: (i) follow-up on the Legal Framework for Peace and other relevant legislative developments, as well as jurisdictional aspects relating to the emergence of 'new illegal armed groups;' (ii) proceedings relating to the promotion and expansion of paramilitary groups; (iii) proceedings relating to forced displacement; (iv) proceedings relating to sexual crimes; and, (v) false positive cases.

## I. Introduction

23. Under article 15 of the Statute the Prosecutor may initiate investigations *proprio motu* on the basis of information on crimes within the jurisdiction of the Court, subject to authorisation from the Pre-Trial Chamber. In order to proceed, the Court must be satisfied that the information available provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed; that cases arising from the situation would be admissible; and that there are no substantial reasons to believe that it would not serve the interests of justice to proceed.<sup>3</sup> The specificity and credibility of information available to the Court must satisfy the requisite standard of proof of 'reasonable basis', which has been interpreted by Chambers to require "a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court 'has been or is being committed.'"<sup>4</sup>

24. In the context of the situation in Colombia, the Court may exercise its jurisdiction over ICC crimes committed in the territory or by nationals of Colombia since 1 November 2002, following Colombia's ratification of the Statute on 5 August 2002.<sup>5</sup> However, the Court only has jurisdiction over war crimes since 1 November 2009, in accordance with Colombia's declaration pursuant to article 124 of the Rome Statute.

25. The Republic of Colombia has experienced almost fifty years of violent conflict between government forces and rebel armed groups, as well as between such armed groups. The most significant actors include the so-called guerrilla armed groups the *Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo* ("FARC") and the *Ejército de Liberación Nacional* ("ELN"); paramilitary armed groups, sometimes referred to collectively as the *Autodefensas Unidas de Colombia* ("AUC"); and the national armed forces and the police.

26. The Office has received and gathered information on a large number of alleged crimes within the jurisdiction of the Court, including widespread acts of murder, rape and other forms of sexual violence, forcible transfer, severe deprivation of physical liberty or hostage taking, enforced disappearance, torture, and the conscription, enlistment and use of child soldiers.<sup>6</sup> The alleged victims of such crimes include human rights defenders, public officials, trade unionists, teachers as well as members of indigenous and afro-colombian communities. In

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<sup>3</sup> Article 53(1)(a)-(c), ICC Statute; Rule 48, ICC Rules of Procedure and Evidence. For further elaboration, see Draft Policy Paper on Preliminary Examinations (ICC-OTP, 4 October 2010).

<sup>4</sup> *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19-Corr, 31 March 2010, para. 35.

<sup>5</sup> As article 126 of the ICC Statute provides, the Statute shall enter into force for a ratifying State on the first day of the month after the 60<sup>th</sup> day following the deposit by that State of its instrument of ratification.

<sup>6</sup> As of September 2012, the Office had received 114 communications under article 15 of the Statute, of which 94 warranted further analysis.

carrying out its preliminary examination, the Office has also sought additional information from relevant States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources.<sup>7</sup>

27. On 2 March 2005, the Prosecutor informed the Government of Colombia that he had received information on alleged crimes committed in Colombia that could fall within the jurisdiction of the Court. Since then, the Office has focused on obtaining additional information on such crimes, as well as on the status of related national proceedings. In doing so, the Office has sought to determine whether national proceedings encompass persons who appear to bear the greatest responsibility for the most serious crimes and are genuine.

28. Numerous meetings have been held in this regard with the Colombian authorities, with the national prosecution service and members of the judiciary, as well as with members of civil society and academia. In October 2007 and August 2008, the Prosecutor led missions to Colombia to obtain further information on the status of national proceedings, while further missions have been undertaken by senior staff members of the Office. The Office has also maintained ongoing channels of communication with the Colombian authorities for the purpose of receiving updated information on national proceedings from the judicial authorities, including copies of judgments as well as information on ongoing and completed proceedings under the ordinary and Justice and Peace Law frameworks. The Office has also encouraged and engaged in public discourse on the principle of complementarity in Colombia, including in the context of its bi-annual roundtable with local and international non-governmental organizations and through its participation in external events.

29. The purpose of the present report is to summarize the analysis undertaken to date and to outline the key areas of continuing focus. This report reaches no conclusions on whether or not an investigation may be opened in the future. Preliminary examination of the situation continues.

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<sup>7</sup> Article 15(2), ICC Statute.

## II. Jurisdiction

30. In accordance with article 53(1)(a) of the Statute, the Prosecutor must determine whether there is a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed.<sup>8</sup>

### A. Alleged crimes against humanity

31. Based on the information available, there is a reasonable basis to believe that since 1 November 2002 acts constituting crimes against humanity have occurred within the situation in Colombia. In particular, the information available supports a finding in relation to: murder under article 7(1)(a); forcible transfer of population under article 7(1)(d); rape and other forms of sexual violence under article 7(1)(g); severe deprivation of physical liberty under article 7(1)(e); and enforced disappearance under article 7(1)(i) of the Statute. Members of both State and non-State actors appear to bear responsibility for one or more of these crimes.

32. The contextual elements of crimes against humanity are set out in the chapeau of article 7(1) as follows: “‘crimes against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Article 7(2)(a) of the Statute further indicates that “‘attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

33. Thus for a crime against humanity within the meaning of article 7 of the Statute, the attack consists of a course of conduct involving the multiple commission of acts directed against the civilian population as a whole and not against randomly selected individuals.<sup>9</sup>

34. The attack must be widespread or systematic in nature contrary to isolated or random acts of violence. In this regard, the adjective “widespread” refers to “the large-scale nature of the attack and the number of targeted persons,”<sup>10</sup> while the adjective “systematic” refers to the “organised nature of the acts of violence and the improbability of their random occurrence.”<sup>11</sup>

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<sup>8</sup> In accordance with article 15(4), the Pre-Trial Chamber must also consider whether the “the case appears to fall within the jurisdiction of the Court.” In the situation in the Republic of Kenya, the Chamber observed that this requirement would be understood as relating to ‘potential cases’ within the situation at stake. ICC-01/09-19-Corr, para 64. See below Section III (*Admissibility*).

<sup>9</sup> *Situation in the Republic of Cote d’Ivoire*, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Cote d’Ivoire,” 3 October 2011, ICC-02/11-14 (hereinafter “PTC-III Cote d’Ivoire Investigation Decision”), paras. 31-33.

<sup>10</sup> PTC-III Cote d’Ivoire Investigation Decision, para. 53.

<sup>11</sup> PTC-III Cote d’Ivoire Investigation Decision, para. 54.

35. The attack must also be conducted pursuant to or in furtherance of a State or organizational policy. The term State is self-explanatory, yet a State policy does not need to have been conceived at the highest level of State machinery but may have been adopted by regional or local organs of the State.<sup>12</sup>

36. Organizations not linked to a State may, for the purposes of the Statute, elaborate and carry out a policy to commit an attack against a civilian population. “Such a policy may be made either by groups of persons who govern a specific territory or by any organisation with the capability to commit a widespread or systematic attack against a civilian population. The policy need not be explicitly defined by the organizational group.”<sup>13</sup> The determination of whether a group qualifies as an “organization” under the Statute must be made on a case-by-case basis.<sup>14</sup>

### **1. Alleged crimes against humanity committed by non-State actors**

37. There is a reasonable basis to believe that each of the non-State actors under the analysis, the FARC, ELN and paramilitaries, have committed crimes against humanity. The required elements appear to be met for each group taken individually.

#### **a. Contextual elements of crimes against humanity**

##### *Attack directed against any civilian population*

38. The information available provides a reasonable basis to believe that large numbers of attacks have been carried out against the civilian population by FARC, ELN and paramilitary groups across different parts of Colombia; particularly in Antioquia, Bolivar, Casanare, Cauca, Arauca, Santander, Magdalena, Chocó, Norte de Santander, Putumayo, Sucre, and Valle.<sup>15</sup> The

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<sup>12</sup> PTC-III Cote d’Ivoire Investigation Decision, para. 45.

<sup>13</sup> *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Pre-Trial Chamber I, “Decision on the Confirmation of Charges,” Situation in the Democratic Republic of Congo, 30 September 2008, ICC-01/04-01/07-717, para. 396.

<sup>14</sup> PTC-III Cote d’Ivoire Investigation Decision, para. 46. The Chamber identified a number of factors which can be taken into account when determining the “organization”: “a) whether the group is under a responsible command, or has an established hierarchy; b) whether the group possesses the means to carry out a widespread or systematic attack against a civilian population; c) whether the group exercises control over part of the territory of the State; d) whether the group directed its criminal activities against the civilian population as a primary purpose; e) whether the group articulates, explicitly or otherwise, an intention to attack a civilian population; and f) whether the group is part of a larger group, which fulfills some or all of the abovementioned criteria.”

<sup>15</sup> “Annual Report of the Inter-American Commission on Human Rights 2002,” 7 March 2003, OEA/Ser.L/V/II.117, Doc. 1 rev. 1, (hereinafter “IACHR 2002 Annual Report”), Chap. IV, Colombia, paras. 16-31.

crimes have typically occurred in the context of efforts to exercise control over territories of strategic military and/or economic importance.<sup>16</sup>

39. Specific categories of the civilian population have, in particular, formed the target of such attacks, including community leaders,<sup>17</sup> indigenous persons and Afro-Colombians, in the form of mass killings, executions, sexual violence, and forced displacement.<sup>18</sup> Civilians have also been targeted based on their suspected or perceived affiliation with other armed groups or the State authorities; their suspected involvement in the narcotics industry; or for their refusal to cooperate with and/or opposition to particular armed groups. This includes human rights defenders, public officials, trade unionists, teachers and journalists.<sup>19</sup>

#### *State or organizational policy*

40. The attacks on the civilian population were not isolated or spontaneous acts of violence, but were committed pursuant to a policy developed by the leadership of each of the main non-State actors involved, namely the FARC, the ELN and the paramilitaries.

41. The FARC, and to a lesser extent the ELN, developed and focused their military operations on gaining control and exercising power over parts of Colombian territory which they could expropriate for political and financial gain.<sup>20</sup> Pursuant to this policy, the FARC and ELN launched widespread and systematic attacks against the civilian population with the aim of expropriating land and subsequently gaining political, economic and social control over the

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<sup>16</sup> "Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia," 28 February 2005, U.N. Doc. E/CN.4/2005/10, (hereinafter "UN OHCHR 2005 Annual Report"), p. 30, para. 121-122, p. 58, para. 51-52; "Annual Report of the Inter-American Commission on Human Rights 2004," 25 February 2005, OEA/Ser.L/V/II.122, Doc. 5 rev. 1, (hereinafter "IACHR 2004 Annual Report"), Chap. IV, Colombia, para. 24.

<sup>17</sup> "Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia," 17 February 2004, U.N. Doc. E/CN.4/2004/13 (hereinafter "UN OHCHR 2004 Annual Report"), p. 4, pp.25-26, para. 91, p. 47, para. 14.

<sup>18</sup> "Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia," 16 May 2006, U.N. Doc. E/CN.4/2006/9, (hereinafter "UN OHCHR 2006 Annual Report"), p. 17, paras. 61-62, p. 21, para. 84, p. 62, paras. 12-13; "Annual Report of the Inter-American Commission on Human Rights 2006," 3 March 2007, OEA/Ser.L/V/II.127, Doc. 4 rev. 1, (hereinafter "IACHR 2006 Annual Report"), Chapter IV, Colombia, paras. 40, 42.

<sup>19</sup> Observatorio del Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario, Reports from 2003 until 2010, *available at* <http://www.derechoshumanos.gov.co/Observatorio/Paginas/InformeAnual.aspx> (last accessed on 4 July 2012); "Annual Report of the Inter-American Commission on Human Rights 2011," 9 April 2012, (hereinafter "IACHR Annual Report 2011"), paras. 47-48; "Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia," 3 February 2011, U.N. Doc. A/HRC/16/22, (hereinafter "UN OHCHR 2011 Annual Report"), p. 7, para. 34.

<sup>20</sup> International Crisis Group, "Colombia: Prospects for Peace with the ELN," 4 October 2002, (hereinafter "ICG Prospects for Peace Report"), *available at* <http://www.crisisgroup.org/en/regions/latin-america-caribbean/andes/colombia/002-colombia-prospects-for-peace-with-the-eln.aspx> (last accessed 3 July 2012), pp. 7, 9.

targeted territory. In addition, the FARC and the ELN are responsible for the largest number of hostage-takings, constituting severe deprivation of liberty, for the purposes of economic extortion and political pressure.<sup>21</sup>

42. Paramilitary groups assisted the Colombian military in their fight against FARC and ELN.<sup>22</sup> Acts of violence appear to have been an integral part of the strategy of paramilitary groups.<sup>23</sup> According to the IACHR, members of the paramilitary units have been involved in the mass killings of civilians; selective assassinations of social leaders, trade unionists, human rights defenders, judicial officers, and journalists; acts of torture, harassment, and intimidation; and actions aimed at forcing the displacement of entire communities.<sup>24</sup> The policy to attack such civilians was reportedly designed to break any real or suspected links between civilians and the guerrilla.<sup>25</sup>

43. According to the information available, at least 45 leaders of the displaced population were assassinated from 2002 to 2011.<sup>26</sup> The IACHR observed that the family members of many community leaders have been deliberately targeted in order to deter them from seeking restitution of their land.<sup>27</sup>

44. Similarly, attacks against Afro-Colombian communities have reportedly been motivated by the fact that these communities live in resource-rich regions of Colombia which are considered to be of strategic importance by armed groups involved in narcotics production and trafficking. According to the National Association of Displaced Afro-Colombians (AFRODES), the murder of a number of Afro-Colombian leaders points to "a strategy of persecution and dismantling against the Afro-Colombian ethnic-territorial movement."<sup>28</sup> For example, according to Amnesty International, at the end of 2007, the FARC issued an ultimatum to all Community Council leaders in Nariño Department, giving them until April 2008 to disband their organizations or face death. The FARC have

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<sup>21</sup> UN OHCHR 2005 Annual Report, p. 27, para. 109; ICG Prospects for Peace Report, p. 9.

<sup>22</sup> "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston," Addendum, Mission to Colombia, U.N. Doc. A/HRC/14/24/Add.2, 31 March 2010 (hereinafter "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston"), Appendix B, p. 32.

<sup>23</sup> See e.g., Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Appendix B, p. 32.

<sup>24</sup> IACHR 2004 Annual Report, Chap. IV, Colombia, para. 14.

<sup>25</sup> Amnesty International describes the army-backed paramilitary strategy as involving a three-stage process of incursion, consolidation and legitimization. See Amnesty International, "The Paramilitaries in Medellín: Demobilization or Legalization?," 31 August 2005, pp. 9-10.

<sup>26</sup> IACHR 2011 Annual Report, p. 37, para. 122.

<sup>27</sup> "Second Report on the Situation of Human Rights Defenders in the Americas," Inter-American Commission on Human Rights, 31 December 2011, OEA/Ser.L/V/II, Doc. 66, (hereinafter "IACHR Second Report on HR Defenders"), p. 120, para. 293.

<sup>28</sup> "Report of the Independent Expert on Minorities: Preliminary note on the mission to Colombia," 15 March 2010, U.N. Doc. A/HRC/13/23/Add.3, (hereinafter "UN Independent Expert on Minorities Report"), p. 4, paras. 12-13; IACHR 2010 Annual Report, Chap. IV, Colombia, p. 396, para. 179, p. 397, para. 182.

sought to promote their own community organizations. Paramilitary groups in the area have also pressured Afro-Colombian communities to grow coca. As part of their coca-growing strategies, guerrilla and paramilitary groups have promoted the migration of “colonos” – non-Afro-Colombian campesinos from outside Nariño – into the area to grow coca.<sup>29</sup> Paramilitary groups have formalized their policy of attacking indigenous people in the Cauca Department by declaring them “military targets” and carrying out a sustained campaign of killings, attacks and intimidation.<sup>30</sup>

*Widespread or systematic nature of the attack*

45. According to the Government of Colombia’s Presidential Human Rights Programme, the number of civilians killed over the period 2003-2010 amounts to 3,166, including killings of indigenous persons, trade unionists, teachers, local authorities and civilians killed in massacres.<sup>31</sup> Non-governmental sources estimate that approximately 6,040 civilians have been killed in the context of the armed conflict from 2003 until 2009.<sup>32</sup> A large number of murders related to the armed conflict have allegedly been committed against specific groups within the civilian population, including members of indigenous and Afro-Colombian communities. Between 2002 and 2010, at least 1,120 persons belonging to indigenous communities were allegedly killed while thousands were reportedly made victims of forced displacement as a result of the armed conflict. There are also credible allegations that trade unionists and members of local authorities have been the target of conflict-related killings based on actual or perceived political affiliation. According to official figures from the Colombian Government, at least 423 such persons were killed between 2003 and 2010<sup>33</sup>.

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<sup>29</sup> Amnesty International, “Leave us in Peace: Targeting Civilians in Colombia’s Internal Armed Conflict,” 28 October 2008, (hereinafter “AI, Leave us in Peace”), available at <http://www.amnesty.org/en/library/info/AMR23/023/2008/en> (last accessed on 3 July 2012), pp. 57-58.

<sup>30</sup> Amnesty International, “The Struggle for Survival and Dignity: Human Rights Abuses against Indigenous Peoples in Colombia,” February 2010, p. 9, available at <http://www.amnesty.org/en/library/asset/AMR23/001/2010/en/29984719-a927-4ec9-a42a-0641b5865a60/amr230012010en.pdf>

<sup>31</sup> Observatorio del Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario, Reports from 2003 until 2010, available at <http://www.derechoshumanos.gov.co/Observatorio/Paginas/InformeAnual.aspx> (last accessed on 4 July 2012).

<sup>32</sup> Centro de Recursos Para el Análisis de Conflictos (CERAC), “Base de datos sobre Conflicto Armado Colombiano,” undated, available at <http://www.cerac.org.co/es/recursos/datosconflictoscolombia/> (last accessed on 3 July 2012).

<sup>33</sup> Observatorio del Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario, Reports from 2003 until 2010, available at <http://www.derechoshumanos.gov.co/Observatorio/Paginas/InformeAnual.aspx> (last accessed on 4 July 2012).

46. According to UNHCR, from 2005 to 2010, 52,521 persons belonging to indigenous communities were displaced.<sup>34</sup> The indigenous and Afro-Colombian communities most often targeted by the FARC, ELN and paramilitary groups were the Embera Chamí (Caldas), Wayuu (La Guajira), Wiwa (La Guajira), Kankuama and Kogui (Cesar), Páez (Cauca), Guambiana (Cauca), Toribío and Jambaló (Cauca), Guahíbo (Arauca), Awá (Nariño), Vistahermosa (Meta), Tame (Arauca), Cocorná (Antioquia), Valencia (Córdoba), Roberto Payán (Nariño), Coreguaje, Embera-Katío, Arhuaco, Pijao, Nukak Maku, the Guayaberos, the Hitnu groups as well as communities in Sierra Nevada de Santa Marta, Caquetá, Amazonía, Cauca and Chocó.<sup>35</sup>

47. According to records from the government agency 'Fondelibertad', in 2002 there were 1,708 victims of abductions.<sup>36</sup> By 2009, the number of victims decreased to about 160.<sup>37</sup> The parts of the country most affected by severe deprivation of physical liberty include Antioquia, Valle, Meta, Bolívar, Cauca, Meta, Huila, Cauca, Valle, Nariño and Tolima. Various disappearances appear to be related to forced recruitment, including of minors, by paramilitary groups in poor neighbourhoods of cities such as Bogotá, Medellín and Sincelejo.<sup>38</sup>

48. There had been 490 confessions of torture in the context of JPL proceedings until March 2011.<sup>39</sup> Over the years the percentage of reported torture cases attributed to paramilitary groups has decreased from 56% in 2002 to 40% in 2005.<sup>40</sup> Cases of torture ascribed to armed groups have increased over the years, rising to 20% of the cases in recent years.<sup>41</sup>

49. According to the First Survey on the Prevalence of Sexual Violence against Women in the Context of the Colombian Armed Conflict 2001-2009, at least 33,960 women in Colombia were victims of some form of sexual violence committed by armed groups in the areas of Antioquia, Cauca, Córdoba, Arauca, Nariño, Tolima,

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<sup>34</sup> UN High Commissioner for Refugees, "Colombia Situation: Indígenas," No.4, undated, (hereinafter "UNHCR Indígenas"), available at [http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/RefugiadosAmericas/Colombia/Situacion\\_Colombia\\_-\\_Pueblos\\_indigenas\\_2011](http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/RefugiadosAmericas/Colombia/Situacion_Colombia_-_Pueblos_indigenas_2011) (last accessed on 5 July 2012).

<sup>35</sup> UN OHCHR 2006 Annual Report, p. 17, paras. 61-62, p. 21, para. 84, p. 62, paras. 12-13, p 2, p. 17, para. 64, p. 61, para. 6; UN OHCHR 2005 Annual Report, p. 30, para. 122, p. 58, para. 51, p. 60, paras. 7-8.

<sup>36</sup> Fondelibertad, "Realidad de las Víctimas del Secuestro en Colombia," March 2010, (hereinafter "Fondelibertad, March 2010 Report"), available at [http://www.fondelibertad.gov.co/2/informe\\_secuestro/documentos/informe\\_realidad\\_secuestro\\_2010.pdf](http://www.fondelibertad.gov.co/2/informe_secuestro/documentos/informe_realidad_secuestro_2010.pdf) (last accessed on 5 July 2012), p.18.

<sup>37</sup> Fondelibertad, March 2010 Report, p.18.

<sup>38</sup> UN OHCHR 2005 Annual Report, pp. 28-29, para. 114.

<sup>39</sup> Information provided by Colombian authorities, September 2011.

<sup>40</sup> Comisión Colombiana de Juristas (CCJ), "Colombia: La metáfora del desmantelamiento de los grupos paramilitares: Segundo informe de balance sobre la aplicación de la Ley 975 de 2005," 15 April 2010, (hereinafter "CCJ Segundo Informe L975/2005"), available at [http://www.coljuristas.org/documentos/libros\\_e\\_informes/la\\_metafora.html](http://www.coljuristas.org/documentos/libros_e_informes/la_metafora.html) (last accessed on 5 July 2012), p. 23.

<sup>41</sup> CCJ Segundo Informe L975/2005, p. 23.

Risaralda, Quindío, Palmira (Valle del Cauca), Norte de Santander, and Valle.<sup>42</sup> More than 700 cases of rape and other forms of sexual violence against women have been reported before the Justice and Peace Unit.<sup>43</sup>

50. The large-scale commission of the crimes, the number of victims, and the organized nature of the acts of violence evidence the widespread and systematic character of the attacks against the Colombian civilian population carried out by the FARC, the ELN and paramilitary groups.

#### **b. Underlying acts constituting crimes against humanity**

51. On the basis of the available information, and without prejudice to other possible crimes within the jurisdiction of the Court which may be identified in future, the Office has determined that there is a reasonable basis to believe that from 1 November 2002 to date, at a minimum the following conduct has been committed by FARC, ELN and paramilitary groups:

- a. murder constituting a crime against humanity under article 7(1)(a) of the Statute;
- b. forcible transfer of population constituting a crime against humanity under article 7(1)(d) of the Statute;
- c. imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law under article 7(1)(e) of the Statute;
- d. torture constituting a crime against humanity under article 7(1)(f) of the Statute;
- e. rape and other forms of sexual violence constituting a crime against humanity under article 7(1)(g) of the Statute.

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<sup>42</sup> Campaign Rape and other Violence: Leave my Body Out of War, OXFAM International, "First Survey on the Prevalence of Sexual Violence against Women in the Context of the Colombian Armed Conflict, 2001-2009," January 2011, (hereinafter "OXFAM, Survey on Sexual Violence"), available at [http://www.peacewomen.org/portal\\_resources\\_resource.php?id=1425](http://www.peacewomen.org/portal_resources_resource.php?id=1425) (last accessed on 5 July 2012), pp. 13-14, 17. *But see* Francoise Roth, Tamy Guberek and Amelia Hoover Green, "Using Quantitative Data to Assess Conflict-Related Sexual Violence in Colombia: Challenges and Opportunities," 22 March 2011, available at [https://www.hrdag.org/resources/publications/SV-report\\_2011-04-26.pdf](https://www.hrdag.org/resources/publications/SV-report_2011-04-26.pdf) (last accessed on 14 August 2012), (examining challenges and shortcomings in collecting reliable data about conflict-related sexual violence in Colombia).

<sup>43</sup> *See* United Kingdom Foreign & Commonwealth Office, "Human Rights and Democracy: The 2011 Foreign and Commonwealth Office Report," April 2012, available at <http://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf> (last accessed on 14 August 2012), p. 213. *See also* Amnesty International, "This is what we Demand: Justice!," September 2011, available at [http://www.amnesty.nl/sites/default/files/public/1109\\_rap\\_colombia.pdf](http://www.amnesty.nl/sites/default/files/public/1109_rap_colombia.pdf) (hereinafter "AI, This is what we Demand: Justice!"), p.23, (last accessed on 14 August 2012). "Colombia - Amnesty International Report 2012," undated, available at <http://www.amnesty.org/en/region/colombia/report-2012#section-29-11> (last accessed on 14 August 2012).

## 1. Murder

52. The objective element of the crime of murder consists in the fact that the alleged conduct was “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”; and provided that the alleged act is part of a course of conduct involving the multiple commission of acts “pursuant to or in furtherance of a State or organizational policy to commit such attack.” The acts need not constitute a military attack.<sup>44</sup>

53. Reportedly, the FARC, ELN and paramilitary groups have carried out a series of attacks against the civilian population, including a high number of killings of civilians.<sup>45</sup> These groups are allegedly responsible for a large number of assassinations of social leaders, trade unionists, human rights activists, judicial officers, and journalists.<sup>46</sup>

### 1.1. Murders of indigenous people and Afro-descendants

54. A large number of victims of killings by armed groups include indigenous and Afro-Colombian communities, mainly their leaders. Reportedly, armed groups kill members of these communities in order to intimidate the population and to provoke the displacement of individuals, families or groups and thus, gain territorial control, or as retaliation for opposing their presence or for allowing the presence of other armed groups on their territories.<sup>47</sup> Allegedly, the Coreguaje, Wiwa, Awá, Kankuamo and Embera-Katío communities have suffered from high murder rates.<sup>48</sup> In the same manner, activists and community leaders are allegedly targeted for the reason that they are perceived as a challenge to the armed groups’ authority.<sup>49</sup>

55. FARC and ELN have been identified as the main perpetrators of murders of indigenous and Afro-Colombian communities. For instance, on 9 October 2007, the bodies of four peasants were found after being kidnapped by the ELN in Fortul Municipality, Arauca department.<sup>50</sup> Similarly, in March and August of the same year, the FARC and ELN allegedly killed more than 20 civilians in the same

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<sup>44</sup> Elements of Crimes, article 7.

<sup>45</sup> UN OHCHR 2005 Annual Report, p. 2; “Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia,” 5 March 2007, U.N. Doc. A/HRC/4/48, (hereinafter “UN OHCHR 2007 Annual Report”), p. 16, para. 68.

<sup>46</sup> IACHR 2004 Annual Report, Chap. IV, Colombia, para. 14.

<sup>47</sup> AI, *Leave us in Peace*, pp. 56-57.

<sup>48</sup> See Corte Constitucional de Colombia, *Auto* 004/2009, “Protección de derechos fundamentales de personas e indígenas desplazadas por el conflicto armado en el marco de superación del estado de cosas inconstitucional declarado en Sentencia T-025/04,” 26 January 2009, available at: <http://www.corteconstitucional.gov.co/relatoria/autos/2009/a004-09.htm>, para. 2.2.2.

<sup>49</sup> AI, *Leave us in Peace*, pp. 56-57.

<sup>50</sup> “Colombia - Amnesty International Report 2007,” undated, (hereinafter “AI 2007 Report”), available at <http://www.amnesty.org/en/region/colombia/report-2007> (last accessed on 5 July 2012).

department.<sup>51</sup> FARC has also been attributed responsibility for the killings of 10 Awá indigenous persons in Nariño, in February 2009. Reportedly, after killings have occurred, the FARC has ordered the civilian population not to report the crimes under threat of death.<sup>52</sup> On 6 March 2003, the FARC allegedly killed 5 members of the Murui indigenous community in La Tagua, Puerto Leguizamo municipality, Putumayo department.<sup>53</sup>

56. Paramilitary groups have also been attributed responsibility for high profile cases of murder of indigenous people and Afro-Colombians. For instance, on 5 May 2003 in the municipality of Tame, Arauca, paramilitary groups allegedly entered the indigenous reserves (*resguardos*) of Betoyes killed at least 3 members of the community and raped at least 3 girls.<sup>54</sup> The community attributed responsibility to paramilitary groups acting in collusion with elements of the armed forces.<sup>55</sup> In October 2003, paramilitaries reportedly killed three Kankuamo indigenous leaders in the Sierra Nevada de Santa María.<sup>56</sup> Similarly, in April 2004, 11 persons, members of the Wayuu community, were allegedly killed by paramilitaries in Bahía Portete, La Guajira.

### *1.2. Targeted killings of community leaders and activists*

57. According to the information available, at least 45 leaders of displaced populations seeking land restitution were assassinated from 2002 to 2011.<sup>57</sup> According to the National Trade Union Movement School, in 2010, 51 trade unionists were killed in Colombia; of these 29 were teachers.<sup>58</sup> The International Trade Union Confederation (ITUC) reported that of all countries in the world, Colombia is the one with the highest number of killings of persons associated

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<sup>51</sup> AI, 2007 Report.

<sup>52</sup> Amnesty International, "Tercera masacre contra la comunidad indígena Awá de Colombia en 2009," 28 August 2009, available at <http://www.amnesty.org/es/news-and-updates/third-mass-killing-colombia039s-aw%C3%A1-indigenous-peoples-2009-20090828> (last accessed 5 July 2012); Organización Nacional Indígena de Colombia (ONIC) "Informe de Comisión de Investigación Minga Humanitaria," 3 April 2009, available at <http://www.colectivodeabogados.org/spip.php?article1537> (last accessed on 5 July 2012).

<sup>53</sup> "Amnesty International Report 2004," 26 May 2004, (hereinafter "AI 2004 Report"), available at <http://www.unhcr.org/refworld/country,,AMNESTY,ANNUALREPORT,COL,,40b5a1f1c,0.html> (last accessed on 5 July 2012).

<sup>54</sup> Amnesty International, "Colombia: Scarred Bodies, Hidden Crimes: Sexual Violence against Women in the Armed Conflict," AMR 23/040/2004, 12 October 2004, (hereinafter "AI, Scarred Bodies Report"), available at <http://www.amnesty.org/en/library/asset/AMR23/040/2004/en/ec8e59b4-d598-11dd-bb24-1fb85fe8fa05/amr230402004en.pdf> (last accessed on 13 November 2012), pp. 17-18.

<sup>55</sup> Indymedia, 16 May 2003, available at <http://argentina.indymedia.org/news/2003/05/110316.php> (last accessed on 6 July 2012). See also, Indymedia, 14 May 2003, available at <http://madrid.indymedia.org/slash/articles/03/05/14/189211.shtml> (last accessed on 6 July 2012).

<sup>56</sup> AI, 2004 Report.

<sup>57</sup> IACHR Annual Report 2011, p. 37, para. 122; Inter-American Commission on Human Rights, "Second report on the Situation of Human Rights Defenders in the Americas," 31 December 2011, OEA/Ser.L/V/II, Doc. 66, (hereinafter "IACHR Second Report on HR Defenders"), p. 120, para. 293.

<sup>58</sup> IACHR Second Report on HR Defenders, p. 101, para. 264.

with a trade union, with 78 persons murdered in 2006, 39 victims in 2007, 49 victims in 2008 and 48 victims in 2009.<sup>59</sup>

58. FARC and ELN have been identified as the main perpetrators of targeted killings of community leaders and activists.<sup>60</sup> The FARC has allegedly killed members of Community Councils (*Consejos Comunitarios*) of Afro-Colombian communities in several parts of the country, including Chocó, Nariño, Cauca and Valle del Cauca departments, in an attempt to undermine their organizational structures.<sup>61</sup> In January 2011, two members of Los Manglares Community Council were murdered in López de Micay (Cauca), allegedly by members of the FARC.<sup>62</sup> Similarly, in February 2004, the ELN allegedly killed a teacher, and a peasant farmer in Remedios Municipality, Antioquia Department.<sup>63</sup>

59. Paramilitary groups have been attributed responsibility for high profile cases of murder of leaders and activists, such as human rights defenders. For example, in October 2008, Walberto Hoyos, a leader seeking the protection of collective land rights for the Afro-descendant communities of the Curvaradó River Basin, was killed by paramilitaries in Caño Manso.<sup>64</sup> Similarly, in August 2004, paramilitaries allegedly killed a Kankuamo leader, in Valledupar, Cesar Department.<sup>65</sup>

## 2. Forcible transfer of population<sup>66</sup>

60. The objective element of the crime of forced displacement of population consists in the fact that the perpetrator forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts. Moreover, the objective element

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<sup>59</sup> IACHR Second Report on HR Defenders, p. 101, para. 262.

<sup>60</sup> AI, *Leave us in Peace*, pp. 33, 64, 68.

<sup>61</sup> AI, *Leave us in Peace*, pp. 56-57.

<sup>62</sup> Washington Office on Latin America, "Recent Violations of Afro-Colombian Human Rights," 16 March 2011, available at [http://www.wola.org/publications/recent\\_violations\\_of\\_afro\\_colombian\\_human\\_rights](http://www.wola.org/publications/recent_violations_of_afro_colombian_human_rights) (last accessed on 5 July 2012).

<sup>63</sup> "Amnesty International Report 2005," 25 May 2005, (hereinafter "AI 2005 Report"), available at <http://www.unhcr.org/refworld/country,,AMNESTY,ANNUALREPORT,COL,,429b27dc20,0.html> (last accessed on 5 July 2012).

<sup>64</sup> Amnesty International, "Colombia: Killings of Indigenous and Afro-descendant Land Right Activists Must Stop," 21 October 2008, available at <http://www.amnesty.org/en/library/asset/AMR23/038/2008/en/2bb4f07d-a057-11dd-81c4-792550e655ec/amr230382008en.html> (last accessed on 5 July 2012).

<sup>65</sup> AI 2005 Report.

<sup>66</sup> According to article 7(2)(d), "deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law. Footnote 13 of the Elements of Crimes (article 7(1)(d)), specifies that the term "deported or forcibly transferred" is interchangeable with "forcibly displaced."

further requires that such person or persons were lawfully present in the area from which they were so transferred.<sup>67</sup>

61. Armed groups under the analysis, i.e. FARC, ELN and paramilitaries, have been identified as the main perpetrators of forced displacement in Colombia. The available information provides a reasonable basis to believe that these groups have caused displacement for various reasons, including the expansion of their strategic military presence, securing access routes, and establishing zones of political influence.<sup>68</sup> Colombians are also forced to flee as a result of threats and attacks, including assassinations of community leaders, by armed groups which suspect them of supporting the other side.<sup>69</sup> With regard to Afro-Colombian territories in particular, the UN independent expert on minority issues explained that these are strategically important for armed groups involved in narcotics production and trafficking, as well as in the context of newly emerging macro-economic development plans, referred to as “megaprojects”. According to the expert, these projects have been implemented with brutal forced displacement, mass violence and selected killings.<sup>70</sup> For example, in the case of the river basins of Curvarado and Jiguamiando, 3,000 Afro-Colombians were forcibly displaced from their collective territory by paramilitaries, narco-traffickers, and those seeking to acquire lands illegally for plantations and cattle ranching.<sup>71</sup>

62. Victims of forced displacement targeted by armed groups include Afro-Colombian and indigenous communities in the regions of Bolivar, Cauca, Sierra Nevada de Santa Marta, Serrania del Perija and vast areas of Antioquia, Tolima, Nariño, Putumayo, Caquetá, Norte de Santander, Meta, Putumayo, Santander, Sucre, Cordoba and Choco; civil servants forced to resign or abandon their place of residence because of the influence of armed groups; school teachers; members of medical missions; trade union leaders; members of the Church; and demobilized combatants.<sup>72</sup>

63. Forced displacement is caused by different coercive methods used by the FARC, ELN and paramilitaries, including direct threats, indirect threats, murders

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<sup>67</sup> Elements of Crimes, Article 7(1)(d), 1-2.

<sup>68</sup> Internal Displacement Monitoring Center (IDMC), “Colombia: Agents of Displacement,” 5 September 2011, available at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/BD93CC5FDE65C22BC12578FF004965E9?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/BD93CC5FDE65C22BC12578FF004965E9?OpenDocument) (last accessed 4 July 2012).

<sup>69</sup> Norwegian Refugee Council, “Profile of Internal Displacement: Colombia,” 4 February 2004, p. 8.

<sup>70</sup> “Megaprojects” have targeted these regions for one-crop agro-business investments including palm oil and banana cultivation, for mining concessions, and ranching and logging operations. UN Independent Expert on Minorities Report, p. 16, para. 68.

<sup>71</sup> UN Independent Expert on Minorities Report, p. 10, para. 38.

<sup>72</sup> IACHR 2002 Annual Report, Chap. IV, Colombia, para. 35; IACHR 2010 Annual Report, Chap. IV, Colombia, p. 355, para. 52; IACHR 2011 Annual Report, p. 19, para. 66.

of family members, neighbours, and friends, massacres, torture, abductions, sexual violence, and other forms of attack against the targeted population.<sup>73</sup>

64. In the period from 2005 through 2010, FARC was allegedly responsible for approximately 32.2% of registered and 31% of unregistered cases of forced displacement out of the total number of (newly) displaced persons in that period.<sup>74</sup> Forced displacement committed by FARC continued to be widespread in 2011. The UN OHCHR reported that in January 2011 FARC forcibly displaced nearly 5,000 people from the area of Anorí, Antioquia.<sup>75</sup> FARC was further responsible for the forcible displacement of 15 indigenous families belonging to the Perancho Baquera community in the area Riosucio, Chocó. These families fled their homes after FARC murdered two members of their community on 23 January 2011.<sup>76</sup>

65. According to the *Comisión de Seguimiento A La Política Pública Sobre Desplazamiento Forzado*, the ELN was responsible for approximately 1.7% of registered and 2.3% of unregistered cases of forced displacement in the period from 2005 to 2010.<sup>77</sup> For example, after murdering a person accused of collaborating with the army on 1 May 2008 in Morales, Bolívar, ELN guerrillas threatened other persons in the town on the basis of the same accusations, which resulted in the displacement of approximately 18 families.<sup>78</sup>

66. In 2008, the State attributed 35 events that displaced 12,922 persons (58%) to the FARC and the ELN.<sup>79</sup>

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<sup>73</sup> Comisión de Seguimiento A La Política Pública Sobre Desplazamiento Forzado, “Tercer Informe de Verificación Sobre el Cumplimiento de Derechos de la Población en Situación de Desplazamiento,” December 2010, (hereinafter “Comisión de Seguimiento A La Política Pública Sobre Desplazamiento Forzado”), available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/F46AA9643AE9D7D5C125785B004B578A/\\$file/III+Informe+de+Verificaci%C3%B3n+CS+dic+910.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/F46AA9643AE9D7D5C125785B004B578A/$file/III+Informe+de+Verificaci%C3%B3n+CS+dic+910.pdf) (last accessed on 13 November 2012), pp. 33-34.

*Comisión de Seguimiento A La Política Pública Sobre Desplazamiento Forzado* is a Commission created by the Constitutional Court on 22 January 2004 (Sentence T-025) to follow up on institutional developments related to the human rights situation of the internally displaced population.

<sup>74</sup> Comisión de Seguimiento A La Política Pública Sobre Desplazamiento Forzado, pp. 33-34; CODHES, Departamentos de Llegada (1999-2010), 13 December 2010, p. 37. According to CODHES, the total number of (newly) displaced persons in the period from 2005 through 2010 was 1,623,193. According to the Accion Social this number was 1,523,394.

<sup>75</sup> “Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia,” 31 January 2012, U.N. Doc. A/HRC/19/21/Add.3, (hereinafter “UN OHCHR 2012 Annual Report”), p. 15, para. 85.

<sup>76</sup> UN OHCHR 2012 Annual Report, p. 28, para. 11(o).

<sup>77</sup> Comisión de Seguimiento A La Política Pública Sobre Desplazamiento Forzado, p. 37.

<sup>78</sup> “Report of the UN High Commissioner for Human Rights on the Human Rights Situation in Colombia,” 9 March 2009, U.N. Doc. A/HRC/10/32, (hereinafter “UN OHCHR 2009 Annual Report”), p. 28, para. 20.

<sup>79</sup> “Annual Report of the Inter-American Commission on Human Rights 2008,” 25 February 2009, OEA/Ser.L/V/II.134, Doc. 5, rev. 1, (hereinafter “IACHR 2008 Annual Report”), Chap. IV, Colombia, para. 79.

67. The available information shows that paramilitaries committed widespread and systematic acts of forcible displacement throughout the period over which the Court has temporal jurisdiction. For instance, between 1 and 7 May 2003 soldiers of the XVIII Brigade, wearing AUC armbands, reportedly entered the indigenous communities of Julieros, Velasqueros, Roqueroz, Genareros and Parreros, in Betoyes, Tame Municipality and attacked the local civilian population by killing and raping female members of the communities. These attacks forced hundreds to flee to nearby towns such as Saravena. Paramilitaries reportedly threatened members of these displaced communities saying that they would be killed if they returned.<sup>80</sup> According to the *Comisión de Seguimiento A La Política Pública Sobre Desplazamiento Forzado*, paramilitaries committed 22.6% of registered and 24.5% of unregistered cases of forced displacement in the period from 2005 to 2010.<sup>81</sup>

### *3. Imprisonment or other severe deprivation of physical liberty*

68. For the crime of severe deprivation of physical liberty under the Rome Statute to be constituted, the perpetrator must have severely deprived one or more persons of physical liberty and the gravity of the conduct must have been such that its occurrence would amount to a violation of fundamental rules of international law.

69. FARC, ELN and paramilitary groups have resorted to imprisonment in order to obtain resources to finance their activities in relation to the internal armed conflict in Colombia, to assert their presence and authority in a particular area or to exert pressure over the Colombian State in order to exchange them for guerrilla prisoners held by the authorities.<sup>82</sup>

70. Severe deprivation of liberty is reportedly committed through different methods, including abductions in multiple locations such as victims' residences, checkpoints or public places. While in captivity, victims are subjected to severe conditions, including long periods of detention, ill-treatment, deprivation of communication from the outside world, and placing of chains around their bodies.

71. The FARC has been attributed responsibility for high-profile cases of severe deprivation of liberty, such as former presidential candidate Ingrid Betancourt who was kidnapped in 2002 and held in captivity until July 2008.<sup>83</sup> In addition, several persons have been killed while in detention. For instance, in 2006, the FARC killed a police captain who had been taken hostage by the FARC

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<sup>80</sup> Amnesty International, "Colombia – A Laboratory of War: Repression and Violence in Arauca," 19 April 2004, available at <http://www.amnesty.org/en/library/info/AMR23/004/2004> (last accessed on 15 August 2012), p. 41.

<sup>81</sup> *Comisión de Seguimiento A La Política Pública Sobre Desplazamiento Forzado*, p. 37.

<sup>82</sup> AI, *Leave us in Peace*, p. 36.

<sup>83</sup> AI, *Leave us in Peace*, p. 36.

in Mitú in 1998.<sup>84</sup> On 21 December 2009, for the fifth time since 1987, the 68-year-old Governor of Caquetá was taken hostage by members of the FARC, while he was at home. During this action, two policemen were injured and one killed. The next day, members of the army and the police found the body of the Governor, with his throat cut by members of FARC, surrounded by explosives.<sup>85</sup>

72. The ELN has been attributed responsibility for several cases of severe deprivation of liberty. In January and February 2008 only, seven incidents of severe deprivation of liberty in Samaniego (Nariño) were attributed to the ELN.<sup>86</sup> Similarly, in July, five workers at a contractor for Ecopetrol were kidnapped in the town of Orú in Tibú, Norte de Santander, allegedly by the ELN.<sup>87</sup> On 15 January 2006 in Anserma (Caldas), members of the ELN took hostage a university student, whose body was found by the authorities on 16 September in an open grave in the countryside.<sup>88</sup>

73. Furthermore, paramilitary groups have been attributed responsibility for abductions and subsequent killings.<sup>89</sup> For instance, in 2004, the disappearance of two persons in Puerto Libertador (Córdoba) was attributed to the Northern Bloc of AUC, in the course of an action in which 10 hostages were taken, including a former municipal counsellor (*consejal*), 8 of whom were subsequently killed.<sup>90</sup>

74. Different sources<sup>91</sup> attributed to the FARC, ELN and paramilitaries cases of enforced disappearance, a crime defined in article 7(1)(i) of the Statute, which requires that the conduct was carried out by, or with the authorization, support or acquiescence of, a State or a political organization. However, further analysis is required to determine whether these armed groups may be considered as political organizations within the meaning of article 7(1)(i) of the Statute. Otherwise, these cases qualify as acts of severe deprivation of physical liberty committed under article 7(1)(e) as part of a widespread and systematic attack against the civilian population pursuant to the organizational policy of each armed group to commit such attack.

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<sup>84</sup> UN OHCHR 2007 Annual Report, p. 17, para. 77.

<sup>85</sup> "Report of the UN High Commissioner for Human Rights on the human rights situation in Colombia," 4 March 2010, U.N. Doc. A/HRC/13/72, (hereinafter "UN OHCHR 2010 Annual Report"), p. 28 (w).

<sup>86</sup> UN OHCHR 2009 Annual Report, p. 12, para. 39.

<sup>87</sup> UN OHCHR 2009 Annual Report, p. 30, para. 35.

<sup>88</sup> UN OHCHR 2007 Annual Report, p. 34, para. 64.

<sup>89</sup> International Peace Observatory, "Paramilitares admitieron haber asesinado a más de 1.100 secuestrados," 3 February 2007, available at <http://www.peaceobservatory.org/es/4852/paramilitares-admitieron-haber-asesinado-a-mas-de-1100-secuestrados> (last accessed on 5 July 2012); Semana, "Paras: En Valle hay 300 fosas comunes con restos de 800 ejecutados", undated, available at [http://www.semana.com/wf\\_ImprimirArticulo.aspx?IdArt=103946](http://www.semana.com/wf_ImprimirArticulo.aspx?IdArt=103946) (last accessed on 5 July 2012).

<sup>90</sup> UN OHCHR 2005 Annual Report, p. 29, para. 114.

<sup>91</sup> For example, see "Report of the Working Group on Enforced or Involuntary Disappearances – Addendum: Mission to Colombia," 17 January 2006, U.N. Doc. E/CN.4/2006/56/Add.1, p. 14, paras. 46-49; UN OHCHR 2007 Annual Report, p. 13, paras. 48-49.

#### 4. Torture

75. The objective element of the crime of torture involves that the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons who were in the custody or under the control of the perpetrator. It is required that such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.<sup>92</sup>

76. The UN received reports on acts of torture by members of armed groups, particularly by paramilitaries who resorted to torture and degrading or humiliating treatment, *inter alia*, in Antioquia, Cauca and Cesar.<sup>93</sup> Since 2003, victims of the paramilitaries were described as usually being: (i) people accused of being linked to rebel armed groups; (ii) social leaders and public officials opposed to the paramilitary groups' social, economic and political expansion; (iii) rivals for control of businesses (drug trafficking, theft of fuel, etc.); and (iv) victims of "social cleansing."<sup>94</sup> Some social groups appear particularly vulnerable to torture, such as women, children, youth, incarcerated persons, and lesbian, gay, bisexual and transgender persons, in particular in Antioquia.<sup>95</sup>

77. Incidents of torture were also attributed to the FARC. For example, from 4 to 6 February 2009 at Unipa, in Tortugal, FARC members grouped 17 people of Awá ethnicity, amongst them three minors, and accused them of cooperation with the Colombia's Army. Allegedly, they tied them up, tortured them and killed some of them.<sup>96</sup> In July 2005, members of the ELN also allegedly tortured and killed an army corporal in Tame, Arauca. According to the information received, the corporal was shot several times before he died, suffering bullet wounds from his fingers up to his head.<sup>97</sup>

#### 5. Rape and other forms of sexual violence

78. The FARC, the ELN and paramilitaries have been held responsible for the commission of various forms of sexual violence, including: rape; torture and sexual mutilation; forced prostitution and sexual slavery; and other forms of sexual violence.<sup>98</sup>

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<sup>92</sup> Elements of Crimes, Article 7(1)(f), 1-3.

<sup>93</sup> UN OHCHR 2006 Annual Report, p. 17, para. 63.

<sup>94</sup> For the purposes of this report, the term "social cleansing" is used to mean violent acts against specific persons for the purpose of seeding fear and gaining social control in communities. UN OHCHR 2004 Annual Report, p. 20, para. 56.

<sup>95</sup> UN OHCHR 2010 Annual Report, p. 11, paras. 49 - 51.

<sup>96</sup> FIDH, "La Federación Internacional de Derechos Humanos condena las massacres de por lo menos 27 indígenas Awá, perpetradas por las FARC los días 4 y 11 de febrero, en el departamento de Nariño," 13 February 2009, available at [http://www.fidh.org/IMG/article\\_PDF/article\\_a6341.pdf](http://www.fidh.org/IMG/article_PDF/article_a6341.pdf) (last accessed on 5 July 2012), p. 2.

<sup>97</sup> UN OHCHR 2006 Annual Report, p. 54, para. 68.

<sup>98</sup> "Conflict-related sexual violence: Report of the Secretary-General," 13 January 2012, U.N. Doc. A/66/657 - S/2012/33 (hereinafter "UNSG Conflict-Related Sexual Violence 2012 Report"), p. 5, para. 17, referring to

79. Targeted victims of sexual violence include women and girls who have been forcibly recruited; women whose relatives are members of armed groups or are viewed as having contacts with members of an opposing group; women obstructing forced recruitment of their sons and daughters, particularly by the FARC and the paramilitaries; women belonging to indigenous communities; men and women whose sexual orientation or gender identity is questioned; alleged carriers of sexually transmissible diseases such as HIV/AIDS; women members of human rights organizations and activists; women who refuse to obey instructions of the FARC.<sup>99</sup>

80. Amnesty International identified the following motives behind the commission of sexual violence by armed groups: to sow terror within communities to ease military control; to force people to flee to facilitate acquisition of territory; to wreak revenge on adversaries; to accumulate trophies of war; to exploit victims as sexual slaves; to injure the “enemy’s honour.”<sup>100</sup>

81. According to the First Survey on the Prevalence of Sexual Violence against Women in the Context of the Colombian Armed Conflict 2001-2009, victims of some types of sexual violence were assaulted and victimized by the use of a weapon to threaten them, including knives and firearms.<sup>101</sup>

### 5.1. Rape

82. The objective element of the crime of rape involves that the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The objective element further requires that the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.<sup>102</sup>

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*Auto* 092/2008, Corte Constitucional de Colombia, Sala Segunda, “Protección de los derechos fundamentales de las mujeres víctimas del desplazamiento forzado por causa del conflicto armado,” 14 April 2008; UN OHCHR 2005 Annual Report, p. 27, para. 106; pp. 61-62, para. 14; UN OHCHR 2010 Annual Report, p. 10, para. 44; AI, Scarred Bodies Report, p. 27.

<sup>99</sup> UNSG Conflict-Related Sexual Violence 2012 Report, pp. 5-6, para. 17; UN OHCHR 2004 Annual Report, p. 50, para. 29; UN OHCHR 2005 Annual Report, p. 62, para. 15; “Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia,” 29 February 2008, U.N. Doc. A/HRC/7/39, (hereinafter “UN OHCHR 2008 Annual Report”), p. 21, para. 70; AI, Scarred Bodies Report, pp. 4, 8, 22

<sup>100</sup> AI, Scarred Bodies Report, pp. 3, 7, 11, 17.

<sup>101</sup> OXFAM, Survey on Sexual Violence, Executive Summary, p. 27.

<sup>102</sup> Elements of Crimes, Article 7(1)(g)-1, 1-2.

83. The First Survey on the Prevalence of Sexual Violence against women in the context of the Colombian Armed Conflict 2001-2009 found that over the period at least 12,809 women were victims of rape committed by members of armed groups.<sup>103</sup>

84. For example, according to the UN Special Rapporteur on Violence against Women, a group of around 60 paramilitaries entered the city of San Benito Abad, Sucre on 23 August 2002 and after intimidating the inhabitants, allegedly raped four women in front of their children.<sup>104</sup> Amnesty International reported a number of other cases of rape.<sup>105</sup>

### *5.2. Sexual slavery and enforced prostitution*

85. The objective element of the crime of sexual slavery consists of the fact that the perpetrator exercised any or all the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty. Moreover, it is required that the perpetrator caused such person or persons to engage in one or more acts of a sexual nature.<sup>106</sup>

86. The objective element of the crime of enforced prostitution consists in the fact that the perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent. The objective element further requires that the perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.<sup>107</sup>

87. According to the Survey on the Prevalence of Sexual Violence against women in the context of the Colombian Armed Conflict 2001-2009, armed groups are responsible for forcing at least 1,575 women into prostitution while at least 9,388 women were victims of forced domestic labour.<sup>108</sup> In May 2008, a witness from Meta reported how paramilitaries in the area recruited under-age girls for prostitution. Many of these girls lived in the IDP camps next to the local military

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<sup>103</sup> OXFAM, Survey on Sexual Violence, Executive Summary, p. 16.

<sup>104</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Addendum: Communications to and from Governments," 18 March 2005, U.N. Doc. E/CN.4/2005/72/Add.1, pp. 28-29, para. 86.

<sup>105</sup> AI, This is what we Demand: Justice!

<sup>106</sup> Elements of Crimes, Article 7(1)(g)-2, 1-2.

<sup>107</sup> Elements of Crimes, Article 7(1)(g)-3, 1-2.

<sup>108</sup> OXFAM, Survey on Sexual Violence, Executive Summary, pp. 16 and 25.

base. Reportedly, soldiers from the base had sexual relations with girls from these camps, some of whom have become pregnant.<sup>109</sup>

88. The IACHR and Amnesty International have reported the kidnapping of girls as sexual slaves for commanders of armed groups. It has been alleged that paramilitary leaders in the Cauca region ordered the search of young girls (between 12 and 14 years old) to “live with them, provide sexual services and perform domestic duties.”<sup>110</sup> In 2004 the FARC was accused of sexual slavery in Tolima, Risaralda and Quindío while paramilitaries were responsible for cases of sexual slavery in Casanare.<sup>111</sup>

### *5.3. Other forms of sexual violence*

89. The objective element of the crime of sexual violence involves that a “perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person’s or persons’ incapacity to give genuine consent.” The objective element further requires that such conduct was of a gravity comparable to the other offences in article 7(1)(g) of the Statute.<sup>112</sup>

90. The IACHR reported in 2006 the use of sexual violence as a means of warfare by armed groups, i.e. FARC, ELN and paramilitaries, against their enemies, including for the purposes of obtaining information, terrorizing, punishing, intimidating and coercing women and members of their families and communities.<sup>113</sup> In 2010, a follow-up report indicated that armed groups continued to use sexual violence against women.<sup>114</sup>

91. According to the Survey on the Prevalence of Sexual Violence against Women in the Context of the Colombian Armed Conflict 2001-2009, armed groups such as the FARC, ELN and paramilitaries were responsible for inflicting the following forms of sexual violence: (i) at least 4,415 women were victims of forced pregnancy committed by armed groups;<sup>115</sup> (ii) 1,810 women were victims of forced abortions;<sup>116</sup> (iii) 8,166 women were victims of sexual harassment.<sup>117</sup>

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<sup>109</sup> AI, *Leave us in Peace*, p. 47.

<sup>110</sup> Inter-American Commission on Human Rights, “Violence and Discrimination against Women in the Armed Conflict in Colombia,” 18 October 2006, OEA/Ser.L/V/II. Doc. 67, (hereinafter “IACHR Violence and Discrimination against Women Report”), p. 35, para. 92.

<sup>111</sup> UN OHCHR 2005 Annual Report, pp. 57-58, para. 51; pp. 61-62, para. 14.

<sup>112</sup> Elements of Crimes, Article 7(1)(g)-6, 1-2.

<sup>113</sup> IACHR Violence and Discrimination against Women Report, pp. 19-20, para. 55.

<sup>114</sup> IACHR 2009 Annual Report, Chapter V, para. 11.

<sup>115</sup> OXFAM, *Survey on Sexual Violence*, Executive Summary, p. 19.

<sup>116</sup> OXFAM, *Survey on Sexual Violence*, Executive Summary, p. 20.

<sup>117</sup> OXFAM, *Survey on Sexual Violence*, Executive Summary, p. 24.

## 2. Alleged crimes against humanity committed by State actors

92. Allegedly, members of the Colombian army deliberately killed thousands of civilians to bolster success rates in the context of the internal armed conflict and to obtain monetary profit from the State's funds.

### a. Contextual elements of crimes against humanity

#### *Attack directed against any civilian population*

93. False positives cases — unlawful killings of civilians, staged by the security forces to look like lawful killings in combat of guerrillas or criminals — reportedly began during the 1980s.<sup>118</sup> However, they began occurring with a disturbing frequency across Colombia from 2004.<sup>119</sup> Executed civilians were reported as guerrillas killed in combat after alterations of the crime scene.<sup>120</sup> The available information indicates that these killings were carried out by members of the armed forces, at times operating jointly with paramilitaries and civilians, as a part of an attack directed against civilians in different parts of Colombia. Killings were in some cases preceded by arbitrary detentions, torture and other forms of ill-treatment.<sup>121</sup>

94. The available information further indicates that these attacks were directed against particular categories of civilians, who resided in remote areas and were considered to belong to a marginalized sector of the population (unemployed persons, considered as indigents and drug addicts). In some instances, civilians appeared to have been targeted also due to their political, social and community activities. Victims would include social and community leaders, indigenous persons, others persons accused of being collaborators or members of guerrilla forces, minors, peasants and persons with disabilities.<sup>122</sup> To locate their victims, the perpetrators would often use informants who were civilians, paramilitaries, police or military officers. Victims were reportedly approached by persons posing as recruiters with offers of employment and transportation to far away towns, where they were subsequently executed and

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<sup>118</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, p. 8, para. 10.

<sup>119</sup> Ibid.

<sup>120</sup> UN OHCHR 2007 Annual Report, p. 11, paras. 36-37.

<sup>121</sup> UN OHCHR 2004 Annual Report, p. 22, para. 72, p. 44, para. 2; UN OHCHR 2005 Annual Report, p. 23, para 86, p. 28, para 113; p. 48, para. 2, p.49, para. 9; UN OHCHR 2006 Annual Report, pp. 10-11, para. 27. *See also* Verdad Abierta, "Miembros del Ejército presentaban como 'falsos positivos' a víctimas de 'paras' en Meta," 4 May 2010, available at <http://www.verdadabierta.com/bandera/2431> (last accessed on 3 July 2012).

<sup>122</sup> "Annual Report of the Inter-American Commission on Human Rights 2006," 3 March 2007, OEA/Ser.L/V/II.127, Doc. 4 rev. 1, (hereinafter "IACHR 2006 Annual Report"), Chap. IV, Colombia, para. 25; "Annual Report of the Inter-American Commission on Human Rights 2007," 29 December 2007, OEA/Ser.L/V/II.130, Doc. 22, rev. 1, (hereinafter "IACHR 2007 Annual Report"), Chap. IV, Colombia, para. 43; IACHR 2008 Annual Report, Chap. IV, Colombia, para. 62; IACHR 2010 Annual Report, Chap. IV, Colombia, p. 345, para. 19.

reported as members of armed groups killed in combat, with intelligence reports prepared to substantiate such affiliations.<sup>123</sup>

*State or organizational policy*

95. There is a reasonable basis to believe that the acts described above were committed pursuant to a policy adopted at least at the level of certain brigades within the armed forces, constituting the existence of a State or organizational policy to commit such crimes. As Chambers of the Court have found, “a State policy does not need to have been conceived at the highest level of State machinery but may have been adopted by regional or local organs of the State. Hence, a policy adopted by regional or even local organs of the State could satisfy the requirement of a State policy.”<sup>124</sup> The Office continues to analyse information on whether such a policy may extend to higher levels within the State apparatus.

96. The Colombian armed forces are organized into eight divisions that report directly to the General Command of the Colombian armed forces. Each division is assigned to several departments of the country. Acting under each division are two to six brigades. Each brigade consists of up to nine battalions and tactical units. Furthermore, mobile brigades are created within divisions on an ad hoc basis for special operations.<sup>125</sup> Former army officers have admitted their units’ implication in the commission of these crimes.<sup>126</sup> Accounts from such members indicate that, at least at the brigade level, organized structures to commit false positives killings existed.<sup>127</sup>

97. The Office has also analysed incidents reported by *Centro de Investigación y Educación Popular* in its report “*Deuda con la Humanidad 2: 23 Años de Falsos Positivos (1988-2011)*.”<sup>128</sup> The report recorded 951 incidents of false positives involving 1,741 victims, committed between October 1988 and June 2011. The incidents registered indicate that they occurred with greatest frequency between 2002 and 2008, with at

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<sup>123</sup> UN OHCHR 2009 Annual Report, p. 8, para. 13; “Annual Report of the Inter-American Commission on Human Rights 2009,” 30 December 2009, OEA/Ser.L/V/II, Doc. 51, corr. 1, (hereinafter “IACHR 2009 Annual Report”), Chap. IV, Colombia, para. 68.

<sup>124</sup> *Situation in the Republic of Cote d’Ivoire*, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Cote d’Ivoire,” 3 October 2011, ICC-02/11-14-Corr, p. 20, para. 45. See also ICTY, *Prosecutor v. Blaskic*, Judgement, 3 March 2000, IT-95-14-T, p. 69, para. 205.

<sup>125</sup> Ejército Nacional de Colombia, “Divisiones del Ejército,” available at <http://www.ejercito.mil.co/index.php?idcategoria=89534> (last accessed on 2 July 2012).

<sup>126</sup> For a compilation of incidents attributed to those brigades and others, see Centro de Investigación y Educación Popular (CINEP). Programa Por la Paz, Noche y Niebla, “Caso Tipo: Colombia, Deuda con la Humanidad 2: 23 Años de Falsos Positivos (1988-2011)”, Banco de Datos, ISSN 0123-3637, Ed. Codice, 31 October 2011, (hereinafter “CINEP Falsos Positivos Report”), available at [http://issuu.com/cinepppp/docs/deuda\\_con\\_la\\_humanidad\\_web](http://issuu.com/cinepppp/docs/deuda_con_la_humanidad_web) (last accessed on 2 July 2012).

<sup>127</sup> Juzgado Penal Especializado del Circuito de Sincelajo, Sucre, Sentencia anticipada contra Luis Fernando Borja Aristizabal, Radicado 2011-00004-00, 23 June 2011; see also Juzgado Penal Especializado del Circuito de Sincelajo, Sucre, Sentencia condenada al Coronel Luis Fernando Borja Aristizabal, Radicado 2011-0010-00, 28 September 2011.

<sup>128</sup> CINEP Falsos Positivos Report.

least 709 such incidents reported.<sup>129</sup> The regions most affected during that period were Antioquia (198 incidents); Meta (62 incidents); Huila (48 incidents) and Norte de Santander (40 incidents).<sup>130</sup>

98. Responsibility has been attributed to numerous brigades. For instance, in the department of Antioquia, responsibility has been attributed to the 4<sup>th</sup>, 14<sup>th</sup> and 17<sup>th</sup> Brigades, acting under Division VII, for 78, 35 and 17 incidents respectively from December 2002 to March 2011. In the department of Huila, 45 incidents from July 2003 to July 2008 have been attributed to the 9<sup>th</sup> Brigade, acting under Division V. In Meta, responsibility has been attributed to the 7<sup>th</sup> and Mobile 12<sup>th</sup> Brigades, acting under Division IV, for 13 and nine incidents, respectively, from November 2002 to July 2008. In Norte de Santander, 15 and seven incidents from June 2004 to August 2008 have been attributed to the Mobile 15<sup>th</sup> and 30<sup>th</sup> Brigades, respectively, under Division II.<sup>131</sup>

99. Factors that could have motivated the widespread commission of false positives killings appear to include pressure within military units to produce results and demonstrate that ground was being gained against guerrillas and criminals. As the UN Special Rapporteur on extrajudicial, summary or arbitrary executions observed, “[w]hile senior Government officials disputed this and emphasized that killing civilians does not increase security, it is clear that within the military, success was often equated with enemy ‘kill counts’ - the number of FARC members and others killed in combat”.<sup>132</sup> His report goes on to explain that:

As security in Colombia began to improve from 2002, and as guerrillas retreated from populated areas, some military units found it more difficult to engage in combat. In such areas, some units were motivated to falsify combat kills. In other areas, the guerrillas were perceived by soldiers to be particularly dangerous and soldiers were reluctant to engage them in combat. It was “easier” to murder civilians. In still other areas, there are links between the military and drug traffickers and other organized criminal groups. Local military units do not want to engage in combat with the illegal groups with which they are cooperating, so killing

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<sup>129</sup> CINEP Falsos Positivos Report. *See also* Federation Internationale de Droits de l’Homme (FIDH) and Coordinacion Colombia, Europa y Estados Unidos (CCEEU), “Colombia: The War is Measured in Litres of Blood”, 29 May 2012, (hereinafter “FIDH and CCEEU, Colombia: The War is Measured in Litres of Blood”), available at [http://www.fidh.org/IMG/pdf/rapp\\_colombie\\_juin\\_2012\\_anglais\\_def.pdf](http://www.fidh.org/IMG/pdf/rapp_colombie_juin_2012_anglais_def.pdf) (last accessed on 13 November 2012), p. 16.

<sup>130</sup> CINEP Falsos Positivos Report. Other sources report that the departments of Cesar and Caqueta are also amongst the most affected regions. *See* FIDH and CCEEU, Colombia: The War is Measured in Litres of Blood, pp. 16-17.

<sup>131</sup> CINEP Falsos Positivos Report; *see also* FIDH and CCEEU, Colombia: The War is Measured in Litres of Blood, p. 26.

<sup>132</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, p. 12, para. 20.

civilians falsely alleged to be part of these groups make military units appear to be taking action.<sup>133</sup>

100. In relation to allegations of responsibility at higher levels within the armed forces, the information available indicates that high officials of the army were aware of false positive killings prior to 2002, but failed to take appropriate measures to address the allegations.<sup>134</sup> Indeed, allegations of false positive incidents were raised by the UN OHCHR in its annual reports addressing the human rights situation in Colombia in 2004,<sup>135</sup> 2005,<sup>136</sup> 2006<sup>137</sup> and 2007.<sup>138</sup> In the annual report of 2005, the UN OHCHR indicated that there had been an increase in allegations of extrajudicial executions attributable to members of the security forces and that most of them were executions that had been “portrayed by the authorities as guerrilla casualties in the course of combat, after alteration of the crime scene. Many were wrongly investigated by the military criminal justice system. Some cases were recorded in which the commanders themselves allegedly agreed to dress up the victims in guerrilla clothing in order to cover up the facts and simulate death in action.”<sup>139</sup> The UN OHCHR considered that “this type of conduct, its denial by certain authorities and the absence of any sanctions against the perpetrators raised the issue of the possible responsibility of senior officials.”<sup>140</sup> In some instances the authorities reportedly downplayed such accusations.<sup>141</sup> It has also been alleged that the military would sometimes open preliminary investigations immediately after a death in combat was reported in order to prevent future criminal investigations, rather than to establish the truth on the circumstances of the death.<sup>142</sup> The lack of accountability for violators as

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<sup>133</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, p. 12, para. 21.

<sup>134</sup> Colombia Reports, “Ex-Colombian army colonel confesses to 50 extrajudicial killings,” 29 February 2012, available at <http://colombiareports.com/colombia-news/news/22523-ex-colombian-army-colonel-confesses-to-50-extrajudicial-killings.html> (last accessed on 3 July 2012). See also FIDH and CCEEU, Colombia: The War is Measured in Litres of Blood, pp. 20-22.

<sup>135</sup> UN OHCHR 2004 Annual Report, p. 44, para. 2.

<sup>136</sup> UN OHCHR 2005 Annual Report, p. 23, para. 86; p. 29, para. 118; p. 48, paras. 3-4.

<sup>137</sup> UN OHCHR 2006 Annual Report, p. 11, paras. 28-29; p. 45, paras. 1-6; p. 50, para. 32.

<sup>138</sup> UN OHCHR 2007 Annual Report, p. 11, paras. 36-38.

<sup>139</sup> UN OHCHR 2006 Annual Report, p. 10, para. 25.

<sup>140</sup> UN OHCHR 2006 Annual Report, p. 10, para. 26.

<sup>141</sup> See e.g., UN OHCHR 2012 Annual Report p. 7, paras. 31-32; FIDH and CCEEU, Colombia: The War is Measured in Litres of Blood, pp. 48-49; The Georgetown Voice, “On the record with Ex-Colombian President Alvaro Uribe,” 16 September 2010, available at <http://georgetownvoice.com/2010/09/16/on-the-record-with-ex-colombian-president-alvaro-uribe/>; see also, BBC News, “Toxic fallout of Colombian scandal,” 7 May 2009, available at <http://news.bbc.co.uk/2/hi/americas/8038399.stm> (last accessed on 13 November 2012).

<sup>142</sup> See FIDH and CCEEU, Colombia. The War is measured in Litres of Blood, p. 39; Semana, “Los casos olvidados de los ‘falsos positivos,’” 17 July 2010, available at <http://www.semana.com/nacion/casos-olvidados-falsos-positivos/141863-3.aspx> (last accessed on 13 November 2012); “Ejecuciones extrajudiciales directamente atribuibles a la Fuerza Publica en Colombia, Julio 2006 a Junio 2007, Audiencia ante la Comision Interamericana de Derechos Humanos,” Observatorio de Derechos Humanos y Derecho Humanitario, Coordinacion Colombia-Europa-Estados Unidos (CCEEU), 10 October 2007 (hereinafter “CCEEU 2007 Extrajudicial Killings

well as the absence of effective control by army commanders or clear rules preventing and punishing these crimes could have contributed to the persistence of such practices.<sup>143</sup>

101. As the UN Special Rapporteur explained, “unlawful killings by the military are the result of a set of complex factors, which have both motivated individuals to commit killings, and fostered an environment in which such killings have been able to occur with general impunity.”<sup>144</sup> He noted that he had seen “no evidence to suggest that these killings were committed as part of an official policy or that they were ordered by senior Government officials.”<sup>145</sup> However, he received “detailed and credible reports of such killings from across the country, committed in numerous departments and by a large number of different military units.”<sup>146</sup> The Special Rapporteur considered that it was clear that “members of Colombia’s security forces have committed a significant number of unlawful killings and that the *falsos positivos* pattern has been repeated around the country. There have been too many killings of a similar nature to characterize them as isolated incidents carried out by individual rogue soldiers or units, or ‘bad apples.’”<sup>147</sup> As he observed, “[t]he sheer number of cases, their geographic spread, and the diversity of military units implicated, indicate that these killings were carried out in a more or less systematic fashion by significant elements within the military.”<sup>148</sup>

102. Military personnel were also granted rewards and other incentives based on reported success rates, including vacation time, medals or promotions but allegedly without sufficient internal oversight and supervision.<sup>149</sup> According to the UN Special Rapporteur on Extrajudicial Executions, Directive No. 29 (2005) provided for “payment of rewards to those who provide ‘timely and truthful information ... [that leads to, for example] the capture of overthrow in combat of

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Report”), available at

[http://www.cjlibertad.org/index.php?option=com\\_content&view=article&id=124:-ejecuciones-extrajudiciales-directamente-atribuibles-a-la-fuerza-publica-en-colombia-&catid=61:violaciones-dh&Itemid=96](http://www.cjlibertad.org/index.php?option=com_content&view=article&id=124:-ejecuciones-extrajudiciales-directamente-atribuibles-a-la-fuerza-publica-en-colombia-&catid=61:violaciones-dh&Itemid=96) (last accessed on 13 November 2012), p. 13.

<sup>143</sup> UN OHCHR 2009 Annual Report, p. 8, para. 14.

<sup>144</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, p. 12, para. 19.

<sup>145</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, p. 9, para. 14.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> “Statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial executions - Mission to Colombia 8-18 June 2009,” United Nations, Press Release, (hereinafter “Philip Alston Statement”), available at

<http://www.unhchr.ch/hurricane/hurricane.nsf/0/C6390E2F247BF1A7C12575D9007732FD?opendocument> (last accessed on 2 July 2012).

<sup>149</sup> UN OHCHR 2009 Annual Report, p. 8, paras. 13-14.

leaders of Illegal Armed Groups.”<sup>150</sup> This Directive is reportedly no longer in effect.<sup>151</sup>

103. Measures to regulate the system of rewards began to be adopted in June 2007, when the Ministry of Defence issued Ministerial Directive No. 010 instructing the armed forces to avoid killing protected persons and creating a committee to monitor complaints of extrajudicial executions.<sup>152</sup> Directives No. 2 (2008) and No. 01 (2009) made the system of controls more explicit, clarified that payment cannot be made to soldiers or public officials and that rewards can be made only for information leading to clear operational results and following approval by a technical follow-up or central committee.<sup>153</sup> In 2011, Permanent Directive No. 070 of the General Command of the Military Forces (25 August 2011) and Permanent Directive No. 019 of the National Police (25 May 2011) implemented a number of measures taken to combat impunity, that may be grouped into: (i) measures of support for judicial authorities; (ii) measures of strengthening discipline and control within the armed forces; and, (iii) evaluation measures for policy formulation on prevention and guarantees of the right to a defence and due process.<sup>154</sup>

104. In October 2008, the President removed three Generals from service, as well as over 24 more officers including four Colonels, and took other disciplinary measures for an “inexcusable lack of diligence on the part of officers in the rigorous investigation of alleged irregularities in their jurisdiction.”<sup>155</sup> In 2009, new rules of engagement and an Operational Law Handbook, containing important rules for the respect and protection of human rights, were issued by the Ministry of Defense.<sup>156</sup> Despite these measures, extrajudicial killings have been reported during 2011.<sup>157</sup>

105. According to the Court’s legal instruments, a State policy “may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack.”<sup>158</sup> However, “[t]he existence of such a policy cannot be inferred solely from the absence of governmental or organization action.”<sup>159</sup> Although the information currently available does not enable the identification of responsibility beyond the brigade level, the Office continues to

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<sup>150</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, p. 13 para. 24, footnote 18.

<sup>151</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, p. 13 para. 24.

<sup>152</sup> Colombia: The War is Measured in Litres of Blood, p. 31.

<sup>153</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, p. 13, para. 25, footnote 19.

<sup>154</sup> Communication from the Government of Colombia, received on 31 October 2012.

<sup>155</sup> UN OHCHR 2009 Annual Report, p. 7, para. 10. See also, UN OHCHR 2010 Annual Report, p. 9, para. 36.

<sup>156</sup> UN OHCHR 2010 Annual Report, p. 9, para. 36.

<sup>157</sup> UN OHCHR 2012 Annual Report, pp. 7-8, paras. 30-32.

<sup>158</sup> Elements of Crimes, article 7(3), footnote 6.

<sup>159</sup> Ibid.

analyze reported attempts of masking or tolerating, and allegations against higher officials of having indirectly encouraged the commission of such crimes.

*Widespread or systematic nature of the attack*

106. Cases of false positives have been described as “widespread”, increasingly common and not limited to a single military unit, but occurring in zones of responsibility of different military units over a large area of the country.<sup>160</sup>

107. The information reviewed indicates that killings described as false positives have occurred in Colombia in a regular manner for the last 25 years, with its highest peak in the number of victims reported from 2002 until 2008. The UN OHCHR indicated that more than 3,000 persons may have been victims of extrajudicial executions, primarily attributed to the Army. The majority of these were allegedly carried out between 2004 and 2008.<sup>161</sup> During this time, false positives incidents were recorded in numerous departments across the country, including Antioquia, Chocó, Norte de Santander, Sierra Nevada de Santa Marta, Huila, Meta, Cesar, Caqueta, Tolima, Arauca, La Guajira, Cauca, Valle, Cordoba, Putumayo, Casanare, Sucre, Bolivar, Nariño, Santander, Caldas, Magdalena, Bogota, Quindio and Cundinamarca.<sup>162</sup> One study reportedly concluded that between 2002 and 2006, extrajudicial killings attributed to members of the security forces took place in 27 of the nation’s 32 departments.<sup>163</sup>

108. The number of false positives cases began to decrease in 2009.<sup>164</sup> In March 2011, the UN OHCHR stated in its annual report that a “drastic reduction in the number of persons presented as killed in combat while under the custody of the Army, known as ‘false positives,’ was consolidated.”<sup>165</sup>

109. Moreover, cases of false positives appear to have followed three common elements: first, civilian victims are reportedly found in a location different and often far away from where the abduction and detention took place. Second, victims turn up wearing military fatigues, with weapons or other military equipment. Third, victims are often buried without first being identified, while some are buried in communal

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<sup>160</sup> UN OHCHR 2007 Annual Report, p. 11, paras. 37-38.

<sup>161</sup> UN OHCHR 2011 Annual Report, p. 6, paras. 25-26. The estimation of UN OHCHR was “based on the number of cases under investigation by the Attorney General, plus the active cases and the uncertain number of cases in the military justice system, taking into account that there is more than one victim in most of the cases.”

<sup>162</sup> CINEP Falsos Positivos Report; FIDH and CCEEU, Colombia: The War is Measured in Litres of Blood, p. 17.

<sup>163</sup> IACHR 2006 Annual Report, Chap. IV, Colombia, para. 24 (referring to a study conducted by the Human Rights and International Humanitarian Law Observatory of the Colombia–Europe–USA Coordination, “False Positives: Extrajudicial killings directly attributed to the security forces in Colombia, July 2002 to June 2006.”)

<sup>164</sup> IACHR 2009 Annual Report, Chap. IV, Colombia, p.19, para. 72.

<sup>165</sup> UN OHCHR 2011 Annual Report, p. 6, para. 25. In its 2012 annual report, the IACHR agreed with the UN’s conclusions. IACHR 2011 Annual Report, p. 6, para. 24.

graves.<sup>166</sup> To avoid tracing, their bodies are normally stripped of personal belongings and identification papers and buried as unidentified persons.<sup>167</sup> Killings were sometimes preceded by arbitrary detentions and torture.<sup>168</sup> Reportedly, when family members of victims discover what happened and take steps to seek justice, such as reporting a case to officials or discussing the case with the press, they often faced intimidation and threats.<sup>169</sup>

110. The large scale nature of the attacks, the number of victims, similarities amongst allegations of crimes reported across the country, the planning and organization that the conduct required to commit the killings and their subsequent reporting as deaths in combat indicate that 'false positive' killings amount to a widespread and systematic attack against the civilian population.

#### **b. Underlying acts constituting crimes against humanity**

111. On the basis of the available information, and without prejudice to other possible crimes within the jurisdiction of the Court which may be identified in future, the Office has determined that there is a reasonable basis to believe that, since 1 November 2002, at a minimum the following conduct has been committed by organs of the State:

- a. murder constituting a crime against humanity under article 7(1)(a) of the Statute;
- b. enforced disappearance constituting a crime against humanity under article 7(1)(i) of the Statute;

112. Information available indicates that in some cases, killings were preceded by acts of torture as a crime against humanity under article 7(1)(f) of the Statute. The Office continues to analyse whether there is a reasonable basis to believe that torture was committed in 'false positive' cases in a systematic and widespread manner and as part of an organizational policy.

#### *1. Murder & Enforced disappearances*

113. False positive incidents have been described as killings of civilians "staged by the security forces to look like lawful killings in combat of guerrillas or criminals."<sup>170</sup>

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<sup>166</sup> IACHR 2007 Annual Report, Chap. IV, Colombia, para. 43.

<sup>167</sup> UN OHCHR 2009 Annual Report, p. 8, para. 13; IACHR 2007 Annual Report, Chap. IV, Colombia, para. 43; IACHR 2008 Annual Report, Chap. IV, Colombia, para. 62; IACHR 2010 Annual Report, Chap. IV, Colombia, p. 345, para. 19.

<sup>168</sup> UN OHCHR 2006 Annual Report, p.11, para. 27.

<sup>169</sup> "Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Addendum, Follow-up to the mission to Colombia," 15 May 2012, United Nations, Doc. A/HRC/20/22/Add.2, (hereinafter "UN Special Rapporteur on extrajudicial executions, Christof Heyns, Follow-up to the mission to Colombia"), p. 7, para. 18.

<sup>170</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, p. 8, para. 10.

Typically, the victim is lured to another area by a false offer of work or the victim is arbitrarily detained. Allegations indicate that killings are often preceded by acts of torture and other forms of ill-treatment. After the murder, the crime scene is altered and the body is dressed up with military clothing in order to create the false impression that the victim was killed in combat. Victims are stripped of personal belongings and identification papers. Because the identity of the victim is deliberately concealed as part of the crime, false positives cases constitute both enforced disappearances as well as murder.<sup>171</sup>

114. Reportedly, Brigades 4, 14 and 17 acting under Division VII of the Colombian Armed Forces have committed a large number of 'false positive' killings from November 2002 until March 2011.<sup>172</sup> At least nine different units acting under Brigade 4 are allegedly responsible for 78 incidents from December 2002 until March 2011. At least four different battalions within Brigade 14 have been attributed responsibility for 17 incidents from November 2006 until July 2008. At least five different units within Brigade 17 have been attributed responsibility for 35 incidents from August 2003 until August 2008.

115. Reportedly, Brigade 7 and Mobile Brigade 12, acting under Division IV are responsible for the majority of false positive incidents in Meta from November 2002 until July 2008. At least one battalion within Brigade 7 has been attributed responsibility for 13 incidents, while operating under its command. At least 10 different units operating under Mobile Brigade 12 appear to be responsible for nine incidents.

116. Allegedly, Brigade 9 acting under Division V committed 45 false positive incidents in Huila from July 2003 until May 2008, out of a total of 48. At least five different units were operating under its command during that period of time.

117. Similarly, Mobile Brigade 15 and Brigade 30 acting under Division II are allegedly responsible for the largest number of false positive cases in Norte de Santander from June 2004 until August 2008. At least one battalion under Mobile Brigade 15 has been attributed responsibility for 15 incidents, and two different units operating under the command of Brigade 30 have been attributed responsibility for seven false positive incidents in the region.

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<sup>171</sup> For allegations of enforced disappearances to amount to a crime against humanity under article 7 of the Statute, the perpetrator must have arrested, detained or abducted one or more persons, or must have refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons by, or with the authorization, support or acquiescence of, a State or political organization. Such arrest, detention or abduction must be followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or such refusal must be preceded or accompanied by that deprivation of freedom. Elements of Crimes, article 7(1)(i).

<sup>172</sup> For a compilation of 951 incidents from 1984 until 2011, see CINEP Falsos Positivos Report.

118. Allegations brought against Brigade 4 are illustrative of the general *modus operandi* in false positive cases: victims are often peasants or minors, abducted from their houses or arrested at checkpoints or in public places, or offered false offers of work; victims are then brought to an agreed location, killed and their civilian appearance removed by changing their clothes to military uniforms and by placing weapons and other military equipment next to them.<sup>173</sup>

119. False positive victims have been found buried as unidentified persons in several locations in Colombia. For instance, in October 2008, the bodies of 17 young men dressed in military attire were found in Ocaña, Norte de Santander. The victims were young men with limited financial resources, residents of the municipality of Soacha, department of Cundinamarca. They were offered lucrative jobs near the Venezuelan border, where they were later killed by members of the 15<sup>th</sup> Mobile Brigade of Division VII of the Colombian Army.

120. After this incident, the Inspector General charged two colonels, two majors, one captain, four non-commissioned officers and 18 soldiers with kidnapping and murder.<sup>174</sup> The accusations indicated that the 15<sup>th</sup> Mobile Brigade, operating under the direct command of Lieutenant Colonel Gabriel de Jesús Rincón Amado, took the life of at least two persons on 27 January 2008 in Soacha, south of Bogotá. His findings concluded that the tasks of the brigade in the perpetration of the crime were divided in the following manner: some of the alleged perpetrators were devoted to give the appearance of legality to the operation, producing the necessary documents to archive, others were entrusted with getting the victims and locating the site agreed for the killing with the help of civilians, and others to physically carry out the murder.<sup>175</sup> After the killings, Mobile Brigade 15 removed the identity papers of the victims and their civilian appearance by dressing them in camouflage attire and by placing weapons and

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<sup>173</sup> Verdad Abierta, "Los hombres de 'Don Mario' cuentan como se hicieron falsos-positivos en el Meta," 7 May 2010, available at <http://verdadabierta.com/justicia-y-paz/2444> (last accessed on 2 July 2012). See also Verdad Abierta, "Miembros del Ejercito presentaban como 'falsos positivos' a victimas de 'paras' en Meta," 4 May 2010, available at <http://www.verdadabierta.com/la-historia/2431-ejercito-presentaba-como-falsos-positivos-a-victimas-de-las-auc-en-el-meta> (last accessed on 2 July 2012). See also, El Tiempo, "Paras liderados por 'don Mario' confiesan alianza con militares para realizar 'falsos positivos'," available at <http://m.eltiempo.com/colombia/paras-liderados-por-don-mario-confiesan-alianza-con-militares-para-realizar-falsos-positivos/7700840/1/home> (last accessed on 2 July 2012).

<sup>174</sup> Colombia, Procuraduría General de la Nación, "Pliego de cargos contra 28 miembros del Ejercito por homicidio de jóvenes del municipio de Soacha," 25 October 2010, (hereinafter "Procuraduría, pliego de cargos"), available at [http://www.procuraduria.gov.co/html/noticias\\_2010/noticias\\_765.htm](http://www.procuraduria.gov.co/html/noticias_2010/noticias_765.htm) (last accessed on 3 July 2012). See also El Tiempo, "Presion por resultados condujo a Falsos Positivos: Procuraduría," 20 October 2010, (hereinafter "El Tiempo, presion por resultados"), available at [http://www.eltiempo.com/justicia/presion-por-resultados-condujo-a-falsos-positivos-procuraduria\\_8164501-4](http://www.eltiempo.com/justicia/presion-por-resultados-condujo-a-falsos-positivos-procuraduria_8164501-4) (last accessed on 2 July 2012); Colombia Reports, "Government Pressure led to extra judicial killings said Inspector General," 21 October 2007, (hereinafter "Colombia Reports, Government pressure"), available at <http://colombiareports.com/colombia-news/news/12491-pressure-from-above-led-to-extrajudicial-killings-inspector-general.html> (last accessed on 2 July 2012).

<sup>175</sup> Unofficial translation from El Tiempo, presion por resultados; see also Procuraduría, pliego de cargos; Colombia Reports, Government pressure.

other military equipment next to their bodies. Mobil Brigade 15 then presented the victims as members of armed groups,<sup>176</sup> and later buried the victims in Ocaña, Norte de Santander.<sup>177</sup>

## 2. Torture

121. In some instances, false positive incidents allegedly included acts of torture prior to the killing of the victims. For example, on 21 February 2005, members of Brigade 17 killed five peasants and three children from San José de Apartadó, Antioquia and La Resbalosa, Córdoba and later reported them as insurgents.<sup>178</sup> Reportedly, during this incident Brigade 17 acted in conspiracy with members of the paramilitary group Bloque Heroes de Tolová.<sup>179</sup> Reportedly, the former paramilitary commander Jose Ever Veloza Garcia, alias “HH,” was approached by a high ranking officer in Turbo, Antioquia, and was offered two million pesos for a couple of persons that would be willing to provide testimony attributing responsibility to the FARC in judicial proceedings related to the incident.<sup>180</sup>

122. Reportedly, the bodies of the victims were found beheaded in a mass grave.<sup>181</sup> After exhumation of the mass grave, a judicial commission composed of officials from the Attorney General's Office and the Inspector General found that the dismembered bodies of the victims displayed visible signs of torture.<sup>182</sup>

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<sup>176</sup> This incident is also known as the Soacha incident. El Tiempo, *presion por resultados*; Colombia Reports, “Progress on the false positives cases: a case of false hope?,” 15 January 2010, *available at* <http://colombiareports.com/opinion/the-colombiamerican/7686-progress-on-the-false-positives-cases-just-a-case-of-false-hope.html> (last accessed on 2 July 2012); *see also* Colombia Reports, “Colombia soldiers sentenced to 55 years for killings of civilians,” 16 July 2011, *available at* <http://colombiareports.com/colombia-news/news/17685-colombian-soldiers-sentenced-to-55-years-for-killing-civilians.html> (last accessed on 2 July 2012).

<sup>177</sup> *See* El Tiempo, *presion por resultados*; *see also* Procuraduría, *pliego de cargos*; Colombia Reports, *Government pressure*.

<sup>178</sup> El Espectador, “Comunidad de Paz de San José de Apartadó, siete años clamando justicia,” 22 February 2012, *available at* <http://www.elespectador.com/noticias/paz/articulo-328230-comunidad-de-paz-de-san-jose-de-apartado-siete-anos-damando-justicia> (last accessed on 2 July 2012).

<sup>179</sup> *See* Verdad Abierta, “Los Cabos Sueltos de la Masacre de San Jose de Apartado,” 31 January 2012, (hereinafter “Verdad Abierta, cabos sueltos”), *available at* <http://www.verdadabierta.com/component/content/article/40-masacres/3818-aun-hay-cabos-sueltos-en-masacre-de-san-jose-de-apartado> (last accessed on 2 July 2012). Former paramilitary commander, Jose Ever Veloza Garcia, alias “HH,” stated in the course of initial statements under JPL that in 2005 Colonel Nestor Duque Lopez approached him in Turbo, Antioquia, and offered 2 millions pesos for a couple of persons that would be willing to testify attributing responsibility to the FARC in judicial proceedings related to the incident.

<sup>180</sup> *See* Verdad Abierta, *cabos sueltos*.

<sup>181</sup> *Ibid.*

<sup>182</sup> World Organisation Against Torture, “Colombia: LA OMCT rechaza medidas gubernamentales sobre la militarizacion de las Comunidades de Paz,” press release, 21 March 2005, *available at* <http://www.omct.org/es/urgent-campaigns/urgent-interventions/colombia/2005/03/d17414/> (last accessed on 2 July 2012).

## B. Alleged war crimes

123. The information available provides a reasonable basis to believe that conduct committed since 1 November 2009 in the context of a non-international armed conflict which continued in the territory of Colombia constitutes war crimes falling within the jurisdiction of the Court, including: murder under article 8(2)(c)(i) and attacking civilians under article 8(2)(e)(i); torture and cruel treatment under article 8(2)(c)(i); outrages upon personal dignity under article 8(2)(c)(ii); taking of hostages pursuant to article 8(2)(c)(iii); rape and other forms of sexual violence under article 8(2)(c)(vi); and conscription, enlistment and use of child soldiers under article 8(2)(e)(vii) of the Statute. The information available provides a reasonable basis to believe that individuals belonging to each of the different State and non-State actors involved in the armed conflict in Colombia appear to bear responsibility for one or more of the above listed crimes.

### *Contextual elements of war crimes*

124. The application of article 8 of the Rome Statute requires the existence of an armed conflict.<sup>183</sup> “An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.”<sup>184</sup>

125. “An armed conflict not of an international character is characterized by the outbreak of armed hostilities of a certain level of intensity, exceeding that of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature, and which takes place within the confines of a State territory.”<sup>185</sup> Thus, in order to distinguish a non-international armed conflict from less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the armed confrontation must reach (1) a minimum level of intensity, and (2) the parties involved in the conflict must show a minimum level of organization.

126. Intensity may be shown by factual indicators such as the scale, seriousness and increase of the attacks; type of operations; the mobilisation and distribution of weapons; length of time of combat operations; geographical expansion as well as whether the conflict has attracted the attention of the United Nations Security

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<sup>183</sup> See Elements of Crimes, second last element of each crime under article 8.

<sup>184</sup> *Prosecutor v. Thomas Lubanga Dyilo*, “Judgment pursuant to Article 74 of the Statute,” Situation in the Democratic Republic of the Congo, 14 March 2012, (hereinafter “Lubanga Judgment”), ICC-01/04-01/06-2842, para. 533 (referring to ICTY, *Prosecutor v. Tadic*, “Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction,” 2 October 1995, Case No. IT-94-1, para. 70).

<sup>185</sup> *Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo,” ICC-01/05-01/08-424, 15 June 2009, para. 231.

Council, and, if so, whether any resolutions on the matter have been passed.<sup>186</sup>

127. As to the requirement of organization, a number of factors to be assessed include: the force or group's internal hierarchy; the command structure and rules; the extent to which military equipment is available; the ability to plan military operations and put them into effect; and the extent, seriousness, and intensity of any military involvement.<sup>187</sup> Organized armed groups must have a sufficient degree of organization, in order to enable them to carry out protracted armed violence.<sup>188</sup>

128. During the time period over which the Court has jurisdiction over war crimes, i.e. since 1 November 2009, an armed conflict of a non-international character has been taking place in the territory of Colombia between armed groups, i.e. FARC and ELN, and the Government of Colombia. Both the FARC and the ELN exhibit a sufficient degree of organization, and have engaged in sustained military hostilities against the Colombian government of sufficient intensity to meet the threshold requirements for the existence of a non-international armed conflict. The persistence of a non-international armed conflict in the territory of Colombia was acknowledged in the 2011 Victim's Law<sup>189</sup> and by Colombian President Santos on 6 May 2011.<sup>190</sup> The existence of a non-international armed conflict has also been confirmed by observers such as the International Committee of the Red Cross.<sup>191</sup>

129. Due to the AUC's demobilization as of 2006, they are not considered a party to the armed conflict during the period over which the ICC has jurisdiction over war crimes.

130. However, new groups emerged in various parts of the country after the demobilization process of paramilitary groups began.<sup>192</sup> According to the UN OHCHR, well-known paramilitary leaders are, or have been, behind these

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<sup>186</sup> Lubanga Judgment, para. 538.

<sup>187</sup> Lubanga Judgment, para. 537.

<sup>188</sup> Lubanga Judgment, para. 536.

<sup>189</sup> Law No. 1448, "Por la cual se dictan medidas de atención y reparación integral a las víctimas de violaciones a los derechos humanos e infracciones al derecho internacional humanitario," 10 June 2011. Article 3 states: "For the purposes of this law, victims are those persons that individually or collectively have suffered damage for events that occurred after 1 January 1985, as a consequence of violations to International Humanitarian Law or for grave violations of International Human Rights, in the context of the internal armed conflict." [Unofficial translation]

<sup>190</sup> See Presidencia República de Colombia, "Reconocer conflicto armado interno no les da estatutos político a los terroristas," 6 May 2011, [http://wsp.presidencia.gov.co/Prensa/2011/Mayo/Paginas/20110506\\_10.aspx](http://wsp.presidencia.gov.co/Prensa/2011/Mayo/Paginas/20110506_10.aspx) (last accessed on 3 July 2012).

<sup>191</sup> See e.g., "Summary Report: Afghanistan, Colombia, Democratic Republic of the Congo, Georgia, Haiti, Lebanon, Liberia and the Philippines: Opinion Survey and In-Depth Research, 2009," International Committee of the Red Cross, available at <http://www.icrc.org/eng/assets/files/other/summary-report.pdf> (last accessed on 14 August 2012).

<sup>192</sup> Report of the Human Rights Committee, 10 October 2009, U.N. Doc. A/65/40, Vol. 1, p. 86, para. 9.

successor paramilitary groups or new illegal armed groups. Some of these groups are headed by former middle-ranking cadres from previous paramilitary groups such as the AUC while a number of low-level demobilized members operate in areas which were once zones of influence of the paramilitaries.<sup>193</sup> These groups are said to also maintain links with demobilized paramilitary leaders who have accepted the terms of Law 975/2005.<sup>194</sup> In 2010, the military was authorized to support the police in its combat against six of these groups: *Los Paisas*, *Los Urabeños*, *Popular Revolutionary Anti-terrorist Army of Colombia (ERPAC)*, *Renacer*, *Los Rastrojos* and *Los Machos*.<sup>195</sup>

131. As previously noted, the issue of whether new illegal armed groups would qualify as organized armed groups that are parties to the armed conflict, remains the subject of further analysis by the Office. This is a required contextual element for their commission of war crimes within the Court's subject-matter jurisdiction. The Government of Colombia's position is that they are not organized armed groups, as they lack an established hierarchical structure or chain of command, do not exercise territorial control, and do not conduct sustained and concerted military operations.

#### **1. Alleged war crimes committed by non-State Actors**

132. On the basis of the available information, and without prejudice to other possible crimes within the jurisdiction of the Court, there is a reasonable basis to believe that from 1 November 2009 to date, at a minimum the following conduct has been committed by the FARC and the ELN:

- a. murder pursuant to article 8(2)(c)(i) and attacking civilians pursuant to Article 8(2)(e)(i);
- b. torture and cruel treatment pursuant to article 8(2)(c)(i) and outrages upon personal dignity pursuant to article 8(2)(c)(ii);
- c. taking of hostages pursuant to article 8(2)(c)(iii);
- d. rape and other forms of sexual violence pursuant to article 8(2)(e)(vi);
- e. conscripting, enlisting and using children to participate actively in hostilities pursuant to article 8(2)(e)(vii).

*a. Murder pursuant to article 8(2)(c)(i) and attacking civilians pursuant to article 8(2)(e)(i)*

133. In the context of article 8(2)(c)(i), murder refers to the intentional killing of one or more protected persons without lawful justification.<sup>196</sup> The elements of the

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<sup>193</sup> UN OHCHR 2007 Annual Report, p. 9, para. 29, p. 18, paras. 86-88.

<sup>194</sup> UN OHCHR 2008 Annual Report, p. 14, para. 41; UN OHCHR 2009 Annual Report, p. 13, para. 43.

<sup>195</sup> UN OHCHR 2011 Annual Report, p. 7, para. 32, footnote 11.

<sup>196</sup> Otto Triffterer, "Commentary on the Rome Statute of the International Criminal Court," Second Edition, 2008, Elements of the Crimes, p. 489.

crime of murder in non-international armed conflicts were drawn without difference to those of “wilful killing” in an international armed conflict. Following the elements of the latter, international case law and the main commentaries of the Rome Statute, the objective elements of murder would comprise those acts or omissions causing death of persons taking no active part in hostilities and that are contrary to treaty or customary law.

134. The FARC and the ELN are both allegedly responsible for murders of protected persons as well as for intentionally directing attacks against the civilian population since 1 November 2009.<sup>197</sup> For example, on 2 March 2011 in Buenaventura, Valle del Cauca, the President of the Board of the Rio Cajambre Community Council and her husband were kidnapped and allegedly murdered by the FARC. These acts caused the displacement of other members of the Board.<sup>198</sup> On 26 November 2011, the bodies of four members of the security forces whom the FARC had held in captivity for more than 10 years were found in a FARC camp in Solano, Caquetá following clashes with the Colombian armed forces. Three of the victims were allegedly shot in the head and the fourth in the back.<sup>199</sup> According to the UN OHCHR, in June 2011, the ELN was accused of the killings of eight peasants in Colón Génova, Nariño.<sup>200</sup>

*b. Cruel treatment and torture pursuant to article 8(2)(c)(i) and outrages upon personal dignity pursuant to article 8(2)(c)(ii)*

135. The objective element of the war crime of cruel treatment involves the perpetrator inflicting severe physical or mental pain or suffering upon one or more persons who were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in hostilities.<sup>201</sup> The objective element of the war crime of torture involves the perpetrator inflicting severe physical or mental pain or suffering upon one or more persons who were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in hostilities, for the purposes of obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.<sup>202</sup>

136. The objective element of the crime of outrages upon personal dignity involves the perpetrator humiliating, degrading or otherwise violating the dignity of one or more persons who were either *hors de combat*, or were civilians,

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<sup>197</sup> UN OHCHR 2010 Annual Report, p. 14, paras. 67, 68, 70; IACHR 2010 Annual Report, Chap. IV, Colombia, p. 342, para. 14.

<sup>198</sup> UN OHCHR 2012 Annual Report p. 21, para. 2(a).

<sup>199</sup> Human Rights Watch, “FARC’s Killings of Captives: A War Crime,” 28 November 2011, *available at* <http://www.hrw.org/news/2011/11/28/colombia-farc-s-killing-captives-war-crime> (last accessed on 3 July 2012).

<sup>200</sup> UN OHCHR 2012 Annual Report, p. 15, para. 86.

<sup>201</sup> Elements of Crimes, Article 8(2)(c)(i)-3, 1-2.

<sup>202</sup> Elements of Crimes, Article 8(2)(c)(i)-4, 1-3.

medical personnel, or religious personnel taking no active part in hostilities. The objective element further requires that the severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.<sup>203</sup>

137. The UN OHCHR reported that in 2010 the FARC continued to hold civilians and members of public security forces in cruel and inhuman conditions, in some cases for over 13 years, such as the Army sergeant Jose Libio Martínez, deprived of his freedom for reasons relating to the conflict since 21 December 1997.<sup>204</sup>

*c. Taking of hostages pursuant to article 8(2)(c)(iii)*

138. The objective element of the war crime of taking hostages involves the perpetrator seizing, detaining, or otherwise holding hostage one or more persons after having threatened to kill, injure or continuing to detain such person or persons. Such person or persons must have been either *hors de combat*, civilians, or medical or religious personnel taking no active part in the hostilities. In addition, the perpetrator must have intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.<sup>205</sup>

139. The FARC and ELN have been identified as the main perpetrators of hostage-taking in the context of the internal armed conflict in Colombia. The information reviewed indicates that these armed groups have taken civilians and individuals *hors de combat* as hostages regularly since 1 November 2009 in order to exchange them for guerrilla prisoners held by the Colombian authorities or for ransom.

140. The taking of hostages has involved abductions in multiple locations including victims' residences, check points or public places or by detaining members of the armed forces after an armed clash and placing them in the condition of hostages. While in captivity, hostages are often submitted to cruel treatment and outrages upon personal dignity. In June 2010, in Tadó, Chocó, ELN members took three road workers hostage.<sup>206</sup> Similarly, in July 2010, four human rights defenders were kidnapped by members of the ELN in Teorama (Norte de Santander) and were released a few days later.<sup>207</sup> In September 2011 in Tumaco, Nariño, the assistant to the mayor was kidnapped by the FARC and released on 29 October 2011. A 61-year-old member of the community was also kidnapped

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<sup>203</sup> Elements of Crimes, Article 8(2)(c)(ii), 1-3.

<sup>204</sup> UN OHCHR 2011 Annual Report, p. 25, para. 13.

<sup>205</sup> Elements of Crimes, Article 8(2)(c)(iii), 1-4.

<sup>206</sup> UN OHCHR 2011 Annual Report, p. 25, para. 13(b).

<sup>207</sup> UN OHCHR 2011 Annual Report, p. 20, para. 2(g).

along with the assistant to the mayor, but was released after a few hours.<sup>208</sup> Reportedly, FARC and ELN commanders have received a standing order to kill hostages before allowing a military rescue. For instance, in January 2010, during an armed confrontation with the armed forces, the FARC killed four members of security forces who had been held in captivity for between 12 and 14 years.<sup>209</sup>

*d. Rape and other forms of sexual violence pursuant to article 8(2)(e)(vi)*

141. The objective element of the war crime of rape pursuant to article 8(2)(e)(vi) involves the perpetrator invading the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. Moreover, the objective element requires that the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.<sup>210</sup>

142. The objective element of the crime of sexual violence pursuant to article 8(2)(e)(vi) involves the perpetrator committing an act of a sexual nature against one or more persons or causing such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent. The objective element further requires that such conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.<sup>211</sup>

143. The UN Secretary General reported, "grave and repeated acts of sexual violence by armed groups" such as the FARC and the ELN in the period from December 2010 through November 2011.<sup>212</sup> Acts of sexual violence committed in the context of the armed conflict have included rape, torture and sexual mutilation, forced nudity, forced prostitution and sexual slavery, forced contraception and forced abortions. For example, on 12 September 2011 in Campamento (Antioquia), information was received about a 16-year-old recruited

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<sup>208</sup> UN OHCHR 2012 Annual Report, p. 27, para. 11(c).

<sup>209</sup> UN OHCHR 2012 Annual Report, p. 15, para. 85. FARC announced that they will stop kidnapping civilians in a bid to restart peace talks with the government. See Colombia Reports, "FARC announces intention to release all hostages, abandon kidnapping," 26 February 2012, <http://colombiareports.com/colombia-news/news/22439-farc-announces-to-release-all-hostages-abandon-kidnapping.html> (last accessed on 3 July 2012).

<sup>210</sup> Elements of Crimes, Article 8(2)(e)(vi)-1, 1-2.

<sup>211</sup> Elements of Crimes, Article 8(2)(e)(vi)-6, 1-2.

<sup>212</sup> UNSG Conflict Related Sexual Violence 2012 Report, p. 6, para. 18.

by the FARC who denounced that another minor belonging to this guerrilla group had been the victim of acts of sexual violence, *inter alia*, rape and five forced abortions.<sup>213</sup>

*e. Conscripting, enlisting and using children to participate actively in hostilities pursuant to article 8(2)(e)(vii)*

144. The objective element of the crime of enlistment, conscription or use of child soldiers consists of the conscription or enlistment of one or more persons into an armed force or group by the perpetrator; or the use of one or more persons to actively participate in hostilities. Such persons must be under the age of 15. The objective element of the crime requires that the conduct took place in the context of and was associated with an armed conflict not of an international character.<sup>214</sup>

145. FARC and ELN have been identified as the main perpetrators of enlistment, conscription and use of child soldiers, in the context of the internal armed conflict in Colombia. The information reviewed indicates that these armed groups have engaged in enlisting and conscripting persons under the age of 15 years, as well as using them to actively participate in hostilities.<sup>215</sup>

146. In 2011, the UN's country task force on monitoring and reporting received information on child recruitment from 29 of the 32 departments in Colombia.<sup>216</sup> The UN Special Representative of the Secretary-General on Children and Armed Conflict reported that in 2011, 282 children had been separated from armed groups. Of these, 207 were separated from the FARC and 44 from the ELN.<sup>217</sup>

147. The FARC and ELN reportedly enlist children by using different methods, including the dissemination of political propaganda at schools and in public places, or the offer of salaries, meals and protection.<sup>218</sup> Children are also conscripted following direct and indirect threats as well as by forcing the local population to gather in public places of municipalities to conduct a census and prepare the recruitment of children over the age of eight years old.<sup>219</sup> In 2010, the FARC convened a community meeting in Antioquia to obtain a headcount of children. It also announced that children above the age of 8 would be recruited.

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<sup>213</sup> UN OHCHR 2012 Annual Report, p. 26, para. 9(c).

<sup>214</sup> Elements of Crimes, Article 8(2)(e)(vii)1-2, 4.

<sup>215</sup> See Watchlist on Children and Armed Conflict, Women's Refugee Commission, "No One to Trust: Children and Armed Conflict in Colombia," 1 April 2012, (hereinafter "Watchlist Report"), available at [http://www.humansecuritygateway.com/documents/Watchlist\\_NoOnetoTrustChildrenandArmedConflictinColombia.pdf](http://www.humansecuritygateway.com/documents/Watchlist_NoOnetoTrustChildrenandArmedConflictinColombia.pdf) (last accessed on 3 July 2012), pp. 16-17.

<sup>216</sup> "Children and armed conflict in Colombia: Report of the Secretary General," 26 April 2012, U.N. Doc. A/66/782-S/2012/261, (hereinafter "UNSG Children and Armed Conflict 2012 Report"), p. 24, para. 128.

<sup>217</sup> UNSG 2012 Report on Children and Armed Conflict, p. 35, para. 183.

<sup>218</sup> UNSG 2011 Report on Children and Armed Conflict, p. 36, paras. 154-155. See also Watchlist Report, p. 17.

<sup>219</sup> UN OHCHR 2011 Annual Report, p. 14, paras. 84-85.

In one typical use of children to participate in hostilities, a child was used by the FARC to carry out an attack against a police station using explosives. The explosives were attached to the child and activated as he approached the police station, killing him instantly.<sup>220</sup>

## 2. Alleged war crimes committed by State actors

148. The available information provides a reasonable basis to believe that in the period from 1 November 2009 to date, members of State forces have committed at a minimum the following conduct:

- a. murder pursuant to article 8(2)(c)(i) and attacking civilians pursuant to article 8(2)(e)(i);
- b. torture and cruel treatment pursuant to article 8(2)(c)(i) and outrages upon personal dignity pursuant to article 8(2)(c)(ii);
- c. rape and other forms of sexual violence pursuant to article 8(2)(e)(vi).

*a. Murder pursuant to article 8(2)(c)(i) and attacking civilians pursuant to article 8(2)(e)(i)*

149. Killings in ‘false positive’ cases may amount to a war crime under the Rome Statute if committed after 1 November 2009. For instance, on 15 August 2010, members of Mobile Brigade 23 of the Colombian Army allegedly killed a young man in the municipality of El Tarra, Norte de Santander. Reportedly, Mobile Brigade 23 shot the victim and planted weapons next to him after confirming his death and reporting him as an insurgent. Mobile Brigade 23 reported the incident as a death in combat.<sup>221</sup>

*b. Cruel treatment and torture pursuant to article 8(2)(c)(i) and outrages upon personal dignity pursuant to article 8(2)(c)(ii)*

150. According to the UN OHCHR, in 2010, members of state security forces<sup>222</sup> detained civilians and subjected them to cruel or degrading treatment and torture. These civilians were released only after they were forced to sign a declaration that they had been well treated.<sup>223</sup> Methods used against detainees include punches or kicks to different parts of the body or blows with weapons, as well as electric shocks, burns, spraying with pepper gas, or suffocation with plastic bags.<sup>224</sup> On 21 February 2010, during a police operation to capture members of a new illegal armed group in Mapiripán, Meta, members of the

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<sup>220</sup> UNSG 2011 Report on Children and Armed Conflict, p. 36, para. 154.

<sup>221</sup> CINEP Falsos Positivos Report.

<sup>222</sup> For the purposes of this report, the term “state forces” includes members of the military and the police.

<sup>223</sup> UN OHCHR 2011 Annual Report, p. 15, para. 87.

<sup>224</sup> UN OHCHR 2011 Annual Report, p. 15, para. 91.

national police allegedly detained a person and tortured him physically and psychologically while insisting that he provide them with information on members of the group.<sup>225</sup> On 24 May 2010 in Araquita, Arauca, two young men were allegedly beaten while detained by police agents.<sup>226</sup> On 23 June 2011, in El Tarra, Norte de Santander, two farmers were reportedly detained by army soldiers who, after accusing them of being guerrillas, hit the victims with machetes and forced them to sign a certificate of good treatment.<sup>227</sup>

*c. Rape and other forms of sexual violence pursuant to article 8(2)(e)(vi)*

151. Rape, torture and other forms of sexual violence have been attributed to members of the armed forces. For instance, in October 2010, in the municipality of Tame, Arauca, the bodies of three minors, including a 14 year-old girl, were found by their father in a mass grave, only 450 meters away from the military camp of the 5th Mobile Brigade of the armed forces which was operating in the region. The three children's bodies showed signs of torture and stab wounds. The autopsy showed signs of rape on the girl's body. Forensic examinations concluded that the perpetrator of the rape was Sub-Lieutenant Raul Muñoz Linares, a member of the 5th Mobile Brigade. Muñoz has also been charged with raping another girl two weeks earlier.<sup>228</sup> Likewise, in May 2010, in Medio Baudó (Chocó), a sub-officer of the Marine Infantry sexually abused a 13-year-old girl.<sup>229</sup> In Cumaribo (Vichada), army soldiers allegedly tortured and repeatedly raped a man and a woman throughout the night on 29 July 2010.<sup>230</sup> On 3 April 2011, in Ipiales, Nariño, a woman was raped and then seriously wounded with a knife by a soldier.<sup>231</sup>

### **C. Conclusion**

152. The foregoing analysis indicates that the required contextual elements and underlying acts are met for conduct by each of the aforementioned parties to qualify as crimes against humanity or war crimes. The Office has therefore concluded that there is a reasonable basis to believe that crimes against humanity and war crimes have been committed within the context of the situation.

153. The following table summarises the current status of the Office's findings with respect to the commission of crimes against humanity and war crimes by each party to the conflict. These findings are without prejudice to other possible crimes within the jurisdiction of the Court which may be identified in future.

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<sup>225</sup> UN OHCHR 2011 Annual Report, p. 27, para. 22(b).

<sup>226</sup> UN OHCHR 2011 Annual Report, p. 27, para. 22(c).

<sup>227</sup> UN OHCHR 2012 Annual Report, p. 29, para. 12 (e).

<sup>228</sup> Watchlist Report, p. 25.

<sup>229</sup> UN OHCHR 2011 Annual Report, p. 23, para. 8 (b).

<sup>230</sup> UN OHCHR 2011 Annual Report, p. 23, para. 8 (c).

<sup>231</sup> UN OHCHR 2012 Annual Report, p. 13, para. 68; p. 26, para. 9(b).

**Table 1: Alleged Criminal Conduct (1 November 2002 - present)**

	Murder	Forcible transfer	Deprivation of liberty <sup>232</sup>	Rape and sexual violence	Enforced disappearance <sup>233</sup>	Torture	Recruitment & use of children
<b>FARC</b>	CAH/WC	CAH	CAH/WC	CAH/WC	(CAH)	CAH/WC	WC
<b>ELN</b>	CAH/WC	CAH	CAH/WC	CAH/WC	(CAH)	CAH/WC	WC
<b>Paramilitary Groups</b>	CAH	CAH	CAH	CAH	(CAH)	CAH	N/A
<b>State Actors</b>	CAH/WC	N/A	N/A	WC	CAH	CAH/WC	N/A

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<sup>232</sup> The alleged conduct includes cases which are qualified under Colombian law as enforced disappearance committed by non-state entities, but which are included in the current analysis as cases constituting acts of severe deprivation of physical liberty committed under article 7(1)(e) of the Rome Statute.

<sup>233</sup> As noted above, the issue of whether the non-State actors concerned would qualify as a “political organization” within the meaning of article 7(1)(i) of the Statute requires further analysis.

### III. Admissibility assessment

154. As set out in article 17(1) of the Statute, admissibility requires an assessment of complementarity (subparagraphs (a)-(c)) and gravity (subparagraph (d)). Pursuant to its prosecutorial strategy, the Office will assess complementarity and gravity in relation to the most serious crimes alleged and to those who appear to bear the greatest responsibility for those crimes.<sup>234</sup>

155. At the preliminary examination stage, article 53(1)(b) of the Rome Statute requires the Office to consider whether “the case is or would be admissible under article 17.” Prior to the initiation of an investigation, there is not yet a specific ‘case,’ as understood to comprise an identified set of incidents, individuals and charges. Instead, there is a situation. The Office therefore considers admissibility taking into account potential cases that could arise from a potential investigation into the situation based on the information available.<sup>235</sup>

156. The identification of potential cases is made without prejudice to such individual criminal responsibility as may be attributed as a result of a formal investigation and is made only for the purposes of assessing admissibility. It also does not affect the duty of the competent national authorities to exercise their criminal jurisdiction over those responsible for international crimes by, *inter alia*, conducting criminal investigations and prosecutions against other alleged perpetrators.

157. In assessing complementarity at the preliminary examination stage, the first question is whether there are or have been relevant national investigations or prosecutions in relation to potential cases that would be undertaken by the Office. This is done bearing in mind the policy of the Office to focus its investigative and prosecutorial efforts on those who appear to bear the greatest responsibility for the most serious crimes.

158. If relevant national proceedings exist, the next question is whether such investigations and prosecutions are vitiated by an unwillingness or inability to genuinely investigate and prosecute.

159. The Colombian authorities have been conducting a large number of proceedings relevant to the preliminary examination against different actors in

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<sup>234</sup> *Situation in the Republic of Kenya*, “Request for authorisation of an investigation pursuant to Article 15,” ICC-01/09-3, 29 November 2009, p. 20, para. 55 and p.28, para. 78.

<sup>235</sup> *Situation in the Republic of Kenya*, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya,” ICC-01/09-19-Corr, 31 March 2010, p. 23, para. 50, p. 69, para. 182 and p. 73, para. 188; *Situation in the Republic of Côte d’Ivoire*, “Corrigendum to ‘Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire,’” 15 November 2011, ICC-02/11-14-Corr, p. 9, para. 18. For a detailed description of the Office’s policy and practice in the conduct of its preliminary examination activities, see Draft Policy Paper on Preliminary Examinations (ICC-OTP, 4 October 2010).

the conflict in Colombia for crimes that may constitute crimes against humanity and war crimes. Proceedings have been initiated against 1) guerrilla group leaders, 2) paramilitary leaders, 3) police and army officials, and 4) politicians with alleged links to armed groups. As such, the primary focus of the Office's analysis and interaction with the Colombian authorities has been to ascertain whether proceedings have been prioritized against those who appear to bear the greatest responsibility for the most serious crimes and whether such proceedings are genuine. The Office has been in close contact with the Colombian authorities, who have provided a significant volume of information on national proceedings.<sup>236</sup> The information on national proceedings reflected below is based on information received from the Colombian authorities as well as information gathered by the Office from other reliable sources, including but not limited to publicly available sources.

#### **A. Proceedings against FARC and ELN**

160. According to the information available, a large number of FARC and ELN members, including senior leaders, have been the subject of national proceedings under the ordinary criminal justice system in Colombia.<sup>237</sup> Thus far, 218 FARC and 28 ELN members have been convicted of conduct that constitutes a crime within the jurisdiction of the Court, including killing, forcible displacement, hostage-taking, torture and child recruitment. A number of senior leaders, including the first and second in command of the FARC and the ELN,<sup>238</sup> were also convicted *in absentia*. The information available indicates that eight current or former members of the FARC Secretariat, its highest leadership body, and four current members of ELN's Central Command, have been convicted *in absentia* (see Annex).

161. Subject to the appropriate execution of sentences of those convicted, the information available indicates that those who appear to bear the greatest responsibility within FARC and ELN for the most serious crimes within the situation have already been the subject of genuine national proceedings.

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<sup>236</sup> Since 1 January 2012, the Office has received twelve submissions from the Government of Colombia with information on national proceedings pursuant to article 15(2) and rule 104.

<sup>237</sup> The "ordinary" criminal justice system refers to the regular criminal law framework (chiefly the Colombian Penal Code), as distinguished from the Justice and Peace Law framework applicable under special circumstances to demobilized members of armed groups, discussed in further detail below.

<sup>238</sup> Rodrigo Londono Echeverri, alias Timochenko, and Luciano Marin Arango, alias Ivan Marquez, of the FARC, and Nicolas Rodriguez Bautista, alias Gabino, and Eliecer Herlinton Chamorro, alias Antonio Garcia, of the ELN.

## B. Paramilitary Armed Groups

162. National proceedings against members of paramilitary armed groups have been carried out under both the ordinary criminal law framework as well as under the “Justice and Peace Law” (JPL). The JPL, comprised of Law 782/2002, Regulatory Decree 128/03 and Law 975/2005, established a transitional justice framework governing the demobilization of paramilitary armed groups. According to the JPL, individuals convicted of genocide, crimes against humanity or war crimes committed as members of a paramilitary armed group can benefit from reduced prison sentences (five to eight years), provided they meet a number of conditions, including demobilization, full contribution to truth, justice and reparation, and non-repetition of crimes.

163. The JPL also regulates the procedure for the investigation and prosecution of such crimes. Investigations and prosecutions under the JPL are meant to focus on crime patterns in the context of alleged crimes against humanity and war crimes, and on the structure, composition and external support received by paramilitary groups.<sup>239</sup>

164. The JPL procedure begins with the demobilization of a member of a paramilitary armed group and includes three principal stages. The initial stage consists of “free version” hearings (“*versión libre*”) during which the demobilized individual must give a complete account of crimes committed. Victims have the right to participate through legal representatives and are entitled to ask questions to the suspect. During the second stage, the “formulation and attribution of charges” (“*formulación e imputación de cargos*”), the Prosecutor verifies the truthfulness of the confession and formulates criminal charges before a magistrate judge. Charges that are admitted by the defendant are sent to a special judicial chamber (Justice and Peace Chambers of the Higher Tribunals / *Salas de Justicia y Paz de los Tribunales Superiores de Distrito Judicial*). Charges that are contested by the defendant are sent to an ordinary judicial chamber and processed under the ordinary criminal justice system. During the third stage, “reparations and sentencing,” the Justice and Peace Chambers determine the status of victim applicants for purposes of awarding reparations, issue a penal sentence to the defendant under ordinary criminal law, and determine whether the defendant is eligible for a reduced sentence.

165. The information available indicates that to date, 4,714 individuals have been nominated by the Government of Colombia to be eligible for benefits under the JPL system; another 103 individuals have been excluded from the JPL process.

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<sup>239</sup> Corte Suprema de Justicia, Sala de Casación Penal, Decision against Wilson Salazar Carrascal (alias El Loro), Radicado No. 31539, 31 July 2009; and decision against Gian Carlo Gutierrez Suarez (alias El Tuerto), Radicado 32022, 21 September 2009. The guidelines specified by the Supreme Court were adopted by the JPL Chamber, *Protocolo para la Presentación de Medios de Prueba*, 23 August 2010.

3,640 individuals have testified in “free version” hearings.<sup>240</sup> As of October 2012, charges had been brought against 680 former members of paramilitary armed groups, among which charges had been confirmed for 128.<sup>241</sup> At the time of writing, 14 individuals have been convicted and sentenced under the JPL framework, of whom seven were leaders or commanders of paramilitary units (see Annex).<sup>242</sup> Of the 14 individuals convicted and sentenced, one conviction was for crimes outside ICC subject-matter jurisdiction. Finally, it is worth noting that as a result of facts revealed or confessed during the JPL process to date, 10,780 cases have been initiated in the ordinary criminal justice system, in order to investigate the potential responsibility of third parties implicated in those incidents.<sup>243</sup>

166. In addition to proceedings under the JPL system, 23 paramilitary leaders have been convicted under the ordinary justice system. Available information indicates that out of 57 leaders or commanders of paramilitary armed groups (listed in Annex),<sup>244</sup> 46 are still alive, of whom 30 have been convicted in respect of conduct which constitutes a crime within the jurisdiction of the ICC, including murders, forced displacement, enforced disappearances, abductions and child recruitment. Another 13 are the subject of ongoing proceedings (8 under JPL and 5 under the ordinary system). At least 15 of the 30 convictions are for crimes that also fall under the ICC’s temporal jurisdiction, i.e., since 1 November 2002.

167. The Office notes that since some of the worst crimes allegedly committed by paramilitaries were during the 1990s (and earlier), and since the paramilitaries demobilized, bloc by bloc, between 2003-2006, it does not appear unreasonable for the national authorities with broader temporal jurisdiction than the ICC to prioritise incidents occurring prior to November 2002. For instance, Salvatore Mancuso, the overall second-in-command of the AUC, has been convicted nine times for killings committed from June 1994 until November 2001, with sentences ranging from 12 to 40 years of imprisonment for each conviction. He is also the subject of ongoing national proceedings under the JPL framework for alleged crimes committed after November 2002, and was extradited to the United States where he is on trial for drug trafficking offences.

168. A few examples of relevant national proceedings against prominent paramilitary leaders are included here for illustrative purposes. A more detailed

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<sup>240</sup> Communication from the Government of Colombia, received on 31 October 2012.

<sup>241</sup> Ibid.

<sup>242</sup> Three of the seven paramilitary leaders have also been convicted under the ordinary system.

<sup>243</sup> Communication from the Government of Colombia, received on 31 October 2012.

<sup>244</sup> The determination of who qualifies as a paramilitary leader was made by the Office based on all available information, including but not limited to publicly available information, and information provided by the Government of Colombia. Alleged members of the AUC’s central and auxiliary command bodies (the *Dirección Política y Militar* and the *Estado Mayor*), and alleged commanders directing the military operations of approximately 30 blocs under the AUC, were considered as part of the Office’s analysis.

account of national proceedings against 46 senior paramilitary leaders and commanders identified by the Office can be found in the annex to this report. Ramón Isaza Arango, a member of the AUC's Central Political and Military Command and a senior commander of the Magdalena Medio bloc, was sentenced to 16 years of imprisonment for killings committed in May 2003, and was separately sentenced to another 20 years of imprisonment for killings and abductions committed in April 2002. Rodrigo Tovar Pupo (*alias* Jorge 40), a member of the AUC's auxiliary command and a senior commander of the Bloque Norte de las Autodefensas Campesinas de Córdoba y Urabá, was sentenced to 26 years of imprisonment for killings committed in 2004 and 2005, and was separately sentenced to 30 and 47 years of imprisonment for forced displacement committed in November 2000 and killings committed in March 2001, respectively. He was also extradited to the United States where he is on trial for drug trafficking offences.

169. Of the 30 paramilitary leaders already convicted, 26 were convicted for murder, 11 for forcible displacement, 6 for abductions, 3 for child recruitment, and 2 for rape. Section IV, below, addresses in greater detail the status of national proceedings for the crimes of forcible displacement and rape or other forms of sexual violence.

#### *Extraditions to the United States*

170. Between September 2008 and March 2009, the Colombian authorities extradited 29 members of paramilitary groups, including 10 paramilitary leaders, to the United States for drug-smuggling offences. According to various governmental and non-governmental sources, the extraditions, combined with the absence of a suitable judicial cooperation mechanism between the US and Colombia, led to a series of delays and impediments in the JPL process, with reportedly only 6 persons continuing to participate and only sporadically.<sup>245</sup> Subsequently, the Colombian authorities and the US Government concluded an arrangement based on the Inter-American Convention on Mutual Assistance on Criminal Matters (Nassau Convention, 1992) to facilitate the resumed participation of extradited paramilitary leaders in the JPL proceedings. The Government of Colombia has informed the Office that this led to an increase in the number hearings with paramilitary leaders from 3 days of hearings in 2008 to 104 days in 2011. In particular, Hernan Giraldo Serna participated in 15 hearings, Salvatore Mancuso in 6, Ramiro Vanoy in 13, Francisco Javier Zuluaga in 12, Guillermo Perez Alzate in 20, Angel Mejia Munera in 20, Diego Alberto Ruiz

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<sup>245</sup> See Mision de Apoyo al Proceso de Paz Colombia – Organización de Estados Americanos (MAPP-OEA), “Diagnostico de Justicia y Paz en el Marco de la Justicia Transicional en Colombia,” 19 October 2011, (hereinafter “MAPP-OEA Justicia y Paz Report”), available at <http://www.mapp-oea.net/documentos/iniciativas/DiagnosticoJyP.pdf> (last accessed on 3 July 2012), p. 145. See also International Human Rights Law Clinic, University of California, Berkeley, School of Law, “Truth Behind Bars: Colombian paramilitary leaders in U.S. Custody,” February 2010, available at <http://www.law.berkeley.edu/files/IHRLC/Truthbehindbars.pdf> (last accessed on 3 July 2012).

Arroyave in 11 and Juan Carlos Sierra Ramirez in 8 hearings. A further 73 days of hearings were held between January and April 2012.

171. Seven out of the ten most senior extradited paramilitary leaders have also been convicted by ordinary courts, including after their extradition, in respect of conduct which constitutes a crime within the jurisdiction of the ICC.

172. Observers have identified a number of flaws or deficiencies in the JPL process, including through the extradition of a number of senior leaders. Reported causes for delays include the length of the initial hearings, the difficulty of complying with timeframes set up for each stage of the process, and the constant change of prosecutors and judicial officers.<sup>246</sup> While in previous rulings the Supreme Court had held that demobilized persons undergoing JPL proceedings could not be extradited because the crimes attributed to the armed groups included allegations of crimes against humanity,<sup>247</sup> in a recent decision the Supreme Court held that after seven years since JPL proceedings started, those who had joined the proceedings have not contributed in an efficient, real and transparent manner to the establishment of the truth, nor to reparations of victims, and therefore granted the extradition request.<sup>248</sup>

173. As noted above, the primary focus of the Office's admissibility assessment has been on whether proceedings have been prioritized against those who appear to bear the greatest responsibility for the most serious crimes and whether such proceedings are genuine. In total, considering ordinary proceedings and JPL proceedings altogether, the fact that 43 out of 46 senior paramilitary leaders still alive today have been investigated, prosecuted or convicted in respect of conducts which constitute crimes within the subject-matter jurisdiction of the ICC means that these specific cases would not be admissible before the ICC.

### **C. Politicians and Public Officials with alleged links to paramilitaries**

174. The statements given by demobilized members of paramilitary armed groups during JPL proceedings have revealed the existence of agreements between paramilitary groups and certain congressmen, other public officials, members of the military, police and private entities.<sup>249</sup> Reportedly, public officials at the local, regional and national level entered into informal arrangements with

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<sup>246</sup> See e.g., MAPP-OEA Justicia y Paz Report, p. 38.

<sup>247</sup> Corte Suprema de Justicia, Auto, Radicado 29472, 10 April 2008.

<sup>248</sup> Corte Suprema de Justicia, Sala de Casación Penal, Extradición 35630, José del Carmen Gelves Albarracín, 14 August 2012, pp. 26-27.

<sup>249</sup> H. Olásolo Alonso, *Autoría y participación en Derecho penal internacional*, Temis, Univesidad Sergio Arboleda & Instituto Iberoamericano de la Haya para la Paz, los Derechos Humanos y la Justicia Internacional (IIH), Bogotá, 2012 (en prensa). See also, H. Olásolo Alonso, "El Principio de Complementariedad y las Estrategias de Actuacion de la Corte Penal Internacional en la Fase de Examen Preliminar: ¿Por qué la Corte Penal Internacional mantiene du Examen preliminar, pero no abre una Investigación, sobre la Situación en Colombia?," lección inaugural, Facultad de Derecho de la Universidad Santo Tomás de Aquino (USTA), Bogotá, Colombia, 1 July 2012, pp. 24-28.

paramilitary leaders whereby the latter used their military domination over large areas of the country to secure electoral victories, security guaranties, for economic profit and ultimately to take control over the State.<sup>250</sup>

175. This phenomenon, also known as *parapolitics*, affected large sectors of the public administration and resulted in the infiltration of paramilitary power into State institutions.<sup>251</sup> The Supreme Court has found that paramilitary leaders supported candidates for public office in areas where they exerted military power, intimidating voters to ensure the election of their preferred candidates.<sup>252</sup> The JPL Chambers and the Supreme Court have exposed implicit and explicit alliances between paramilitaries and certain politicians and other public officials, such as the *Pacto Santa Fe de Ralito* signed on 23 July 2001 between leaders of several paramilitary groups and congressmen, mayors, governors and other private persons operating in the regions of Sucre, Bolivar, Cordoba, Cesar y Magdalena<sup>253</sup> and the *Pacto de Chivolo*, signed on 28 September 2000, by which Rodrigo Tovar Pupo (aka Jorge 40) leader of the *Bloc Norte* endorsed the candidacy of former congressmen Jose Domingo Davila Armenta to the position of governor of Magdalena.<sup>254</sup>

176. Cases of *parapolitics* have been and continue to be the subject of judicial investigation and inquiry led by the Colombian Supreme Court, which is empowered to investigate and prosecute congressmen and governors, amongst other high-level public officials. The main criminal offence charged in *parapolitics* cases is *concierto para delinquir*, defined in article 340 of the Colombian Penal Code as a voluntary agreement between several persons to commit crimes.<sup>255</sup> The criminal conduct consists of the act of agreeing to commit criminal activities.<sup>256</sup>

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<sup>250</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Auto, Radicacion 28540, 18 November 2009., Tribunal Superior de Justicia de Bogotá, Sala de Conocimiento de Justicia y Paz, “Decisión de Control de Legalidad en el caso contra Gian Carlos Gutierrez Suarez, alias El Tuerto (Bloque Calima), 30 September 2010, Radicado 110016000253200880786; Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia condenatoria en el caso contra el ex senador Alvaro Garcia Romero, Radicado 32805, 23 February 2010, p. 100, ft. 70.

<sup>251</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia contra Jose Maria Imbeth Bermudez, 12 January 2012, Radicado 35227, p. 5, para. 4.

<sup>252</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia contra ex senadores Juan Manuel Lopez Cabrales y Reginaldo Montes Alvarez, Radicado 26942, 18 March 2010. See also, Corte Suprema de Justicia, Sala de Casación Penal, auto de 18 de noviembre de 2009, radicación 28540; Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia condenatoria en el caso contra el ex senador Alvaro Garcia Romero, Radicado 32805, 23 February 2010, p. 100, ft. 70.

<sup>253</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia contra Jose Maria Imbeth Bermudez, 12 January 2012, Radicado 35227. See also Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia contra ex senador Jose Domingo Davila Armenta, 23 February 2011, Radicado 32996, pp. 61-65.

<sup>254</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia contra ex senador Jose Domingo Davila Armenta, 23 February 2011, Radicado 32996, p. 61.

<sup>255</sup> Unofficial translation. Colombian Penal Code, Article 340: Concierto para delinquir - Cuando varias personas se concierten con el fin de cometer delitos.

<sup>256</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia contra Alvaro Araujo Castro, Radicado 27032, 18 March 2010, p. 127-130.

The agreement does not need to relate to specific criminal acts.<sup>257</sup> There is also an aggravated form of *concierto para delinquir* when the agreement entails the promotion and financing of illegal armed groups and/or the commission of violent crimes, such as murder, kidnappings, torture or forced displacement.<sup>258</sup>

177. High profile *parapolitics* cases include those against former congressmen. By August 2012, over 50 former congressmen had been convicted by the Supreme Court for promoting illegal armed groups pursuant to an agreement with an illegal armed group ("*concierto para delinquir agravado para promover grupos armados al margen de la ley*").

178. In a few cases, the Colombian Supreme Court has found that some former public officials charged with *concierto para delinquir agravado* were also responsible for violent crimes.<sup>259</sup> Specifically, the Office has information on four public officials (three senators and one governor) convicted for murder, enforced disappearances, kidnapping and torture. In 2007, Edilberto Castro Rincon, former governor of Meta, was convicted for murder and promoting illegal armed groups pursuant to an agreement with the *Bloque Centauros* of the AUC.<sup>260</sup> In 2009, Salvador Arana Sus, former governor of Sucre, was convicted of murder and enforced disappearance, for his support and promotion of illegal armed groups pursuant to an agreement with the *Bloque Heroes de Los Montes de Maria* of the AUC.<sup>261</sup> In 2010, Alvaro Alfonso Garcia Romero, a senator from 1998-2006, was convicted of murder, embezzlement and criminal support and promotion of illegal armed groups pursuant to an agreement with paramilitary blocs *Montes de Maria* and the *Mojana* of the AUC.<sup>262</sup> More recently, in August 2012, former senator Yidis Medina was convicted for abduction and promotion of illegal armed groups pursuant to an agreement with the ELN.<sup>263</sup>

179. While the above mentioned cases were prosecuted as common crimes, in some instances, after a conviction the Supreme Court ordered investigations for allegations of crimes against humanity against public officials. In this regard, the

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<sup>257</sup> Corte Constitucional de Colombia, Sentencia C-241/97, "Concierto para delinquir en materia de estupefacientes," available at [http://www.secretariassenado.gov.co/senado/basedoc/cc\\_sc\\_nf/1997/c-241\\_1997.html](http://www.secretariassenado.gov.co/senado/basedoc/cc_sc_nf/1997/c-241_1997.html)

<sup>258</sup> Other variants of the *concierto para delinquir agravado* do not correspond to crimes that could fall under the jurisdiction of the ICC, e.g. drug-trafficking, extortion, unlawful enrichment or money-laundering. See Article 340 of the Colombian Penal Code.

<sup>259</sup> Communication from the Government of Colombia, received on 13 April 2012.

<sup>260</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia contra Edilberto Castro Rincon, Radicado 26450, 8 November 2007.

<sup>261</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia contra Salvador Arana Sus, Radicado 32672, 03 December 2009.

<sup>262</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia contra Alvaro Alfonso Garcia Romero, Radicado 32805, 23 February 2010.

<sup>263</sup> El Espectador, "Condenan a Yidis Medina a 32 anos de prision por secuestro," 31 August 2012, available at <http://www.elespectador.com/noticias/judicial/articulo-371504-condenan-yidis-medina-32-anos-de-prision-secuestro> (last accessed on 13 November 2012).

Court has ordered investigations into at least 12 former congressmen in order to establish whether they are responsible for other crimes. The Court ordered the investigations after finding that they had taken part in the criminal structure of the *Bloque Norte* of the AUC, *Bloque Tolima*, *Bloque Elmer Cardenas*, *Bloque Bananero*, *Bloque Arles Hurtado* and *Bloque Norte* of the *Autodefensas Campesinas de Cordoba y Uraba*. For instance, in the judgment against former congressman Jorge de Jesus Castro Pacheco, the Supreme Court found the accused guilty of supporting and promoting illegal armed groups pursuant to an agreement with paramilitary leader Rodrigo Tovar Pupo (alias *Jorge 40*), leader of the *Bloque Norte* of the AUC. The Supreme Court ordered investigations into the level of Castro Pacheco's participation as well as another seven former congressmen who allegedly were parties to the same agreement with the *Bloque Norte*, after finding that the congressmen's involvement with the armed group went beyond a mere agreement to support and promote the group, but rather was so integral to the group's operations that the parties were effectively part of the same criminal hierarchy and organizational structure.<sup>264</sup>

#### **D. Army Officials**

180. Information submitted by the Colombian authorities indicates that 207 members of the armed forces have been convicted for murder of civilians within ICC temporal jurisdiction with sentences ranging from 9 to 51 years of imprisonment. In addition, the Office has information about 27 convictions for abetting and concealment of murder of civilians, with sentences ranging from 2 to 6 years of imprisonment. The Office of the Attorney General (Human Rights Unit) is investigating 1,669 cases of extrajudicial killings of civilians attributed to military forces and presented as death in combat, in which the number of victims could reach 2,896.

181. With respect to commissioned officers of the armed forces, the Office has gathered information on 52 convictions rendered in regard to alleged false positive incidents with sentences between 24 months and 51 years of imprisonment. The convictions are against one colonel, three lieutenant colonels, eight majors, 16 captains and 24 lieutenants (see annex for details).

182. Brigades 4, 7, 9, 14, 17 and 30, and Mobile Brigades 12 and 15, have been reported as being the brigades responsible for most of the false positive cases recorded between November 2002 and March 2011 in the Departments of Antioquia, Meta, Huila and Norte de Santander – the regions most affected by 'false positive' incidents. Below is a summary of available information related to proceedings pertaining to each brigade.

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<sup>264</sup> Corte Suprema de Justicia, Sala de Casacion Penal, Sentencia, Radicado 29200, 12 May 2010, pp. 72-76.

## *Antioquia*

### *The 4<sup>th</sup> Brigade (Division Seven)*

183. Military members of the 4<sup>th</sup> Brigade have allegedly committed or participated in 78 'false positive' incidents where at least seven different battalions of the brigade were involved. The Office has information on 38 convictions related to 'false positive' cases. 143 different perpetrators, among them four Captains and 10 Lieutenants, have been convicted. No information is available on whether higher ranking officers have been or are currently the subject of proceedings for these crimes.

### *The 17<sup>th</sup> Brigade (Division Seven)*

184. Military members of Brigade 17 have allegedly committed or participated in 36 'false positive' incidents where at least five different battalions of the brigade were involved. The Office has information on three convictions related to 'false positive' cases. 10 different perpetrators, among them a Captain, have been convicted. No information is available on whether higher ranking officers have been or are currently the subject of proceedings for these crimes.

185. Throughout the years analysed (2002-2011), seven different commanders have been in charge of the brigade. Open sources indicate that General Pauselino Latorre Gamboa, Commander of Brigade 17<sup>th</sup> in 2004 is undergoing investigations for drug trafficking.<sup>265</sup>

186. Judicial proceedings that concluded in a conviction of 20 years were conducted against Captain Guillermo Armando Gordillo Sánchez for the killing of five peasants and three children on 21 February 2005. Captain Gordillo Sanchez confessed his participation in the killings and implicated General Fandiño who had become commander of the 17<sup>th</sup> Brigade in November 2005.<sup>266</sup> General Hector Fandiño was called to make a statement in December 2010.<sup>267</sup> Reportedly, investigations have subsequently been opened against General

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<sup>265</sup> Caracol, "Piden máxima condena contral el General Pauselino Latorre," 1 June 2010, *available at* <http://www.caracol.com.co/noticias/judicial/piden-maxima-condena-contra-el-general-pauselino-latorre/20100601/nota/1306607.aspx> (last accessed on 3 July 2012); El Tiempo, "Cayó General (r) por lavar plata de la mafia," 25 January 2008, *available at* <http://www.eltiempo.com/archivo/documento/MAM-2804681> (last accessed on 3 July 2012); El Espectador, "Ex Fiscal anti narcóticos y general retirado capturados con red de narco tráfico," 25 January 2008, <http://www.elespectador.com/noticias/judicial/articulo-ex-fiscal-antinarcoticos-y-general-retirado-capturados-red-de-narcotrafic> (last accessed on 3 July 2012).

<sup>266</sup> Verdad Abierta, "A versión libre general Héctor Fandiño por masacre de Apartadó," 6 December 2010, <http://www.verdadabierta.com/bandera/2905-general-r-fandino-a-version-libre-por-la-masacre-de-san-jose-de-apartado> (last accessed on 6 July 2012).

<sup>267</sup> El Espectador, "General Fandino declara este martes por 'Operación Fénix'," 27 December 2010, *available at* <http://www.elespectador.com/impreso/judicial/articulo-242490-general-fandino-declara-martes-operacion-fenix> (last accessed on 3 July 2012).

Fandiño and Colonel Néstor Duque, the previous commander, for the 2005 incident.<sup>268</sup>

187. The Office has no further information on whether other high ranking officers have been or are currently the subject of proceedings.

*The 14<sup>th</sup> Brigade (Division Seven)*

188. Military members of the 14<sup>th</sup> Brigade have allegedly committed or participated in 17 ‘false positive’ incidents where at least four different battalions of the brigade were involved. No information is available on whether high ranking officers have been or are currently the subject of proceedings.

**Meta**

*The 7<sup>th</sup> Brigade (Division Four)*

189. Military members of the 7<sup>th</sup> Brigade have allegedly committed or participated in 13 ‘false positive’ incidents, all of them attributed to one same battalion. From the information available in the Office, one Major has been convicted for a presumably ‘false positive’ case. No information is available on whether higher ranking officers have been or are currently the subject of proceedings.

*The BRIM No. 12 (Mobile Brigade No. 12, Division Four)*

190. Military members of Mobile Brigade No. 12 have allegedly committed or participated in nine ‘false positive’ incidents. The Office has information on two convictions pertaining presumably to ‘false positive’ cases. Although five different perpetrators have been convicted, they are all non-commissioned officers in the brigade. The Office does not have information available on whether higher ranking officers or the commanders of the brigade have been or are currently the subject of proceedings.

**Huila**

*The 9<sup>th</sup> Brigade (Division Five)*

191. Military members of the 9<sup>th</sup> Brigade have allegedly committed or participated in 47 ‘false positive’ incidents in which three different battalions of the brigade were involved.

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<sup>268</sup> El Espectador, “Exmindefensa, llamado a declarar por masacre de San José de Apartadó”, 3 October 2011, available at <http://www.elespectador.com/noticias/judicial/articulo-303204-exministro-de-defensa-llamado-declarar-masacre-de-san-jose-de-ap> (last accessed on 3 July 2012).

192. The Office has no information on any proceedings in relation to these incidents.

### *Norte de Santander*

#### *The Mobile Brigade No. 15 (dissolved)<sup>269</sup>*

193. Military members of Mobile Brigade No. 15 have allegedly committed or participated in 15 'false positive' incidents since the brigade's creation in January 2006 and until its dissolution in January 2009. The Office has information on three convictions involving eight different perpetrators, issued presumably in relation to 'false positive' cases. Among the convicted perpetrators, there is one major and one lieutenant.

194. Open sources indicate that proceedings have been initiated against Colonel Santiago Herrea Fajardo, in charge of the brigade until December 2007, and Colonel Ruben Dario Castro Gomez, commander until October 2008, for their participation in 'false positive' incidents.<sup>270</sup> The Office does not have information on whether higher ranking officers or the commanders of the brigade have been or are currently the subject of proceedings.

#### *The 30th Brigade (Division Two)*

195. Military members of the 30<sup>th</sup> Brigade have allegedly committed or participated in seven 'false positive' incidents in which at least two different battalions of the brigade were involved. The Office has information on three convictions presumably related to 'false positive' cases. Six different perpetrators, among them a captain, have been convicted. No information is available on whether higher ranking officers or the commanders of the brigade have been or are currently the subject of proceedings.

196. To conclude, while numerous members of the armed forces have been investigated and disciplinary measures, criminal convictions and prison sentences issued, the proceedings have not focused on the responsibility of those at senior levels for the occurrence of such crimes.

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<sup>269</sup> Mobile Brigade 15 was dissolved in January 2009 due to allegations involving 'false positive' cases. See Escuela de Cultura de Paz de la AUB, "Colombia Semanal: Resumen semanal de noticias sobre el conflicto armado y la construcción de paz," January 2009, available at [http://ddd.uab.cat/pub/colombiacat/colsem\\_a2009m1n208.pdf](http://ddd.uab.cat/pub/colombiacat/colsem_a2009m1n208.pdf) (last accessed on 6 July 2012), p. 1; see also Caracol, 22 January 2009, available at [www.caracol.com.co/noticias/judicial/relevan-en-ocana-a-la-brigada-movil-15-involucrada-en-falsos-positivos/20090122/nota/751487.aspx](http://www.caracol.com.co/noticias/judicial/relevan-en-ocana-a-la-brigada-movil-15-involucrada-en-falsos-positivos/20090122/nota/751487.aspx) (last accessed on 6 July 2012); Radio Santa Fe, 23 January 2009, available at <http://www.radiosantafe.com/2009/01/23/eliminacion-brigada-movil-15-por-falsos-positivos/> (last accessed on 6 July 2012).

<sup>270</sup> El Tiempo, "Máxima condena para militares ocn responsabilidad en desaparición de 11 jóvenes en Soacha: Uribe," 24 October 2008, available at <http://www.eltiempo.com/archivo/documento/CMS-4623984> (last accessed on 3 July 2012).

**Table 2: Overview of National Proceedings**

	<b>Murder<sup>271</sup></b>	<b>Forcible transfer</b>	<b>Rape and Sexual violence</b>	<b>Enforced Disappearances<sup>272</sup></b>	<b>Torture</b>	<b>Recruitment &amp; use of children</b>	<b>Indigenous and Afro-Colombian targets</b>
FARC	Numerous proceedings	15 convictions, 2 ongoing proceedings	No information available	4 convictions, 20 ongoing proceedings	5 convictions, 8 ongoing proceedings	31 convictions, 1 ongoing proceeding	19 convictions
ELN	Numerous proceedings	2 convictions	No information available	1 ongoing proceeding	5 convictions	4 convictions	No information available
Paramilitary Groups	Numerous proceedings	71 convictions, 25 ongoing proceedings	2 convictions, 14 ongoing proceedings	130 convictions, 422 ongoing proceedings	2 convictions, 62 ongoing proceedings	19 convictions	141 convictions, 11 ongoing proceedings
Army	Numerous proceedings	2 ongoing proceedings	2 convictions, 3 ongoing proceedings	15 convictions, 110 ongoing proceedings	41 convictions, 29 ongoing proceedings	No information available	29 convictions, 2 ongoing proceedings
Police and Other State actors	3 convictions	1 conviction; 1 ongoing proceeding	No information available	2 convictions, 53 ongoing proceedings	5 convictions, 22 ongoing proceedings	No information available	1 proceeding

<sup>271</sup> The number of convictions and ongoing proceedings for killings exceeds the number of all other proceedings combined.

<sup>272</sup> The alleged conduct includes cases which are qualified under Colombian law as enforced disappearance committed by non-state entities, but which are included in the current analysis as cases constituting acts of severe deprivation of physical liberty committed under article 7(1)(e) of the Rome Statute.

#### **IV. Conclusion: the need for prioritization**

197. The Colombian conflict has generated high levels of violence and crimes against millions of victims. The information analysed with regard to complementarity also indicates that the Colombian authorities have carried out and are still conducting a large number of proceedings relevant to the preliminary examination against different actors in the conflict for conduct that constitutes crimes within the jurisdiction of the Court. These efforts should be commended. Nonetheless, at this stage, the Prosecutor has determined that preliminary examination should continue in relation to the complementarity requirement.

198. Examining the different actors that have been proceeded against, it appears that the potential cases against guerrilla groups and paramilitary groups would not be admissible before the ICC, since the main leaders of these groups have been or are being prosecuted genuinely by the competent national authorities. The Office also notes that the Colombian judicial authorities have extended investigations and prosecutions to a number of politicians and officials suspected of links with the paramilitaries and other armed groups.

199. In relation to other actors, the Office has identified certain gaps or shortfalls which indicate insufficient or incomplete activity in relation to certain categories of persons and certain categories of crimes. Specifically, and as noted by the Colombian authorities themselves, there is a need for greater prioritization.

200. In assessing admissibility, the Office has assessed whether the potential cases it would investigate are or would be inadmissible, due to the existence of relevant national proceedings. Nonetheless, this is without prejudice to the broader duty of States to exercise their criminal jurisdiction over those responsible for international crimes. Prioritisation of cases to satisfy the admissibility assessment before the ICC, thus, should not lead to impunity for other crimes. This is elaborated in more detail below.

#### *The Legal Framework for Peace*

201. On 19 June 2012, the “Legal Framework for Peace” bill (*Marco Legal para la Paz*) was approved by the Colombian Senate. The bill introduced transitory articles 66 and 67 to the Constitution, and established a transitional justice strategy that includes prioritization and selection of cases against the most responsible for crimes against humanity or war crimes; the conditioned dropping of all other non-selected cases; and the suspension of selected sentences. The

Office notes the recent publication Directive 0001 of 2012 of the Colombian Attorney General on prioritization of cases.<sup>273</sup>

202. Transitional justice measures will be implemented by the National Congress through statutory laws. They will determine: a) who can benefit from the differentiated treatment; b) which extrajudicial and judicial measures should be implemented to further proceedings; c) the case selection criteria; d) the conditions for the suspension of sentences; and e) in which cases the application of extrajudicial sanctions, alternative sentences or special methods for the execution and serving of the sentence will apply. Statutory laws will take into account the gravity of the cases and how representative they are in order to determine the criteria for the selection of cases.

203. The Legal Framework for Peace will likely impact the conduct of national proceedings relating to crimes falling under the ICC's jurisdiction and the admissibility of cases before the ICC, and thus, is of direct relevance for the ongoing preliminary examination of the Situation in Colombia.

204. The Office notes with appreciation efforts to draw lessons from the JPL process and to refine the investigative and prosecutorial strategy accordingly. However, as stated in the Office's public strategy and policy documents, "the strategy of focusing on those who bear the greatest responsibility for the crimes may leave an 'impunity gap' unless national authorities, the international community and the Court work together to ensure that all appropriate means for bringing other perpetrators to justice are used."<sup>274</sup> Thus, "if the Office does not deal with a particular individual, it does not mean that impunity is granted. Consistent with positive complementarity, the Office supports national investigations of alleged crimes that do not meet the criteria for ICC prosecution."<sup>275</sup> The Office functions "with a two-tiered approach to combat impunity. On the one hand it will initiate prosecutions of the leaders who bear most responsibility for the crimes. On the other hand it will encourage national prosecutions, where possible, for the lower-ranking perpetrators, or work with the international community to ensure that the offenders are brought to justice by some other means."<sup>276</sup>

205. Thus, while the Office welcomes the adoption of a national policy to prioritize the investigation and prosecution of cases against those who bear the greatest responsibility for the most serious crimes, it would view with concern any measures that appear designed to shield or hinder the establishment of criminal responsibility of individuals for crimes within the jurisdiction of the Court. Even in relation to apparently low-level offenders, proceedings related to

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<sup>273</sup> Dated 4 October 2012, *available at* <http://www.fiscalia.gov.co/colombia/wp-content/uploads/2012/10/Directiva001.pdf> (last accessed 5 November 2012).

<sup>274</sup> Paper on some policy issues before the Office of the Prosecutor, ICC-OTP (September 2003), p. 3.

<sup>275</sup> Prosecutorial Strategy 2009-2012 (1 February 2010), p. 6, para. 19

<sup>276</sup> Paper on some policy issues before the Office of the Prosecutor, ICC-OTP (September 2003), p. 3.

the alleged commission of war crimes or crimes against humanity should ensure that as much as possible is known about the specific crimes committed by each accused person. This is because such information is likely to be of considerable utility in reconstructing the operational behaviour of each group as well as internal leadership roles. Failure to examine such information could negatively impact a State's efforts to conduct genuine proceedings in respect of those bearing the greatest responsibility for the most serious crimes. Moreover, bearing in mind the preamble of the Statute, the Office considers that efforts to address large-scale criminality, however challenging, are more likely to contribute to preventing future crimes if as much truth about such crimes as possible is uncovered.

206. The Office will consider the issue of sentences, including both reduced and suspended sentences, in relation to the facts and circumstances of each case. In particular, the Office will assess whether, in the implementation of such provisions, reasonable efforts have been made to establish the truth about serious crimes committed by each accused person, whether appropriate criminal responsibility for such crimes has been established, and whether the sentence could be said, in the circumstances, to be consistent with an intent to bring the person concerned to justice.

207. Against this backdrop, the Office will further consult with the Government of Colombia and will follow closely the drafting of the statutory bills relating to the Legal Framework for Peace, and their ultimate implementation.

*Proceedings relating to paramilitary groups, their partners and sponsors*

208. Despite ongoing challenges, the JPL Chambers and the Colombian Supreme Court have rendered a significant number of judgements against senior paramilitary leaders and congressmen. There is no basis at this stage to determine that such cases are vitiated by an unwillingness or inability to carry out the proceedings genuinely. At the same time, the proceedings conducted in Colombia to date have generated significant material for the cases that remain pending.

209. In particular, further investigative efforts appear necessary to uncover the true scale of the paramilitary phenomena during the conflict and in particular the support and complicity enjoyed from political, military, economic and administrative networks. For example, proceedings before the Supreme Court and the JPL Chambers have shed important light on the role of politicians and the military in supporting and promoting paramilitary groups at the local and regional levels, but have also raised further questions in relation to chains of responsibility at the national level. Such efforts would benefit from a thorough analysis of the findings of the Supreme Court in *parapolitics* cases as well as of the evidence collected and the material generated in the course of the JPL hearings and other investigative steps, and the prioritisation of future investigative efforts on those bearing the greatest responsibility. The twelve persons convicted under JPL and over fifty Supreme Court judgements against congressmen may well be

viewed as different pieces of a single broader picture which has yet to be fully uncovered.

210. The splitting of proceedings between a number of jurisdictional organs (the JPL Chambers in Bogota, Medellin and Barranquilla; the Penal Chamber of the Supreme Court; and other national courts with territorial jurisdiction over specific crimes) may create challenges for such linkage analysis. In particular, the information and evidence concerning the origins, promotion, consolidation and expansion of paramilitary groups is spread out among courts and prosecutors in a way that may hamper the proper contextualisation of the crimes committed and a comprehensive understanding of the complexity of the phenomenon. As such, for the purpose of prioritization, it may be advisable to explore options for effective information sharing and analysis as well as the coordination of future investigations. Such efforts may also assist the authorities in addressing in a more consistent and comprehensive manner crimes of forced displacement and sexual violence. In this regard, the Office notes the recent establishment of a “National Unit of Analysis and Context” in the Attorney General’s Office.<sup>277</sup>

#### *Forced displacement*

211. In January 2004, the Constitutional Court rendered Sentence T-025 after 108 injunctions were presented by internally displaced persons (IDPs) who claimed that the State authorities had failed to provide protection, housing, access to health, education and humanitarian assistance.<sup>278</sup> Sentence T-025 declared that the situation of IDPs constituted an “unconstitutional state of affairs” (“*estado de cosas inconstitucional*”) because the State had failed to attend to the fundamental rights of the displaced population, including their right to justice, and ordered the competent authorities to take immediate measures to address the structural causes of the situation.<sup>279</sup>

212. Four years after Sentence T-025, the Constitutional Court issued Auto 008/2009 which highlighted that a high level of impunity for the crime of forced displacement and procedural and institutional barriers continued to exist.<sup>280</sup> The Court ordered the Attorney General to design a strategy to investigate allegations of forced displacement as an autonomous crime.<sup>281</sup> With *Auto* 219/2011, the Constitutional Court declared that the internal displacement situation in Colombia continued to represent an “unconstitutional state of affairs” and ordered the Office of

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<sup>277</sup> Resolution No. 1810 of 4 October 2012.

<sup>278</sup> Corte Constitucional de Colombia, Sentencia T-025, 22 January 2004, p. 17.

<sup>279</sup> Corte Constitucional de Colombia, Sentencia T-025, 22 January 2004, pp. 24-25.

<sup>280</sup> Corte Constitucional de Colombia, Decision No. 008 of 2009, Magistrate Rapporteur Manuel José Cepeda Espinosa, available at <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=37731> (last accessed on 13 November 2012), para. 94.

<sup>281</sup> Corte Constitucional de Colombia, Decision No. 008 of 2009, Magistrate Rapporteur Manuel José Cepeda Espinosa, para. 104.

the Attorney General to submit information about the results achieved through the implementation of mechanisms and strategies adopted to avoid impunity.<sup>282</sup>

213. On 26 January 2012, the Constitutional Court convened a hearing to assess the measures adopted by the competent institutions. Reportedly, during the hearing the then Attorney General indicated that impunity was no longer an adequate term when referring to displacement.<sup>283</sup> At the time, the JPL Unit of the Office of the Attorney General reported that 10,264 cases (“*hechos*”) of forcible displacement had been confessed during free-version hearings (“*version libre*”) and 7,744 charges were at the stage of formulation and attribution of charges (“*formulación e imputación de cargos*”) under the JPL procedure.<sup>284</sup> The Office of the Attorney General was in the process of recruiting more personnel to investigate 16,000 enforced disappearances and 18,000 forced displacements.<sup>285</sup> Under the ordinary justice system, as of 1 May 2012, the Office had information on 134 individuals convicted of forcible displacement, and another 110 ongoing proceedings. Individuals that are the subject of these proceedings include paramilitaries (71 convictions, 25 ongoing proceedings), members of the FARC (15 convictions, 2 ongoing proceedings), the ELN (2 convictions), and members of the army or police (1 conviction, 3 ongoing proceedings).<sup>286</sup> Nonetheless, the Constitutional Court underlined that the number of convictions remained low and that the Office of the Attorney General needed to be consistent in its efforts to investigate the crime. The Constitutional Court indicated that of every 200 cases less than one reaches the stage of Accusation and that there was still a high level of impunity.<sup>287</sup>

214. While acknowledging the efforts of the Office of the Attorney General, and bearing in mind that Colombia hosts the second largest population of internally displaced persons in the world, the OTP concurs with the Constitutional Court’s assessment. The crime of forced displacement, which particularly affects vulnerable groups and communities, should remain a prosecutorial priority of the Colombian authorities.

### *Sexual crimes*

215. In April 2008, the Constitutional Court rendered a ruling in the context of Sentence T-025 of 2004 referred to above, addressing the special situation of internally displaced women. *Auto* 092/2008 stated that the situation of women

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<sup>282</sup> Auto 219/11: Persistencia del estado de cosas inconstitucionales declarado mediante Sentencia T-025, 13 October 2011, available at <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8444.pdf?view=1> (last accessed on 13 November 2012).

<sup>283</sup> Verdad Abierta, “Las cuentas pendientes del desplazamiento,” 26 January 2012, (hereinafter “Verdad Abierta, Las cuentas pendientes del desplazamiento”), available at [http://www.verdadabierta.com/index.php?option=com\\_content&id=3808](http://www.verdadabierta.com/index.php?option=com_content&id=3808) (last accessed on 13 November 2012).

<sup>284</sup> Communication from the Government of Colombia, received on 27 March 2012.

<sup>285</sup> Verdad Abierta, Las cuentas pendientes del desplazamiento.

<sup>286</sup> Communication from the Government of Colombia, received on 23 April 2012.

<sup>287</sup> Verdad Abierta, Las cuentas pendientes del desplazamiento.

was critical due to the disproportionate impact of conflict-related violence during and after their displacement.<sup>288</sup> The ruling held that internally displaced women were exposed to specific risks in the context of the armed conflict; including the risk of sexual violence, the risk of being forcibly recruited by armed groups and the risk of being targeted as part of a strategy to exert control by armed groups.<sup>289</sup>

216. The Court indicated that it had received detailed, consistent and coherent information about allegations of rape, gang rape, forced pregnancy, forced prostitution, sexual slavery and sexual violence committed as part of armed operations committed by the FARC, ELN, demobilized paramilitary groups and armed groups in process of reconfiguration<sup>290</sup> and in some cases by members of the State forces, against hundreds of displaced women across the country.<sup>291</sup> The Court underlined that conflict-related violence disproportionately affected displaced girls, women and Afro-Colombian and indigenous women and girls.<sup>292</sup> The Court ordered the government to take measures to protect, assist and restore the rights of displaced women and ordered the Attorney General to carry out relevant activities to factually verify the occurrence of the crimes and to pursue investigations into 183 specific cases of sexual violence against women and girls.<sup>293</sup> By January 2012, only four of the 183 cases transmitted to the Attorney General with Auto 092/2008 had been brought to trial.<sup>294</sup>

217. In 2010, the United Nations Committee Against Torture also expressed its concern about the failure of the Justice and Peace Law proceedings to reflect crimes involving sexual violence and document them in forensic reports.<sup>295</sup> The UN Human Rights Committee has echoed the same concern.<sup>296</sup> By the end of 2008, in free-version hearings (*“version libre”*) under JPL, 15 offences of sexual violence had been mentioned, but only 4 of them had been confessed, out of a total of 18,431 crimes mentioned during the hearings and 4,678 confessed.<sup>297</sup> By March 2012, 79 cases of sexual

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<sup>288</sup> Corte Constitucional de Colombia, Sala Segunda, “Protección de los derechos fundamentales de las mujeres víctimas del desplazamiento forzado por causa del conflicto armado,” 14 April 2008, Auto 092/2008, (hereinafter “Order 092/2008”), available at <http://www.corteconstitucional.gov.co/relatoria/autos/2008/a092-08.htm> (last accessed on 18 September 2012).

<sup>289</sup> Order 092/2008, section III.1.1.

<sup>290</sup> Order 092/2008, section III.1.1.2.

<sup>291</sup> Order 092/2008, section III.1.1.2.

<sup>292</sup> Order 092/2008, section III.1.1.3.

<sup>293</sup> Order 092/2008, section VII, decision, ‘segundo’.

<sup>294</sup> Report of the Secretary General on Conflict-related sexual violence, 13 January 2012, U.N. Doc. A/66/657-S/2012/33, para. 22.

<sup>295</sup> UN Committee Against Torture, “Considerations of reports submitted by States parties under article 19 of the Convention – Concluding observations of the Committee against Torture: Colombia,” 4 May 2010, U.N. Doc. CAT/C/COL/CO/4, p. 9, para. 28.

<sup>296</sup> “Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee,” 4 August 2010, CCPR/C/COL/CO/6, p.5, para. 18.

<sup>297</sup> UN OHCHR 2009 Report, p. 17, para. 60

violence had been confessed under JPL proceedings, out of 26,026 total confessions made by former members of paramilitary groups.<sup>298</sup>

218. National proceedings under the ordinary justice system for rape and other forms of sexual violence have been equally limited. As of 01 May 2012, the Office had information on four individuals convicted for rape or other forms of sexual violence, of which two were paramilitaries and two were members of the national army. The Office has information on another 40 ongoing proceedings, in which paramilitaries were suspected in 14 cases, and members of the national army in three cases.

219. As noted by the Colombian Constitutional Court and the UN Human Rights Committee, the level of prosecutorial and judicial activity pertaining to the commission of rape and other forms of sexual violence appears disproportionate to the scale of the phenomenon, the devastating consequences of the crimes and the number of victims. The OTP therefore encourages the Colombian authorities to prioritise the investigation and prosecution of crimes of sexual violence.

*Proceedings relating to false positive cases*

220. As documented in this report, a large number of investigations have been initiated into the killings of civilians in false positive cases. Yet, the existing proceedings have largely failed to focus on the persons who might bear the greatest responsibility for the commission of these crimes. In particular, these crimes appear to have been committed in a widespread and systematic manner, in furtherance of a State or organizational policy. The judicial activity so far has largely failed to bring to light the context and circumstances in which these crimes have been committed, and have perpetuated rather than diminished impunity enjoyed by virtue of official capacity.

221. The Colombian authorities could build on past investigations in order to focus future steps on investigating and identifying those bearing the greatest responsibility within the military hierarchy. In this regard, the Office notes the recent statement by Attorney General Eduardo Montealegre regarding his Office's new approach to focus investigations of false positive cases on those bearing the greatest responsibility.<sup>299</sup>

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<sup>298</sup> Fiscalía de la Nación, Gestion Unidad Nacional de Fiscalias para la Justicia y Paz, Main Crimes confessed until 31 March 2012.

<sup>299</sup> El Tiempo reported the Attorney General as stating that the poor results of proceedings require a substantial rethinking of the investigations. He went on to state that "if we don't do it, we head towards impunity and run the risk of an intervention by the [International] Criminal Court." [Unofficial translation]. El Tiempo, "Casos de falsos positivos van hacia impunidad: Fiscal Montealegre," 20 September 2012, available at [http://www.eltiempo.com/justicia/casos-de-falsos-positivos-van-hacia-impunidad-fiscal\\_12241024-4](http://www.eltiempo.com/justicia/casos-de-falsos-positivos-van-hacia-impunidad-fiscal_12241024-4) (last accessed on 07 November 2012). See also El Tiempo, "Asi sera la estrategia de la Fiscalía contra la impunidad," 24 October 2012, available at <http://m.eltiempo.com/justicia/con-12-casos-arranca-era-de-priorizacin-en-fiscala/12333082> (last accessed on 13 November 2012).

222. On 16 March 2012, a bill proposing the reform of articles 116, 152 and 221 of the Constitution of Colombia with regard to military criminal law was presented for adoption by the Congress.<sup>300</sup> At the time of writing, the bill has passed six debates in Congress out of eight required for approval.<sup>301</sup> The current text of the bill proposes to include within the jurisdiction of military and police courts cases against members of the armed forces, except for crimes against humanity, genocide and enforced disappearances. The amendment would also create a Tribunal of Penal Guarantees (*Tribunal de Garantias Penales*) to oversee investigations and prosecutions against members of the armed forces.

223. On 22 October 2012, eleven Special Procedures mandate-holders of the UN Human Rights Council issued an open letter calling on the Government and Congress of Colombia to reconsider the proposed amendments, which in their view might lead to providing the military justice system with exclusive jurisdiction over international human rights and humanitarian law crimes other than those excepted, and could potentially inhibit the identification of criteria that could indicate the commission of crimes against humanity or genocide.<sup>302</sup> The Office will seek further information and clarification with the Government of Colombia on the legislative efforts pertaining to the jurisdiction of military courts.

224. In sum, from the issuance of this report onward, the preliminary examination of the Situation in Colombia will focus on: (i) follow-up on the Legal Framework for Peace and other relevant legislative developments, as well as jurisdictional aspects relating to the emergence of 'new illegal armed groups;' (ii) proceedings relating to the promotion and expansion of paramilitary groups; (iii) proceedings relating to forced displacement; (iv) proceedings relating to sexual crimes; and, (v) false positive cases.

225. The Prosecutor notes the various measures that the Colombian authorities have taken to date to seek justice for the victims of international crimes, and she hopes that the national authorities will within the near future address the priorities identified above. The Prosecutor will continue to assess the development of the State's efforts to ensure that Colombia prosecutes all those that might be considered to bear the greatest responsibility for crimes within the jurisdiction of the Court.

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<sup>300</sup> Bill No. 16/2012 (Senate) - 192/2012 (Congress). Gaceta del Congreso 70, 16 March 2012.

<sup>301</sup> Gaceta del Congreso 684, 10 October 2012.

<sup>302</sup> UN OHCHR, "Open letter by Special Procedures mandate-holders of the Human Rights Council to the Government and representatives of the Congress of the Republic of Colombia," 22 October 2012, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12683&LangID=E> (last accessed on 13 November 2012).

## Annex: Overview of national proceedings

### Proceedings against Leaders of Guerrilla Groups

<b>Name</b>	<b>Position/Role</b>	<b>National Proceedings</b>
Pedro Antonio Marin (alias Manuel Marulanda) <i>Died in 2008</i>	Founder of FARC	Convicted on 14 counts of murder, abductions, hostage-taking and child recruitment between 2003-2009, with sentences ranging from 13 to 40 years.
Luis Edgar Devia Silva (alias Raul Reyes) <i>Killed in combat (March 2008)</i>	FARC Secretariat member; head of finance and international relations	Convicted on 15 counts of murder, abductions, hostage-taking and child recruitment between 2003-2009, with sentences ranging from 13 to 40 years.
Guillermo Leon Saenz Vargas (alias Alfonso Cano) <i>Killed in combat (November 2011)</i>	FARC's top leader following Marin's death	Convicted on 16 counts of murder, abductions, hostage-taking, forcible displacement and child recruitment between 2003-2010, with sentences ranging from 13 to 40 years.
Victor Julio Suarez Rojas (alias Mono Jojoy) <i>Killed in combat (September 2010)</i>	FARC's head of military operations; #2 in secretariat	Convicted on eight counts of murder, abductions, hostage-taking and child recruitment between 2003-2009, with sentences ranging from 13 to 40 years.
Rodrigo León Londoño Echeverry (alias Timoleón Jimenez, Timochenko) <i>At large</i>	Current #1 in FARC Secretariat; head of military operations	Convicted on 16 counts of murder, abductions, hostage-taking, forcible displacement and child recruitment between 2003-2010, with sentences ranging from 10 to 40 years. Five convictions were rendered for killings and abductions committed in February and May 2003 and February and December 2005.
Luciano Marin Arango (alias Ivan Marquez) <i>At large</i>	Current #2 in FARC Secretariat; political leader	Convicted on 16 counts of murder, abductions, hostage-taking, forcible displacement and child recruitment between 2003-2010, with sentences ranging from 13 to 40 years. He has another eight convictions for crimes committed outside of the temporal jurisdiction of the Court with sentences ranging from 28 to 53 years.
Milton Jesús Toncel Redondo (alias Joaquín Gómez) <i>At large</i>	Current FARC Secretariat member	Convicted on nine counts of murder, abductions, forcible displacement and child recruitment between 2003-2010, with sentences ranging from 13 to 40 years.
Jorge Torres Victoria (alias Pablo Catatumbo) <i>At large</i>	Current FARC Secretariat member	Sentenced to 40 and 57 years for murder, abductions and killings committed in February 2003, and February and December 2005.

Wilson Valderrama Cano (alias Mauricio Jaramillo) <i>At large</i>	Current FARC Secretariat member	Ongoing proceedings for alleged abductions committed in February 2003.
Henry Castellanos Garzon (alias Romana) <i>Killed in combat (September 2010)</i>	Former FARC regional commander	Convicted on three counts of murder and hostage-taking between 2005-2008, with sentences between 33 to 40 years.
Jose Benito Cabrera (alias Fabian Ramirez) <i>At large</i>	Current FARC regional commander	Convicted on seven counts of murder, abductions, hostage-taking and child recruitment between 2003-2007, with sentences ranging from 13 to 40 years.
Nicolás Rodríguez Bautista (alias Gabino) <i>At large</i>	ELN's top leader (commander in chief and political leader)	Convicted and sentenced in 2010 to 30 years for killings, torture and abductions; previously convicted and sentenced to 38 and 40 years for killings and abductions committed in October 1998 and May 1999.
Erlinton Herlinto Javier Chamorro Acosta (alias Antonio García) <i>At large</i>	ELN's second-in-command (member of central command, military commander and spokesperson)	Convicted and sentenced in 2010 to 30 years for killings, torture and abductions; previously convicted and sentenced to 38 and 40 years for killings and abductions committed in October 1998 and May and April 1999.
Israel Ramírez Pineda, (alias Pablo Beltrán) <i>At large</i>	Member of ELN central command	Convicted and sentenced in 2010 to 30 years for killings, torture and abductions; previously convicted and sentenced to between 28 and 40 years for killings and abductions committed in October 1998 and May and April 1999.
Rafael Sierra Granados (alias Ramiro Vargas Mejía) <i>At large</i>	Member of ELN central command	Convicted and sentenced to 40 years for killings committed in October 1998
Pedro Elías Cañas Serrano (alias Oscar Santos Rueda) <i>Died in 2006</i>	Former member of ELN central command	Convicted and sentenced in 2010 to 30 years for killings, torture and abductions; previously convicted and sentenced to 40 years for killings committed in October 1998.

### Proceedings against Leaders of Paramilitary Armed Groups<sup>303</sup>

Name	Position/Role	National Proceedings
Jose Vicente Castaño	Overall leader of the AUC; member of Central Political and Military Command ( <i>Dirección Política y Militar</i> )	<u>Ordinary Justice</u> : Convicted six times for crimes committed from 21 January 2001 until 5 December 2002, with sentences ranging from 22 to 40 years of imprisonment. His death has been reported but not confirmed.
Salvatore Mancuso	Overall second-in-command of AUC; member of Central Political and Military Command ( <i>Dirección Política y Militar</i> )	<u>Ordinary Justice</u> : convicted nine times and given prison sentences that range from 12 to 40 years, for killings committed from June 1994 until November 2001. <u>JPL</u> : Ongoing proceedings for crimes allegedly committed after November 2002. <u>USA</u> : Extradited to USA in 2008. Ongoing trial for drug-trafficking offences (USA v. Castano-Gil, et al., Case #: 1:02-cr-0388-ESH (District of Columbia, Washington DC))
Ramón María Isaza Arango	Member of Central Political and Military Command ( <i>Dirección Política y Militar</i> ); Commander of the Magdalena Medio bloc.	<u>Ordinary Justice</u> : Convicted and sentenced to 16 years of imprisonment for killings committed in May 2003. He has another conviction for killings and abductions committed in April 2002, with a sentence of 20 years of imprisonment. Currently imprisoned in 'La Picota' prison.
Luis Eduardo Cifuentes (alias <i>El Aguila</i> )	Member of AUC auxiliary command ( <i>Estado Mayor</i> ); Commander of the Cundinamarca bloc	<u>JPL</u> : Ongoing proceedings under JPL; has confessed to 15 murders and one enforced disappearance.
Raul Hazbum (alias <i>Pedro Ponte / Pedro Bonito</i> )	Member of AUC auxiliary command ( <i>Estado Mayor</i> ); Commander of the Bananero bloc	<u>Ordinary Justice</u> : Convicted in February 2012 for murder and attempted murder committed in 2000; sentenced to 24 years imprisonment. Convicted in August 2011 for murder and enforced disappearance committed in 1997; sentenced to 20 years imprisonment.
Diego Jose Martinez Goyeneche (alias <i>Daniel / Daniel Roa</i> )	Member of AUC auxiliary command ( <i>Estado Mayor</i> );	Deceased in 2009.

<sup>303</sup> The order of individuals is from highest ranking to lowest ranking (Central command, Auxiliary command, and Bloc commanders), and within each rank, alphabetically by last name.

	Commander of the Tolima bloc	
Diego Fernando Murillo Bejarano (alias <i>Don Berna / Adolfo Paz</i> )	Member of AUC auxiliary command ( <i>Estado Mayor</i> ); Commander of the Cacique Nutibara and Heroes de Tolova blocs	<u>Ordinary Justice</u> : Convicted and given sentences of 26 and 35 years of imprisonment for killings, enforced disappearances and forced displacements committed in July 2003 - April 2005. <u>USA</u> : Extradited in 2008. Sentenced to 31 years of imprisonment in the US for drug-trafficking offences (USA v. Murillo-Bejarano, et al., Case #: 1:03-cr-01188-RMB-1, Southern District of New York, Foley Square)
Rodrigo Tovar Pupo (alias <i>Jorge 40</i> )	Member of AUC auxiliary command ( <i>Estado Mayor</i> ); Commander of the ACCU North bloc ( <i>Bloque Norte de las Autodefensas Campesinas de Córdoba y Urabá</i> )	<u>Ordinary Justice</u> : Convicted and sentenced to 26 years imprisonment for killings committed in 2004 and 2005. He has another two convictions for forced displacement and killings committed in November 2000 and March 2001 with sentences of 30 and 47 years respectively. <u>USA</u> : Extradited in 2008. Ongoing trial for drug-trafficking offences in the US (USA v. Giraldo-Serna, et al., Case #: 1:04-cr-00114-RBW-9, District of Columbia, Washington DC)
Arnubio Triana Mahecha (alias <i>Botalon</i> )	Member of AUC auxiliary command ( <i>Estado Mayor</i> ); Commander of the Puerto Boyaca bloc	<u>Ordinary Justice</u> : Ongoing proceedings for alleged forced displacement committed in 2001.
Alirio Trujillo (alias <i>Chorizo / Francisco Tabares</i> )	Member of AUC auxiliary command ( <i>Estado Mayor</i> ); Commander of the Sur de Cesar bloc	No information available.
Ramiro Vanoy (alias <i>Cuco Vanoy</i> )	Member of AUC auxiliary command ( <i>Estado Mayor</i> ); Commander of the Mineros bloc	<u>IPL</u> : Ongoing proceedings for alleged killings, child recruitment, abductions and enforced disappearances committed from 1990 until 2005. <u>USA</u> : Extradited in 2008. Convicted and sentenced to 24 years in prison in the US for drug-trafficking offences (USA v. Bernal-Madrigal, et al., Case #: 0:99-cr-06153-KMM-24, Southern District of Florida, Ft. Lauderdale)
Jose Ever Veloza Garcia (alias <i>Hernan Hernandez</i> )	Member of AUC auxiliary command ( <i>Estado Mayor</i> );	<u>Ordinary Justice</u> : 61 convictions with prison sentences ranging from 5 to 31 years, for killings, forced displacement, and enforced disappearances committed between March

	Commander of the Bananero and Calima blocs	1995 and August 2004. Seven of these convictions are for crimes committed within the temporal jurisdiction of the ICC. <u>USA</u> : Extradited in 2009. Ongoing trial for drug-trafficking offences in the US (USA v. Garcia, et al., Case #: 1:07-cr-00274-WHP-1, Southern District of New York, Manhattan)
Carlos Mario Aguilar Echeverri (alias <i>Rogelio</i> )	Commander of the Heroes de Granada bloc	Extradited to USA in 2008.
Jairo Andres Angarita (alias <i>Andres</i> )	Commander of the Sinu and San Jorge bloc	Killed in 2006.
Miguel Arroyave (alias <i>El Arcangel</i> )	Commander of the Centauros bloc	Killed in 2004.
Jose Maria Barrera (alias <i>Chepe Barrera</i> )	Commander of the Sur de Magdalena e Isla de San Fernando bloc	<u>Ordinary Justice</u> : Ongoing proceedings for alleged murder.
Huber Enrique Banquez Martinez (alias <i>Juancho Dique</i> )	Commander of the Montes de Maria and Canal del Dique blocs	<u>IPL</u> : Convicted on 29 June 2010 for murder, deportation, forced displacement, abduction, and other offences.
Hector German Buitrago (alias <i>Martin Llanos</i> )	Commander of the Casanare bloc	<u>Ordinary Justice</u> : Convicted <i>in absentia</i> for murders (massacre of San Carlos de Guaroa, 1997); sentenced to 40 years of imprisonment. Ongoing proceedings for alleged murders and enforced disappearances committed in 2000-2002.
Elkin Casarrubia (alias <i>El Cura</i> )	Commander of the Calima bloc	<u>Ordinary Justice</u> : Convicted and sentenced to 26 years of imprisonment for murders committed in 2003.
Edwar Cobos Tellez (alias <i>Diego Vecino</i> )	Commander of the Montes de Maria bloc	<u>IPL</u> : Convicted on 29 June 2010 for murder, deportation, forced displacement, abduction and other offences committed prior to November 2002 and sentenced to 8 years of imprisonment (following reduction). Currently imprisoned in 'La Picota' prison. <u>Ordinary Justice</u> : Convicted and sentenced to 14 and 16 years of prison for killings committed in May and August 2001; subsequently convicted and sentenced to 21 years for killings, abductions and forced displacement committed in November 2002.
Ivan Roberto Duque Gaviria (alias <i>Ernesto Baez</i> )	Commander of the Puerto Boyaca bloc	<u>Ordinary Justice</u> : Convicted and sentenced to 36 years of imprisonment for killings committed in December 2003. Currently imprisoned in 'Itagui' prison.

Luis Eduardo Durango Echevarria (alias <i>Sebastian Guevara</i> )	Commander of the Pacifico bloc	No information available.
Alcides de Jesus Durango (alias <i>Rene</i> )	Commander of the Suroeste Antioqueno bloc	<u>Ordinary justice</u> : Convicted seven times for multiple killings, forced displacement and other crimes, with sentences ranging from 16 to 36 years.
Salomon Feris Chadid (alias <i>08</i> )	Commander of the Sinu and San Jorge bloc	<u>Ordinary Justice</u> : Ongoing proceedings for alleged murders and forced displacement committed in 1996-1997; currently under house arrest.
John Fredy Gallo Bedoya ( <i>El Pajaro</i> )	Commander of the Pajaro bloc	<u>IPL</u> : Ongoing proceedings for alleged murder committed in 2004.
Edgar Ignacio Fierro Flores (alias <i>Don Antonio</i> )	Commander of the José Pablo Díaz front (ACCU North Bloc)	<u>IPL</u> : Convicted on 7 December 2011 for homicide, extortion, recruitment of minors, torture, forced displacement, enforced disappearance, and one rape. <u>Ordinary Justice</u> : Convicted and sentenced to 14 and 25 years of imprisonment for killings and abductions committed in September 2003 and January 2005. Currently imprisoned in 'La Picota' prison.
Carlos Mauricio Garcia (alias <i>Doble Cero</i> )	Commander of the Metro bloc	Killed in 2004.
Hernan Giraldo Serna (alias <i>El Patron</i> )	Commander of the Sierra bloc	<u>Ordinary Justice</u> : convicted and sentenced to 38 years in prison for enforced disappearance committed in February 2001. <u>USA</u> : Extradited in 2008. Ongoing trial for drug-trafficking offences in the US (USA v. Giraldo-Serna, et al., Case #: 1:04-cr-00114-RBW-9, District of Columbia, Washington DC)
David Hernández Rojas (alias <i>Jose / 39</i> )	Commander of the Calima bloc	Killed in 2004.
Omar Isaza (alias <i>Teniente</i> )	Commander of the Magdalena Medio bloc	Killed in 1998.
Ovidio Isaza (alias <i>Roque</i> )	Commander of the Magdalena Medio bloc	<u>Ordinary Justice</u> : Ongoing proceedings for alleged forced displacement and murder.
Oliverio Isaza (alias <i>Terror</i> )	Commander of the Magdalena Medio bloc	<u>Ordinary Justice</u> : Convicted and sentenced to 32.5 years of imprisonment for enforced disappearance, forced displacement and other offences.
Carlos Mario Jimenez Naranjo (alias <i>Macaco</i> )	Commander of the Central Bolivar and Libertadores del	<u>IPL</u> : Ongoing proceedings for alleged killings. <u>USA</u> : Extradited in 2008. Convicted and sentenced to 33 years in prison for drug-trafficking offences in the US (USA v. Naranjo,

	Sur blocs	et al., Case #: 1:05-cr-00235-RMC (District of Columbia, Washington DC, USA and USA v. Naranjo, et al., Case #: 8:02-cr-00482-JDW-EAJ-1, Middle District of Florida, Tampa)
Jorge Ivan Laverde Zapata (alias <i>El Iguano</i> )	Commander of the Catatumbo bloc	<u>IPL</u> : Convicted on 2 December 2010 for murder, forced displacement, torture and other offences.
Jose Baldomero Linares (alias <i>Guillermo Torres</i> )	Commander of the Meta y Vichada bloc	<u>Ordinary Justice</u> : Convicted and sentenced to five and 40 years of imprisonment for killings, abductions and illicit recruitment committed in February 2003 and June 2003. He has another conviction for killings committed in July 1998 with a sentence of 22 years of imprisonment. <u>IPL</u> : Proceedings for alleged killings and forced displacement. Currently imprisoned in 'La Picota' prison.
Rafael Antonio Londoño Jaramillo (alias <i>Rafa Putumayo</i> )	Commander of the Calima bloc	Killed in 2004.
José Gregorio Mangonez Lugo (alias <i>Carlos Tijeras</i> )	Commander of the William Rivas front	<u>Ordinary Justice</u> : Convicted and sentenced to 13 and 40 years for killings committed in 2002 and 2003. <u>IPL</u> : Ongoing proceedings for alleged killings. He has been in detention since 2005.
Daniel Alberto Mejia Angel	Commander of the Heroes de Granada bloc	Killed in 2006.
Miguel Angel Mejia Munera	Commander of the Vencedores de Arauca bloc	<u>IPL</u> : Ongoing proceedings for alleged killings and abductions. <u>USA</u> : Extradited in 2009. Ongoing trial for drug-trafficking offences in the US (USA v. Mejia-Muñera, et al., Case #: 1:00-cr-10171-WPD-1, Southern District of Florida, Miami)
Victor Manuel Mejia Munera	Commander of the Vencedores de Arauca bloc	Killed in 2008.
Rodrigo Antonio Mercado Peluffo (alias <i>Rodrigo Cadena; Roman Zabala</i> )	Commander of the Montes de Maria bloc	<u>Ordinary Justice</u> : Convicted <i>in absentia</i> in October 2009 for murders and kidnapping committed from 2003 to 2005; sentenced to 40 years of imprisonment.
Jose Orlando Moncada Zapata (alias <i>Tasmania</i> )	Commander of the Suroeste Antioqueno bloc	<u>Ordinary Justice</u> : Ongoing proceedings for alleged murder; in detention since 2005.
Pedro Oliveiro Guerrero (alias <i>Cuchillo</i> )	Commander of the Centauros bloc	Killed in 2010.
José Rubén Pena	Commander of	<u>IPL</u> : Convicted on 1 December 2011 for

(alias <i>Lucho</i> )	the Vencedores de Arauca bloc	murder, rape, torture, forced displacement, enforced disappearance, abduction, and other offences.
Guillermo Rodrigo Pérez Alzate (alias <i>Pablo Sevillano</i> )	Commander of the Libertadores del Sur bloc	<u>Ordinary Justice</u> : Convicted and given prison sentences of 26 and 35 years for killings, enforced disappearances and forced displacements committed from July 2003 to April 2005. He has two convictions for enforced disappearances and killings committed in November 1999 and March 2001 with sentences of 16 and 31 years respectively. <u>USA</u> : Extradited in 2008. Prison sentence of 17 years in the US for drug-trafficking offences (USA v. Perez-Alzate, et al., Case #: 8:02-cr-00482-JDW-EAJ-1, Middle District of Florida, Tampa)
Alberto Pérez Betancourt (alias <i>Camilo</i> )	Commander of the Catatumbo bloc	<u>Ordinary Justice</u> : Convicted <i>in absentia</i> in September 2010 for murders (Tibú massacre of 6 April 2000); sentenced to 40 years of imprisonment.
Marco Tulio Pérez Guzmán (alias <i>El Oso</i> )	Commander of the Montes de Maria bloc	<u>Ordinary Justice</u> : Convicted in 2007 for murder, forced displacement and enforced disappearance; sentenced to 25 years of imprisonment. Separately convicted in July 2012 for a murder committed in 2001 and sentenced to 18 years and five months of imprisonment.
Manuel de Jesus Piraban (alias <i>Pirata</i> )	Commander of the Centauros bloc	<u>Ordinary Justice</u> : Convicted 10 times with sentences ranging from six to 33 years of prison for killings committed from November 1991 until September 2004. Four of these convictions are for crimes committed within the temporal jurisdiction of the ICC. Currently imprisoned in 'La Picota' prison.
Juan Francisco Prada Marquez (alias <i>Juancho Prada</i> )	Commander of the Sur de Cesar bloc	<u>Ordinary Justice</u> : Convicted nine times with prison sentences ranging from 12 to 40 years for killings committed from June 1994 until November 2001. He has another three convictions for killings committed in August 1997, August 2000 and February 2001 with sentences that range from nine to 17 years of imprisonment. Currently imprisoned in Barranquilla.
Daniel Rendon Herrera (alias <i>Don Mario</i> )	Commander of the Centauros bloc	<u>Ordinary Justice</u> : Convicted in January 2011 and sentenced to 17 years of imprisonment for murders committed in 2003. Separately convicted in May 2011 and convicted to 15 years and nine months of imprisonment for murder committed in November 2002.
Freddy Rendon	Commander of	<u>IPL</u> : Convicted on 16 December 2011 and

Herrera (alias <i>El Aleman</i> )	the Elmer Cardenas bloc	sentenced to eight years of imprisonment (following reduction) for recruitment of minors, murder, abduction and other offences. <u>Ordinary Justice</u> : Convicted and sentenced to 14 years of imprisonment for murder committed in January 2005; proceedings for alleged killings and abductions. Currently imprisoned in 'Itagui' prison.
Rafael Salgado Marchán (alias <i>El Aguila</i> )	Commander of the Meta y Vichada bloc	<u>IPL</u> : Ongoing proceedings
Luis Arnulfo Tubercua (alias <i>Memin</i> )	Commander of the Noroccidente Antioqueno bloc	<u>Ordinary justice</u> : Convicted 19 times for multiple killings and other crimes, with sentences ranging from 12 to 17 years of imprisonment.
Rodolfo Useda Castano (alias <i>Julio Castano</i> )	Commander of the Libertadores del Sur	<u>IPL</u> : Ongoing proceedings for murder.
Orlando Villa Zapata (alias <i>Ruben</i> )	Commander of the Vencedores de Arauca bloc	<u>IPL</u> : Convicted on 16 April 2012 for child recruitment and other offences.
Francisco Javier Zuluaga (alias <i>Gordolindo</i> )	Commander of the Pacifico bloc	<u>IPL</u> : Ongoing proceedings for alleged killings. <u>USA</u> : Extradited in 2008. Convicted and sentenced to 21 years imprisonment for drug-trafficking offences (USA v. Bernal-Madrigal, et al., Case #: 0:99-cr-06153-KMM-24, Southern District of Florida, Ft. Lauderdale)
Luis Eduardo Zuluaga Arcila (alias <i>Macguiver</i> )	Commander of the Magdalena Medio bloc	<u>Ordinary Justice</u> : Convicted in June 2012 to 22 years and 10 months of imprisonment for the murder of a teacher committed in February 2004. Was also convicted in October 2010 to 18 years and nine months of imprisonment for the murder of a unionist in April 2002.

### Convictions under the Justice and Peace Law

Name	Position/Role	National Proceedings
Wilson Salazar Carrascal, alias " <i>el Loro</i> "	Former member of the bloc "Héctor Julio Peinado Becerra"	Convicted on 19 March 2009 for murder and other offences. Sentence overruled by Supreme Court on 31 July 2009, ordering to re-investigate in the context of a widespread and systematic attack against the civilian population.
Edwar Coboz Téllez, alias " <i>Diego Vecino</i> "	Former commander of paramilitary bloc Montes de María	Convicted on 29 June 2010 for murder, deportation, forced displacement, abduction and other offences.

Huber Enrique Bández Martínez, alias " <i>Juancho Dique</i> "	Former commander of the paramilitary front Canal del Dique	Convicted on 29 June 2010 for murder, deportation, forced displacement abduction, and other offences.
Edinson Giraldo Paniagua, alias " <i>El Pitufu</i> "	Former member of paramilitary blocs Heroes de Tolova, Metro, Cacique Nutibara and Heroes de Granada	Convicted on 30 July 2012 for murder, forced displacement and other offences.
Giancarlo Gutierrez Suarez alias " <i>El Tuerto</i> "	Former member (patrolman) of paramilitary bloc Calima	Convicted on 4 September 2012 for murder, forced displacement, abduction, and other offences.
Jorge Iván Laverde Zapata, alias " <i>El Iguano</i> "	Former leader of the paramilitary bloc Catatumbo	Convicted on 2 December 2010 for murder, forced displacement, torture and other offences.
Aramis Machado Ortiz, alias " <i>Cabo Machado</i> "	Former military instructor of the paramilitary bloc Catatumbo	Convicted on 29 June 2011 for conspiracy to commit a crime, illegal possession of weapons, and escape from prison.
José Rubén Pena alias " <i>Lucho</i> "	Former leader of company Centauros (bloc Vencedores de Arauca)	Convicted on 1 December 2011 for murder, rape, torture, forced displacement, enforced disappearance, abduction, and other offences.
Wilmer Morelo Otero Castro alias " <i>El Boqui</i> "	Former member (patrolman) of bloc Vencedores de Arauca	Convicted on 1 December 2011 for murder, forced displacement, enforced disappearances, abduction, torture and other offences.
José Manuel Hernández Calderas alias " <i>Platino</i> "	Former member of bloc Vencedores de Arauca	Convicted on 1 December 2011 for murder, forced displacement, enforced disappearances, abduction, torture and other offences.
Freddy Rendón Herrera alias " <i>El Alemán</i> "	Former commander of bloc "Elmer Cárdenas"	Convicted on 16 December 2011 for recruitment of minors, murder, abduction and other offences.
Edgar Ignacio Fierro Flores alias " <i>Don Antonio</i> "	Former commander of front "José Pablo Díaz" (Bloc Norte)	Convicted on 7 December 2011 for murder, recruitment of minors, torture, forced displacement, enforced disappearance, rape and other offences.
Andres Mauricio Torres León alias " <i>Z1</i> "	Former member (patrolman) of front "Mártires del Cesar" (Bloc Norte)	Convicted on 7 December 2011 for murder, forced displacement, enforced disappearances, abduction and other offences.

José Barney Veloza García alias “El Flaco”	Former member (patrolman) of blocs Bananero, Calima and Centauros	Convicted on 31 January 2012 for murder and other offences.
Orlando Villa Zapata alias “Ruben”	Commander of bloc Vencedores de Arauca	Convicted on 16 April 2012 for child recruitment and other offences.

### Overview of Proceedings against Senior Paramilitary Leaders<sup>304</sup>

<u>Convictions</u>	30
Under the ordinary system	23
Under the JPL	4
Under both schemes	3
<u>Ongoing national proceedings</u>	13
Under the ordinary system	5
Under the JPL	8
<u>Extradited to USA but not otherwise subject to national proceedings</u>	1
<u>No information available</u>	2
<u>TOTAL</u>	46

### Proceedings against Congressmen in Parapolitics Cases

The following congressmen have been convicted by the Supreme Court of Justice for the crime of promoting illegal armed groups pursuant to an agreement (*concierto para delinquir agravado para promover grupos armados ilegales*):<sup>305</sup>

Congressmen convicted for promoting Salvatore Mancuso and others paramilitary leaders ( <i>Estado Mayor</i> )		
Name	Conviction	Sentence
Juan Manuel López Cabrales	Convicted in November 2008 for promoting illegal armed groups pursuant to an agreement ( <i>Pacto Santa Fe de Ralito</i> ).	74 months of imprisonment
Jose Maria Imbeth	Convicted in January 2012 for promoting	90 months of

<sup>304</sup> Of the 57 most senior paramilitary leaders identified by the Office, 11 are deceased.

<sup>305</sup> Article 340 of the Colombian Penal Code.

Bermudez	illegal armed groups pursuant to the agreement ( <i>Pacto Santa Fe de Ralito</i> ).	imprisonment
Luis Feris Chadid	Convicted in January 2012 for promoting illegal armed groups pursuant to the agreement ( <i>Pacto Santa Fe de Ralito</i> ).	90 months of imprisonment
William Alfonso Montes Medina	Convicted in January 2012 for promoting illegal armed groups pursuant to the agreement ( <i>Pacto Santa Fe de Ralito</i> ).	90 months of imprisonment
Miguel Alfonso De la Espriella Burgos	Convicted in February 2008 for promoting illegal armed groups pursuant to the agreement ( <i>Pacto Santa Fe de Ralito</i> ).	43 months and 15 days
Eleonora Pineda	Convicted for promoting illegal armed groups pursuant to the agreement ( <i>Pacto Santa Fe de Ralito</i> ).	45 months of imprisonment.

**Congressmen Convicted for promoting the Bloc Norte of the AUC**

<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Mauricio Pimiento Barrera	Convicted in May 2008 for promoting illegal armed groups pursuant to an agreement ( <i>Acuerdo de Magdalena</i> ) and electoral crimes.	7 years of imprisonment
Luis Eduardo Vives Lacouture	Convicted in August 2008 for promoting illegal armed groups pursuant to an agreement.	84 months of imprisonment
Karely Patricia Lara Vence	Convicted in August 2009 for promoting illegal armed groups pursuant to an agreement ( <i>Pacto de Chibolo</i> ).	72 months of imprisonment
Alvaro Araujo Castro	Convicted in March 2010 for promoting illegal armed groups pursuant to an agreement and electoral crimes.	112 months of imprisonment
Jorge de Jesus Castro Pacheco	Convicted in May 2010 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
Hernando Cesar Molina Araujo	Convicted in May 2010 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
Miguel Pinedo Vidal	Convicted in February 2012 for promoting illegal armed groups pursuant to an agreement.	108 months of imprisonment
Muriel de Jesús Benito	Convicted in February 2008 for	47 months of

Rebollo	promoting illegal armed groups pursuant to an agreement.	imprisonment
Jorge Luís Ramírez Urbina	Convicted in January 2009 for promoting illegal armed groups pursuant to an agreement.	36 months of imprisonment
Jorge Luís Caballero Caballero	Convicted in June 2012 for promoting illegal armed groups pursuant to an agreement.	5 years and 5 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc Héroes de los Montes de María</b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Jorge Eliecer Anaya Hernandez	Convicted in February 2010 for promoting illegal armed groups pursuant to an agreement and for murder committed on 19 November 1997.	480 months of imprisonment
Javier Caceres Leal	Convicted in April 2012 for promoting illegal armed groups pursuant to an agreement.	108 months of imprisonment
Jairo Merlano	Convicted in July 2011 for promoting illegal armed groups pursuant to an agreement and electoral crimes.	100 months of imprisonment
Jose Maria Conde Romero	Convicted in March 2011 for promoting illegal armed groups pursuant to an agreement.	60 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc Central Bolivar</b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Vicente Bled Saad	Convicted in January 2010 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
Miguel Angel Rangel Sossa	Convicted in September 2010 for promoting illegal armed groups pursuant to an agreement	90 months of imprisonment
Ciro Ramirez Pinzon	Convicted in March 2011 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
Luis Alberto Gil	Convicted in January 2012 for promoting illegal armed groups	90 months of imprisonment

	pursuant to an agreement.	
Alfonso Riaño Castillo	Convicted in January 2012 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
Oscar Josue Reyes	Convicted in January 2012 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
Carlos Arturo Clavijo Vargas	Convicted in September 2008 for promoting illegal armed groups pursuant to an agreement.	45 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc Central Bolivar and Front Cacique Pipinta</b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Enrique Emilio Ángel Barco	Convicted in August 2008 for promoting illegal armed groups pursuant to an agreement.	45 months of imprisonment
<b>Congressmen Convicted for promoting the Front Cacique Pipinta</b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Dixon Ferney Tapasco Triviño	Convicted in February 2010 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc Central Bolivar and Bloc Mineros</b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Rocio Arias Hoyos	Convicted in July 2008 for promoting illegal armed groups pursuant to an agreement.	45 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc Elmer Cardenas</b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Odin Sanchez Montes de Oca	Convicted in July 2011 for promoting illegal armed groups pursuant to an agreement.	108 months of imprisonment
Edgar Eulises Torres	Convicted in July 2011 for promoting	108 months of

Murillo	illegal armed groups pursuant to an agreement.	imprisonment
Mario Salomon Nader Muskus	Convicted in May 2012 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc <i>Elmer Cardenas</i> and Bloc <i>Bananero</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Humberto de Jesus Builes Correa	Convicted in August 2010 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
Ruben Dario Quintero Villada	Convicted in September 2010 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc <i>Elmer Cardenas</i>, Bloc <i>Bananero</i> and Bloc <i>Arles Hurtado</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Manuel Dario Ávila Peralta	Convicted in August 2011 for promoting illegal armed groups pursuant to an agreement.	55 months of imprisonment
Jesús Enrique Doval Urango	Convicted in August 2011 for promoting illegal armed groups pursuant to an agreement.	55 months of imprisonment
César Augusto Andrade Moreno	Convicted in August 2011 for promoting illegal armed groups pursuant to an agreement.	55 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc <i>Tolima</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Gonzalo Garcia Angarita	Convicted in December 2009 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
Luis Humberto Gomez Gallo	Convicted in May 2011 for promoting illegal armed groups pursuant to an agreement.	108 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc <i>Tolima</i></b>		

<b>Congressmen Convicted for promoting the Bloc <i>Resistencia Tayrona</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Jose Domingo Davila Armenta	Convicted in February 2011 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
Enrique Rafael Caballero Aduen	Convicted in March 2011 for promoting illegal armed groups pursuant to an agreement.	67 months and 15 days of imprisonment
<b>Congressmen Convicted for promoting the Bloc <i>Catatumbo</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Ricardo Ariel Elcure Chacon	Convicted in September 2009 for promoting illegal armed groups pursuant to an agreement.	72 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc <i>Calima</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Juan Carlos Martinez Siniestra	Convicted for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc <i>Centauro</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Edilberto Castro Rincon	Convicted in November 2007 for promoting illegal armed groups pursuant to an agreement and murder committed on 13 September 2004.	40 years of imprisonment
Ruben Dario Quintero Villada	Convicted in September 2010 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
<b>Congressmen Convicted for promoting the Bloc <i>Cordoba</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Mario de Jesus Uribe	Convicted in February 2011 for	90 months of

Escobar	promoting illegal armed groups pursuant to an agreement.	imprisonment
<b>Congressmen Convicted for promoting <i>Autodefensas Campesinas del Casanare</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Oscar Leonidas Wilches Carreño	Convicted in April 2011 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
<b>Congressmen Convicted for promoting the <i>Bloc Heroes del Guaviare</i></b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Oscar de Jesús López Cadavid	Convicted in January 2011 for promoting illegal armed groups pursuant to an agreement.	90 months of imprisonment
<b>Congressmen Convicted for promoting the other armed groups</b>		
<b>Name</b>	<b>Conviction</b>	<b>Sentence</b>
Erik Julio Morris Taboada	Convicted in December 2007 for promoting illegal armed groups pursuant to an agreement with paramilitary groups operating in Sucre.	6 years of imprisonment
Reginaldo Enrique Montes Alvarez	Convicted in November 2008 for promoting illegal armed groups pursuant to an agreement with AUC.	72 months of imprisonment
Yidis Medina	Convicted in August 2012 for promoting illegal armed groups pursuant to an agreement with the ELN and kidnapping of two men in 2000.	32 years of imprisonment

### **Investigations of Congressmen for Crimes committed by Paramilitary Groups**

The Supreme Court ordered investigations into the level of participation and responsibility of the following congressmen in the crimes committed by specific paramilitary groups, including crimes against humanity.

Name	Investigation
Jorge de Jesus Castro Pacheco	In May 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity after finding that he was effectively part of the same criminal hierarchy and organizational structure.
Dieb Nicolas Maloof	In May 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity
Jose Gamarra Sierra	In May 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity
Luis Eduardo Vives	In May 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity.
Alfonso Campo Escobar	In May 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity.
Salomón Saade Abdala	In May 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity.
Jorge Luis Caballero	In May 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity.
Mauricio Pimiento	In May 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity.
Álvaro Araújo Castro	In March 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity.
Jose Domingo Davila Armenta	In February 2011, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Norte</i> of the AUC, including crimes against humanity.
Gonzalo Angarita Garcia	In December 2009, the Supreme Court ordered investigation into the level of participation in a massacre known as “ <i>Masacre del Neme</i> ” committed in April 2001, attributed to the <i>Bloque Tolima</i> of the AUC.
Humberto de Jesus Builes Correa	In August 2010, the Supreme Court ordered investigation into the level of participation in crimes attributed to the <i>Bloque Elmer Cardenas</i> , <i>Bloque Bananero</i> and <i>Bloque Arles Hurtado</i> , including crimes against humanity.

**Proceedings against Commissioned Officers of the Armed Forces<sup>306</sup>**

Name	Position	National Proceedings
Luis Fernando Borja Aristizabal	Colonel Sucre Joint Force, 11 <sup>th</sup> Brigade	Sentenced on 28 September 2011 to 25 years and 5 months in prison and prohibition on holding public office for the same period for the crimes of homicide of a protected person and aggravated forced disappearance committed on 3 November 2007
Orlando Hernando Pulido Rojas	Lieutenant Colonel 22nd Mobile Brigade	Sentenced on 18 January 2005 to 38 months in prison for homicide
William Roberto del Valle	Lieutenant Colonel CAES group	Sentenced on 16 December 2008 to 25 years in prison and 10 years disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed on November 1993
Wilson Javier Castro Pinto	Lieutenant Colonel 5 <sup>th</sup> Brigade	Sentenced on 15 July 2011 to 54 years 9 months and 8 days in prison, a fine and 20 year disqualification from the exercise of public rights and holding public office for the following crimes committed on 5 March 2008: aggravated homicide, aggravated forced disappearance and embezzlement by appropriation
Francisco Alfonso Jiménez León	Major 6 <sup>th</sup> Brigade	Sentenced on 12 February 2012 to 19 years in prison for the crimes of homicide, false statement and false certification of public document
Francisco Chilito Gualtero	Major 2 <sup>nd</sup> Mobile Brigade	Sentenced on 12 October 2006 to 29 years in prison and 10 years disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed on January 1993
Jorge Enrique Mora Pineda	Major 2 <sup>nd</sup> Brigade	Sentenced on 31 July 2009 to 336 months in prison for the crimes of aggravated homicide and abduction
Jorge Mauricio Ramirez Rodriguez	Major 11 <sup>th</sup> Brigade	Sentenced on 13 December 2011 to 26 years in prison, a fine and 20 years disqualification from the exercise of public rights and holding public office for the following crimes

<sup>306</sup> The order of individuals is from highest ranking to lowest ranking.

		committed on February 2004: forced disappearance, aggravated homicide, procedural fraud, false statement and false certification of public document
Oscar Alberto Acuña Arroyo	Major 11 <sup>th</sup> Brigade	Sentenced on 2 June 2009 to 336 months in prison, a fine and 20 years months disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed on 5 March 2006
Wilson Orlando Lizarazo Cárdenas	Major 7 <sup>th</sup> Brigade	Sentenced on 06 December 2006 to 24 months of imprisonment for homicide
Marco Wilson Quijano	Major 15 <sup>th</sup> Mobile Brigade	Sentenced on 04 June 2012 to 51 years of imprisonment, a fine and the disqualification from the exercise of public rights and holding public office for 300 months for being a co-author in the crimes of enforced disappearance and murder of a person committed on 12 January 2008
Gustavo Enrique Soto Bracamonte	Major Former commander of the Gaula Casanare Unit	Sentenced on 30 November 2010 to 384 months of imprisonment, for the crimes of aggravated homicide and abduction committed on 6 April 2007
Álvaro Camargo Camargo	Captain 11 <sup>th</sup> Brigade	Sentenced on 2 June 2009 to 336 months in prison, a fine and 20 years months disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed on 5 March 2006
Carlos Alberto Martínez Gabriel	Captain 22nd Mobile Brigade	Sentenced on 30 March 2012 to 30 years in prison, a fine and 15 years disqualification from the exercise of public rights and holding public office for the crime of aggravated forced disappearance committed on October 1992.
Cesar Alonso Maldonado Vidales	Captain 30th Brigade	Sentenced on 16 December 2008 to 25 years in prison and 10 years disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed in November 1993
Elkin Ricardo Prieto Sanchez	Captain 4th Brigade	Sentenced on 16 June 2011 to 35 years in prison and a fine for the crimes

		committed on 29-30 May 2006: homicide of protected person
Giovanni Perez Delgado	Captain 2nd Brigade	Sentenced on 31 July 2009 to 336 months in prison for aggravated homicide and abduction
Guillermo Armando Gordillo Sanchez	Captain 10th Brigade	Sentenced on 07 October 2008 to 240 month in prison for homicide of protected person
Ivan Andres Gonzalez Villafañe	Captain 4th Brigade	Sentenced on 26 May 2011 to 360 month in prison for homicide of protected person
Jaime Alberto Rivera Mahecha	Captain 16th Brigade	Sentenced on 29 December 2011 to 384 month in prison for aggravated homicide
Jaime Alonso Pinto Colmenares	Captain 11th Brigade	Sentenced on 5 November 2010 to 40 years in prison, a fine and 20 years disqualification from the exercise of public rights and holding public office for the following crimes of aggravated homicide and abduction committed in 1997
Jaime Enrique Calvache Pardo	Captain 2nd Brigade	Sentenced on 29 June 2006 to 96 months for aggravated homicide
Jairo Mauricio Garcia Hernandez	Captain 11th Brigade	Sentenced on 6 July 2011 to 366 months in prison, a fine and 20 years disqualification from the exercise of public rights and holding public office for the crime of murder of a protected person committed on 30 April 2007
Jose Antonio Páez Bretton	Captain 29th Brigade	Sentenced on 15 November 2011 to 400 months in prison for murder of a protected person
Jose Wilson Camargo Arevalo	Captain 6th Brigade	Sentenced on 16 December 2011 to 318 months in prison, a fine and 20 years disqualification from the exercise of public rights and holding public office for the following crimes committed on December 2006: aggravated homicide and false certification of public document
Juan Carlos Rodriguez Agudelo	Captain 6th Brigade	Sentenced on 26 November 2009 to 40 years in prison, a fine and 20 years disqualification from the exercise of public rights and holding public office for the following crimes committed on 2 November 2003: murder of a protected person, torture, aggravated forced disappearance, abduction, procedural

		fraud, false certification and false statement.
Juan Pablo Velandia Pachon	Captain 6th Brigade	Sentenced on 02 February 2012 to 18 years in prison for homicide and false statement
Robinson Jhon Edgar Lozano Garnica	Captain 4th Brigade	Sentenced on 29 July 2009 to 360 months in prison for homicide of protected person
Andres Mauricio Rosero Bravo	Lieutenant 4th Brigade	Sentenced on 30 June 2009 to 360 months in prison for murder of a protected person committed on June 2004
Camilo Javier Romero Abril	Lieutenant 12th and 13th Brigade	Sentenced on 17 January 2008 to 448 months in prison and 20 years disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed on 18 March 2005
Carlos Andres Lora Cabrales	Lieutenant 10th brigade	Sentenced on 18 April 2008 to 30 years in prison, a fine and 15 years disqualification from the exercise of public rights and holding public office for the crime of murder of a protected person committed on 7 February 2004
Carlos Enrique Riaño Triana	Lieutenant 4th Brigade	Sentenced on 19 November 2010 to 38 years, a fine and 20 years disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed on 17 February 2006
Diego Beltran Vega	Lieutenant 11th Brigade	Sentenced in appeal on 19 November 2010 confirming 38 years in prison, a fine and 20 years disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed on 17 February 2006
Duberney Vargas Parra	Lieutenant 11th Mobile Brigade	Sentenced on 26 April 2011 to 26 years in prison and 20 years disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed on 4 December 2005
Eduard Antonio Villani Realpe	Lieutenant 5th Brigade	Sentenced on 15 July 2011 to 55 years, 4 months and 24 days in prison, a fine and 20 year disqualification from

		the exercise of public rights and holding public office for the following crimes committed on 5 March 2008: aggravated homicide, aggravated forced disappearance, false certification of public document and embezzlement by appropriation
Elkin Leonardo Burgos Suarez	Lieutenant 10th Brigade	Sentenced on 20 May 2009 to 456 months in prison for aggravated homicide and abduction
Giovany Velasco Suarez	Lieutenant 4th Brigade	Sentenced on 12 December 2011 to 17 years and 6 months in prison and 17 years and 6 months in disqualification from the exercise of public rights and holding public office, for the following crimes committed on December 2007: homicide and false statement
Jose Alejandro Ramirez Riaño	Lieutenant 4th Brigade	Sentenced on 14 May 2009 to 360 months in prison, a fine and 15 years disqualification from the exercise of public rights and holding public office for the crime of murder of a protected person committed on September 2002.
Josue Mersarud Hernandez Fuentes	Lieutenant 4th Brigade	Sentenced on 18 January 2010 to 316 months in prison and 316 months disqualification from the exercise of public rights and holding public office for the following crimes committed on April 2005: aggravated homicide, abetting an aggravated homicide
Juan Carlos Ordoñez Cañon	Lieutenant 18th Brigade	Sentenced on 23 August 2007 to 40 years in prison, a fine and 20 years disqualification from the exercise of public rights and holding public office for the crime of triple aggravated homicide committed on August 2004
Juan Carlos Sarmiento Rojas	Lieutenant 11th Brigade	Sentenced on 16 May 2011 to 378 months in prison for murder of a protected person
Luis Fernando Sarmiento Barrera	Lieutenant 4th Mobile Brigade	Sentenced on 15 December 2010 to 360 months in prison for murder of a protected person
Manuel Antonio Quintero Florez	Lieutenant 11th Brigade	Sentenced on 13 January 2011 to 420 month in prison for murder of a protected person
Marco Fabian Garcia	Lieutenant	Sentenced on 16 December 2011 to

Cespedes	16th Brigade	265 months in prison for murder of a protected person, procedural fraud and false certification of public document
Mario Wilson Parra Ortega	Lieutenant 10th Brigade	Sentenced on 22 August 2011 to 294 months for murder of a protected person and false certification of public documents
Omar Eduardo Vaquero Benitez	Lieutenant 10th Brigade	Sentenced on 30 June 2011 to 37 years in prison for aggravated homicide
Rafael Alberto Orduz Naranjo	Lieutenant 4th Brigade	Sentenced on 28 May 2009 to 324 months in prison for murder of a protected person
Sandro Quintero Carreño	Lieutenant 22th Brigade	Sentenced on 18 January 2005 to 38 months in prison for aggravated homicide
William Eduardo Lopez Pico	Lieutenant 6th Brigade	Sentenced on 16 December 2011 to 300 months in prison, a fine and 16 years disqualification from the exercise of public rights and holding public office for the crime of aggravated homicide committed on December 2006
Yamid Diaz Tobar	Lieutenant 10th, 2nd, 4th Brigades	Sentenced on 30 June 2009 to 288 months in prison for aggravated homicide committed in June 2004.
Hernan Cesario Ceballos Gonzales	Lieutenant 4th Brigade	Sentenced on 05 July 2012 to 30 years of imprisonment and the disqualification from the exercise of public rights and holding public office for 30 years for being a co-author in the crime of murder of a person committed on 29 December 2004
Diego Aldair Vargas Cortés	Lieutenant 15th Mobile Brigade	Sentenced on 04 June 2012 to 52 years of imprisonment, a fine and the disqualification from the exercise of public rights and holding public office for 300 months for being a co-author in the crimes of falsification of documents, enforced disappearance and murder of a person committed on 12 January 2008