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**Report of the High Commissioner for Human Rights  
on the situation of human rights in Colombia\***

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\* The annexes to the present report are circulated as received in the languages of submission only.

## Summary

This report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia covers 2004 and is submitted in response to the request of the Commission on Human Rights made during its sixtieth session. The report contains five chapters whose contents are summarized below. There are also four annexes on the following topics: the activities of the office in Colombia; representative cases of violations of human rights and breaches of international humanitarian law; the situation of particularly vulnerable groups; and a note on statistics.

### **National context and evolution of the internal armed conflict**

During 2004, the public's attention was focused primarily on the debate over the re-election of the President, on the negotiations with paramilitary groups, and on attempts to agree on a humanitarian exchange between the Government and the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP). Reform of the justice system and initiatives related to the social agenda were also publicly debated. At the beginning of 2004, the Government entered into an agreement with the Organization of American States (OAS) regarding the opening of a mission to support the peace process in Colombia (MAPP-OEA). The Government gave priority to demobilizing members of the illegal armed groups, as well as to negotiations with the paramilitary groups of the United Self-Defence Forces of Colombia (AUC), notwithstanding the continued absence of an appropriate legal framework to guarantee the rights to truth, justice and reparations of victims in accordance with international norms. In late 2004, the demobilization was initiated of approximately 3,000 members of the AUC. No significant progress was made in terms of peace negotiations between the Government and the FARC-EP and the Ejército de Liberación Nacional (ELN), respectively. The United Nations Secretary-General continued to provide his good offices. Other countries also offered their services.

It was evident that the paramilitary groups, despite their declared cessation of hostilities and the disappearance of their traditional leader, Carlos Castaño, continued their expansion and consolidation, including social and institutional control at the local and regional levels, as well as close links with drug trafficking.

The evolution of the internal armed conflict was characterized by consolidation of the presence of the Security Forces in municipal centres and the withdrawal of the FARC-EP and the ELN. Starting in April 2004, the so-called Plan Patriota was put into effect in the south of the country, the largest military operation in modern Colombian history. Its main stated objectives were to strike a blow at the rear guard of the FARC-EP and to capture its principal leaders. The security forces took action against the paramilitary groups, but on a smaller scale compared to the actions taken against the FARC-EP. During 2004, the FARC-EP and the ELN carried out a series of attacks against the civilian population, including several massacres of civilians and kidnappings by the FARC-EP. There were occasional joint actions by the FARC-EP and the ELN. There were repeated statements by high-level government officials denying the existence

of an internal armed conflict and affirming that only a terrorist threat against Colombian society existed. The Government and the Attorney-General's Office continued to use massive and systematic search and arrest procedures without sufficient proof, often based on reports by demobilized persons, former members of the illegal armed groups reintegrated into society and military intelligence files.

In 2004, important indicators of violence, such as homicides in general, massacres and kidnappings, continued to decrease at the national level compared to 2003. Nevertheless, the figures remained high. Regarding the population displaced by violence, it was noted that, although the number of new internal displaced persons (IDPs) in 2004 fell as compared to 2003, the total number of IDPs in the country actually increased.

Various proposals were put forward regarding a humanitarian exchange aimed at freeing the many kidnapped civilians and military and police personnel held by the FARC-EP. None of these proposals led to concrete results.

### **Public policies and implementation of the recommendations**

Achievements and advances were observed in the field of human rights and international humanitarian law; however, there were also difficulties and contradictions. In comparison to 2003, various State entities showed greater interest during the second half of 2004 regarding the High Commissioner's recommendations. There was an increased openness and an intensification of the dialogue between the Government and representatives of civil society and the international community. At the same time, the implementation process was less consistent than desired or necessary, given the gravity of the problem and the limited degree of implementation of the recommendations, considering that those made in 2004 were similar to those made both in 2003 and in previous years. At the end of 2004, the overall picture with respect to the implementation by the Government of the recommendations was a mixed and very varied one; this also affected the situation of human rights and international humanitarian law. The illegal armed groups continued to fail to respect their humanitarian obligations and to ignore the recommendations of the High Commissioner.

Inconsistencies were noted in the implementation of the Government's security policy between the objectives and methods used and the effects on certain sectors of the civilian population. Progress was recorded in terms of prevention and protection, including strengthening of the mechanism of community defenders and the early warning system, as well as regarding the Ministry of the Interior's programmes for the protection of vulnerable groups. Weaknesses persisted in the Government's responses to warnings, as well as in decreasing risk factors for vulnerable groups. The Government adopted positive measures regarding the destruction of stored anti-personnel mines. The armed forces occasionally carried out operations in which they failed to observe humanitarian principles.

The Constitutional Court declared the so-called Anti-terrorist Statute null and void due to procedural defects in the way it had been drawn up. The High Commissioner had earlier warned that the Statute was incompatible with international norms. Certain positive actions were recorded in the struggle against impunity by the Special Committee on the investigation of human rights violations and breaches of international humanitarian law; however, the major measures and greater commitment, sustained over time, are still needed. The precariousness

of the policy to combat paramilitarism was noted, particularly with regard to its structures, including links between members of the security forces and other public officials with those groups. The need for an appropriate legal framework was evident in relation to the negotiations with the AUC.

The economic and social policies adopted by the Government did not lead to the necessary progress in decreasing the inequality gap, confronting extreme poverty, decreasing illiteracy and unemployment rates and increasing access to health care and housing. Activities were carried out in relation to the national plan of action on human rights and international humanitarian law. The office in Colombia of the United Nations High Commissioner for Human Rights has continued to advise the Government, and the society in general regarding implementation of the recommendations. It is hoped that better and more comprehensive use will be made of cooperation with and the advice offered by the office.

### **Situation of human rights and international humanitarian law**

Violations continued to be recorded on the rights to life, personal integrity, freedom and security, due process and privacy, as well as of the fundamental freedoms of movement, residence, opinion and expression. No significant progress was observed in the field of economic, social and cultural rights. The lack was noted of an official system to gather statistics on violations of human rights and breaches of international humanitarian law.

The human rights situation continued to be critical. There was an increase in reports of extrajudicial executions attributed to members of the security forces and other public officials. High levels of torture and forced disappearances continued. Reports of arrests and mass searches carried out without an appropriate legal basis by members of the army and the Attorney-General's Office continued. In addition, there were cases of tampering with evidence and witnesses. Continuing links between public officials and the illegal armed groups, particularly paramilitaries, were evident in the context of various allegations in which State responsibility was attributed by direct action or omission. The precarious situation of economic, social and cultural rights persisted, especially for the most vulnerable groups and regions in the country, in particular regarding access, availability, sustainability and enjoyment of the rights to employment, education, health care and housing.

The downward trend of various indicators of breaches of international humanitarian law continued, in particular multiple homicides and hostage-taking, although their incidence remained high. The paramilitary groups failed to respect the cessation of hostilities. The illegal armed groups, particularly the FARC-EP and the paramilitaries, continued to commit serious and numerous breaches such as attacks on the civilian population, indiscriminate attacks, homicides, massacres, hostage-taking, acts of terrorism, forced displacements, use of antipersonnel mines, recruitment of minors, slavery, and attacks on the personal integrity and dignity of women and girls in the context of acts of sexual violence. There were allegations of breaches attributed to members of the security forces, particularly the army, such as homicides, indiscriminate attacks, forced displacements, and attacks on the personal integrity and dignity of women.

### **Situation of especially vulnerable groups**

Various positive measures in the field of protection and prevention were weakened by public statements by high-level government officials who on occasion questioned the legitimacy of the work of human rights defenders and their organizations. The vulnerability of human rights defenders, including trade unionists, women's organizations and other social leaders, continued, due to threats and actions by the illegal armed groups, particularly the paramilitaries. The downward trend in the number of newly displaced persons continued. At the same time, however, the total number of IDPs increased. The indigenous and Afro-Colombian communities continued to be threatened by actions by the illegal armed groups. Other vulnerable groups included women, children, journalists and opinion makers, government employees such as judicial officials, mayors, former mayors and councilmen, along with members of the Unión Patriótica and the Communist Party, and persons suffering discrimination because of their sexual orientation, such as gays, lesbians, bisexuals and transsexuals.

### **Recommendations**

The High Commissioner makes 27 concrete and priority recommendations addressed to the national authorities of the three branches of Government and the monitoring bodies charged with the protection and promotion of human rights, representative sectors of the civil society, the international community, and the illegal armed groups. The recommendations are the practical, forward-looking conclusions of the analysis carried on the basis of systematic and analytical observation, as well as on the dialogue with State authorities and civil society organizations.

The High Commissioner is firmly convinced that the situation of human rights and international humanitarian law would show tangible improvement if the recommendations are applied as part of a consistent and comprehensive process in 2005. As in the previous two years, and to underline the fact that the implementation implies a process requiring coherence over time and covering all the topics, the recommendations are grouped together under the following six headings: prevention and protection; the internal armed conflict; the rule of law and impunity; economic and social policies; promotion of a culture of human rights; technical cooperation and advisory services of the office in Colombia.

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## **Introduction**

1. The Commission on Human Rights has been following the human rights situation in Colombia with concern for a number of years, as reflected in successive statements of its Chairperson. In 1996, the Commission requested the United Nations High Commissioner for Human Rights to establish an office in Colombia, pursuant to the invitation of the Government of Colombia. On 26 November 1996, the office in Colombia of the High Commissioner for Human Rights was established under an agreement between the Government of Colombia and the United Nations High Commissioner for Human Rights. Within the framework of the agreement, the office in Colombia is to observe the situation of human rights and international humanitarian law in order to advise the Colombian authorities on the formulation and application of policies, programmes and measures for the promotion and protection of human rights in the context of violence and internal armed conflict affecting the country. This should enable the High Commissioner to present analytical reports to the Commission on Human Rights. The agreement was renewed in September 2002 at the initiative of President Uribe, for four years until October 2006.

2. The Chairperson's statement at the sixtieth session of the Commission on Human Rights, reaffirmed that the office in Colombia of the High Commissioner "plays a vital role in the work against ongoing violations of human rights and international humanitarian law", and requested that the High Commissioner present a "detailed report" containing an analysis by the office on the human rights situation in Colombia. The office in Colombia continued to perform its duties of observation, advice, technical cooperation, promotion and dissemination. This report covers the period January to December 2004 and has four annexes. The first relates to the observation, advisory services, technical cooperation and promotion activities of the office in Colombia of the High Commissioner; the second covers human rights violations and breaches of international humanitarian law; the third describes the situation of especially vulnerable groups; and the fourth is a note on statistics.

### **I. NATIONAL CONTEXT AND EVOLUTION OF THE INTERNAL ARMED CONFLICT**

3. Politically, the year 2004 has been marked by three main issues. The first was the public debate on constitutional changes that would permit an immediate re-election of the President. Secondly, negotiations took place between the Government and the paramilitary groups that make up the Autodefensas Unidas de Colombia, United Self-Defence Forces of Colombia, AUC, and the third was the absence of significant progress in the peace negotiations between the Government and the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP) and the Ejército de Liberación Nacional (ELN).

4. Regarding the first issue involving the possibility of an immediate re-election, a draft bill was submitted in March, at the initiative of the Government of President Uribe, by means of which certain articles of the Colombian Constitution were to be amended. The draft bill was finally approved by Congress in December. The heated debate took up most of the attention of public opinion and of the Congress throughout the year, and made clear that opinion was divided on the introduction of constitutional changes in the structure of the executive branch. It also relegated other important topics to a lower level of priority.



5. Secondly, negotiations took place between the Government and the paramilitary groups that make up the AUC. These talks took place in the absence of a parallel appropriate legal framework that would have guaranteed the right to truth, justice and reparation for victims, and ensured that there would be no impunity for perpetrators of crimes against humanity and war crimes. Throughout the year, the office in Colombia advised the Government and members of Congress to put in place a framework in accordance with international standards.
6. In early 2004, the Government concluded an agreement with the Organization of American States OAS to open a Mission to Support the Peace Process in Colombia (MAPP-OEA), with the principal tasks of verifying eventual agreements between the Government and the illegal armed groups relating to a ceasefire, their demobilization, and their reintegration into society, in accordance “with the obligations of its Member States with respect to fully comply with human rights and international humanitarian law”.<sup>1</sup>
7. Negotiations with the AUC were aimed at the demobilization of these paramilitary groups, despite their continued violations of the cessation of hostilities, as the Government publicly demanded. It was evident that this absolute prerequisite demanded by President Uribe was not fulfilled as had been hoped. No concrete consequences are known to have occurred for the AUC for its non-compliance with the cessation of hostilities, which, according to the Ombudsman’s Office and other observers, was extensive and serious.
8. In its follow-up report, the Ombudsman’s Office stated that the AUC was responsible for 342 cases of violations of the cessation of hostilities. These include the presumed reincorporation of demobilized persons into its ranks, massacres, forced displacements, selective and systematic homicides, kidnappings, rape, disappearances, threats, intimidation and lootings. These actions took place in 11 departments and targeted the civilian population, in many cases indigenous communities. In November, the demobilization of 3,000 members of the AUC began in different zones of the country, albeit still without an appropriately defined legal framework.
9. Parallel to the negotiation process with the AUC, the expansion and consolidation of paramilitary groups in various parts of the country had become more publicly known. Reports were received of illicit activities related to drug trafficking and gunrunning, as well as of control by these groups over Administrators of the Subsidized (Health) Regime (ARS) in different regions. There were also reports on links between paramilitary leaders and political sectors and members of the Departamento Administrativo de Seguridad (DAS) and the Attorney-General’s Office in the Department of Norte de Santander. The interests of the illegal groups linked to drug trafficking have become increasingly evident, which was reflected in particular in disputes and confrontations between paramilitary groups.<sup>2</sup> In this context, the fate of the AUC leader Carlos Castaño, who disappeared in April, has yet to be established.
10. The third issue was the lack of progress in terms of peace negotiations between the Government and the FARC-EP and ELN, respectively. As far as is known, there was no direct contact on the part of the Government with the leadership of the FARC-EP. There were contacts between spokespersons from the ELN, representatives of the Government and representatives of the Government of Mexico, a country that agreed to act as a facilitator through a special envoy. The Secretary-General of the United Nations continued to provide his good offices, deciding that these should maintain a low profile, and that the United Nations support for Colombia should

give priority to humanitarian and human rights issues. Other countries also offered their good offices. In April, the European Union added the ELN to its list of terrorist organizations, which already includes the FARC-EP and the AUC.

11. Besides these new three elements, the Government continued to implement its security policy. Measures included increasing the number of members of the military and police. Measures were adopted to make the capacity of the Security Forces for mobilization and response more effective. The Constitutional Court declared the change in the Constitution that had allowed the military to carry out arrests, searches and wiretapping unconstitutional due to procedural flaws. According to government figures, the number of persons in the network of informants had increased considerably as did the number of peasant soldiers. The authorities continued to carry out massive and indiscriminate searches and arrests without adequate evidentiary bases. On several occasions, high-level government officials have made public statements criticizing the work of non-governmental human rights organizations, both national and international, which drew attention to and increased tensions between the Government and those organizations. Furthermore, a large-scale surveillance and information-gathering operation (Operación Dragón) was discovered against trade unionists, human rights defenders, parliamentarians and a governor, carried out by a private company linked to the Empresa Pública de Cali (Public Utilities Company of Cali). A high-ranking military officer in active service participated in this intelligence work. Certain actions undertaken within the framework of the security policy were implemented in contravention of previous recommendations made by the High Commissioner.

12. The development of the internal armed conflict was characterized by the consolidation of the presence of the Security Forces in municipal centres, and by the withdrawal of the FARC-EP and the ELN. As of April 2004, the so-called Plan Patriota was put into effect in the south of the country. It is the largest military operation in modern Colombian history, with the declared objective of striking a blow against the rearguard of the FARC-EP and capturing its principal leaders. Faced with the increased presence of the Security Forces, the FARC-EP withdrew towards more isolated and inaccessible zones, thereby giving a different dynamic to the internal armed conflict. The execution of the Plan Patriota revealed a lack of coordination between the Security Forces and the civilian institutions of the Government at national and local levels, as well as the absence of civilian State entities in these regions, which also affected the civilian population. The Armed Forces continued to exert pressure on the ELN. The paramilitary groups also continued their action against the ELN. The FARC-EP and the ELN carried out a series of attacks against the civilian population in the course of 2004, including various massacres and kidnappings of civilians by the FARC-EP. There were occasional joint actions by the FARC-EP and the ELN. The Security Forces launched attacks against the paramilitary groups, but on a smaller scale than those against the FARC-EP.

13. Repeated statements were made by high-level government officials denying the existence of an internal armed conflict and affirming only the existence of a terrorist threat against Colombian society. This new characterization of a problem that has existed for decades in the country could lead to confusion and problems in a number of fields, from statistical data to public policies, including the rigorous application of international humanitarian law. An additional risk is that the illegal armed groups do not feel accountable for breaches committed against the civilian population, thereby reducing the effectiveness of the protection provided in these international instruments for persons not directly participating in the hostilities.

14. During 2004, some important indicators of violence, such as homicides in general, massacres and kidnappings, continued to decline at the national level compared to 2003. Kidnappings and massacres had begun to decrease in 2001. The downward trend in homicides in general started in 2002. It is hoped that these positive trends will be maintained, taking into account that the above-mentioned indicators of violence, in spite of the decreases, continued to be very high. With reference to the population displaced by violence, it was noted that in spite of a slight decrease in the number of new internally displaced persons (IDPs) in 2004 as compared to 2003, the total number of IDPs in Colombia increased in 2004.

15. Other topics on the agenda of the Government and the State were the reform of the justice system, including the preparations for the implementation of the accusatory system, and public statements referring to initiatives aimed at restricting exercise of the public action of *tutela* (legal action to seek immediate relief for the violation of a constitutional right) to limit the constitutional control over the acts of the executive branch while providing it with undue influence over the organization and operation of the judiciary. Political debates also addressed topics on the social agenda, such as tax reform, poverty, public health, equal access to education, unemployment and the housing deficit, as well as the issue of extradition. Negotiations also began with the United States of America on the Free Trade Agreement (FTA), which gave rise to demonstrations and debates both in favour and against.

16. One current concern in 2004 continued to be the question of an agreement between the Government and the FARC-EP aimed at freeing persons deprived of their liberty by that illegal armed group. There were initiatives by the Catholic Church and civil society organizations regarding the possible negotiation of an agreement between the Government and the FARC-EP to free hostages and other persons held by that illegal armed group and to release imprisoned guerrillas. Some diplomatic representatives in the country offered their support. None of the proposals put forward by the Government and the FARC-EP led to progress in this field.

17. The High Commissioner has insistently demanded that the illegal armed groups refrain “from the unacceptable practice of kidnapping” and “immediately and unconditionally release everyone they have taken as hostage” (E/CN.4/2004/13, paras. 112 and 113). The office in Colombia issued a press release on this subject in November 2004, containing 40 points. Inter alia, it recalled the possibilities offered by international instruments in this field and noted that “faced with the unfortunate refusal of the illegal armed groups, including the FARC-EP, to release unconditionally persons who have been unlawfully detained, as well as with the inhuman situation of military and police personnel held by the FARC-EP, the Colombian State always has the duty to seek options and alternatives to achieve the liberation of those persons under satisfactory security conditions”. In December, the Government pardoned 23 members of the FARC-EP who had been imprisoned for political crimes.

18. In the second half of 2004, there were a number of peaceful demonstrations with an important participation by diverse sectors of society. Of particular significance was the large-scale peaceful march in September in the south-western part of the country which was attended by at least 50,000 indigenous people who, for almost a week, demanded, among other claims, respect for their human rights and the recognition of the identity and autonomy of the indigenous communities.

19. In August 2004, the House of Representatives elected a new Ombudsman for a four-year term. Before the election, the office in Colombia had emphasized the need for the work of the Ombudsman's Office to be in accordance with the principles of independence and impartiality so that the institution could continue to enjoy public trust and efficiently carry out its mission of constructive influence and mediation.

20. The international community continued to cooperate with Colombia in following up on commitments agreed to at the meeting in London in July 2003, and on the statement made by the Chairperson at the sixtieth session of the Commission. In November and December, for the first time, a series of meetings were held between the Government and human rights organizations regarding the process of implementation of the recommendations of the High Commissioner. The office in Colombia and diplomatic representatives from the countries that had signed the London Declaration (the Group of 24) participated in those meetings. As part of the follow-up process to this Declaration, the Government of Colombia has issued an invitation to an international meeting to be held in Cartagena in February 2005.

21. In May 2004, the United Nations Under-Secretary-General for Humanitarian Affairs visited the country, requesting a more effective response to the humanitarian crisis. Country visits were also made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

## **II. PUBLIC POLICIES AND IMPLEMENTATION OF THE RECOMMENDATIONS**

22. The High Commissioner's recommendations for 2004 are regarded as commitments by the Government of Colombia before the international community, as reflected in the Chairperson's statement at the sixtieth session of the Commission (see E/2004/23-E/CN.4/2004/127, paragraph 64). In this statement the Commission reminded Colombia of its commitment "to take into account and implement the recommendations contained in the statement". The statement also called "for the prompt implementation by all relevant parties of the concrete priority recommendations for 2004". The Commission also welcomed "the commitment of the Government of Colombia to work in a constructive spirit with the office in Colombia of the High Commissioner to examine the implementation and evaluation of the recommendations" and considered that "the meeting of the international support group in Bogotá in November 2004 will be an appropriate occasion to assess progress in this regard, as well as in the implementation of the London Declaration" (para. 37 of the statement).

23. The High Commissioner is firmly convinced that the situation regarding human rights and international humanitarian law would tangibly improve if the recommendations are implemented in a coherent and sustained manner. The High Commissioner has always emphasized that implementation is a process that will take time, thus the importance of ensuring precise follow-up and continuous support.

24. During 2004, efforts were made by different entities of the State, beginning with the Office of the Vice-President, to whom the President has delegated the leading role in this field, aimed at transforming the commitments into reality. Measures were taken, or are in the process of being taken, in a number of areas to advance the process of implementation. Compared

to 2003, State entities demonstrated greater interest in the recommendations during the second half of 2004. At the same time, the process was less consistent than desired or necessary, given the gravity of the problems and the limited degree of implementation of the recommendations of the High Commissioner, taking into account that the recommendations made in 2004 were similar to those formulated in 2003 and in previous years. The implementation process was also characterized by slowness and lost opportunities. There were certain measures and practices that in and of themselves counteracted the recommendations and affected the situation regarding human rights and international humanitarian law.

25. In this context, it must be emphasized that the illegal armed groups (FARC-EP, ELN, AUC and other paramilitary groups) totally ignored the recommendations addressed to them. These illegal groups continued to commit grave breaches of international humanitarian law and showed a complete lack of respect for human rights.

26. In late 2004, it could be observed that the overall picture of implementation of the recommendations on the part of the State was mixed and very varied, which also affected the situation of human rights and international humanitarian law (see also section III below). The High Commissioner hopes that the Government and the State, beginning as early as possible in 2005 with the integral implementation of the recommendations, will obtain consistent and sustainable results.

27. In order to fulfil its mandate of observation and follow-up, and to contribute to the process of implementation, an analysis follows of the impact of public policies in relation to the 27 recommendations of the High Commissioner for 2004. The presentation addresses the six areas in which the recommendations are grouped: prevention and protection; internal armed conflict; rule of law and impunity; economic and social policies; promotion of a human rights culture; and advisory services and technical cooperation provided by the office in Colombia of the High Commissioner.

#### **A. Prevention and protection**

28. An increased military deployment by the State in the national territory enabled it to more effectively adopt measures for prevention and protection of the civilian population in the municipal centres. However, in various rural zones, the presence of the Security Forces was sporadic, which in some cases increased the vulnerability of the civilian population. Pressure to achieve results in the military and police field, weakness and inconsistency in the control bodies and the Attorney-General's Office, and the unjustified powers assumed by members of the military in detentions and searches affected in particular vulnerable population groups, who required greater protection. This was compounded by the practice of mass or individual arrests based on mere suspicion, or on the testimony of former members of the illegal groups reintegrated into society, or on irregular intelligence reports.

29. The High Commissioner takes note of the Government's positive efforts to continue structuring its preventive response by strengthening the Interinstitutional Early Warning Committee (Comité Interinstitucional de Alerta Temprana (CIAT)). However, the system has not had the hoped-for impact. In 2003, 32 early warnings were issued in relation to 84 risk reports (that is, in 38 per cent of the cases). By November 2004, only 13 early warnings had been issued in relation to 54 risk reports (that is, in 24 per cent of the cases). There has been an

increase in the number of cases in which an incident occurred despite the issuance of a warning. In 2003, incidents took place in 37 out of 84 cases in which warnings had been issued (44 per cent). By August 2004, incidents took place in 27 of 54 such cases (50 per cent). This shows a reduction in the capacity for prevention and protection on the part of CIAT.

30. The number of risk reports which did not give rise to an early warning by CIAT, but where the incident warned of took place, continues to be very high. In 2003, in 10 cases out of 32 in which risk reports were not turned into alerts, the incidents took place (31 per cent). By August 2004, incidents occurred in 6 out of 13 such cases (46 per cent). This significant percentage calls for an examination of the internal mechanisms used by CIAT to evaluate risk reports. Attention is also drawn to the fact that in spite of the ongoing dialogue with the paramilitaries, these groups appear in 92 per cent of cases involving risk reports.

31. Notwithstanding the aforementioned, CIAT continues to be a valuable tool for dealing with difficult situations. It is therefore essential to continue strengthening it by providing it with a legal foundation, mechanisms for follow-up and evaluation, and financial guarantees in the national budget. It should also be noted that the early warning system has weaknesses in identifying risks, threats and the special vulnerability of women and, therefore, to consider the specificity of gender violence within the framework of the armed conflict.<sup>3</sup>

32. In the field of prevention, in line with the recommendation of the Commission on Human Rights, one may highlight that the number of community defenders in the Ombudsman's Office increased from 7 to 17, thanks to support from the international community. However, the Procurator-General and the Ombudsman's Office have been unable to expand their activities and ensure an adequate presence in regions that have the largest military presence, and in zones with high percentages of indigenous, Afro-Colombian and displaced populations.

33. State policies in the field of protection were mainly carried out through protection programmes for vulnerable groups under the responsibility of the Ministry of the Interior.<sup>4</sup> The Government has taken various measures to strengthen these programmes in consultation with the affected groups, although it was unable to resolve certain difficulties such as those relating to the subject of having trusted bodyguards. There has been an increase in the number of requests for protection from the programme by trade unionists, members of the Unión Patriótica and the Communist Party, journalists and former mayors. There has been a decrease in requests from NGOs and public officials currently in office (mayors, councillors, parliamentarians and municipal ombudsmen, among others). The office received information regarding possible leaks of confidential information from within the *Comité de Reglamentación y Evaluación de Riesgos* (CRER) Committee for the Regulation and Evaluation of Risks and regarding an increase in the number of people linked to the programme who have been victims of homicides.

34. Weakness continues to exist with respect to actions taken to lower risk factors. It is advisable that, beyond regional meetings held to encourage understanding and rapprochement between local authorities, the security forces, human rights defenders, trade unionists and other social leaders, clear and unequivocal instructions must be issued to public servants so that they abstain, under threat of disciplinary sanctions, from questioning the legitimate work of those citizens. In so doing, they will honour Colombia's commitment to the Commission's call to

ensure “that no generalized public statements are made which might endanger the rights of people involved in the defence of human rights or in trade union movements” and “to deepen its dialogue with civil society” (para. 32 of the Chairperson’s statement).

35. The Government gave priority to its policy of fostering returns of the displaced communities. However, the Government has not always properly considered the extent to which return is voluntary and undertaken in conditions of dignity and security. It did not adequately take into account judgement T 025 of 22 January 2004, in which the Constitutional Court ordered that the National Council for Integral Assistance to the Population Displaced by Violence, by 31 March of the same year at the latest, determine exactly the situation of the displaced population listed in the Consolidated Registry and adopt the necessary measures to ensure the resources for their assistance. The judgement also ordered that within the year following the publication of the decision, the relevant State entities make all necessary efforts to ensure that the budgetary objectives set by them to assist the displaced population are reached. In September 2004, the Court urged the Government to present its programme of action and a timeframe for the implementation of the above-mentioned decision. In December, the Court again asked the Government for information about actions taken to implement the judgement.

36. The United Nations system has joined efforts with the Government and organizations of civil society to design a plan of humanitarian action for 2005, which seeks a more efficient and joint response to the humanitarian crisis in Colombia in a manner compatible with international norms and principles. At the time of the finalization of the present report, an agreement regarding this plan was still pending.

37. During the last months of 2004, an increase was reported in the number of killings of indigenous leaders, several of whom had been the subject of precautionary measures established by the Inter-American Commission of Human Rights, especially in the Embera Chami and Kankuama communities, provisional measures having been ordered by the Inter-American Court in respect of the latter. A rise in the number of kidnappings of Embera Katios was also recorded. Since 2003, the Government has been unable to arrive at a consensus over a proposed plan of action for the indigenous peoples.

38. A positive step has been a meeting of CRER specifically addressing the situation of the indigenous peoples. It would be advisable to respond to other groups, such as women who are victims of threats and attacks, in terms of their specific needs in the field of prevention and protection.

39. The High Commissioner notes that the Minister of Defence, by order of the President, has ordered that intelligence information affecting the privacy and security of human rights defenders, trade unionists and other social leaders be removed from the files. The High Commissioner also takes note of a letter written by the Procurator-General expressing his wish to accomplish this task through a procedure to be mutually agreed upon with the Minister of Defence. At the time of finalizing this report, the procedures for this important work of the Procurator-General’s Office were not yet known. The High Commissioner considers it a matter of urgency to make progress in the work of clarifying the contents of the military intelligence files in order to prevent the continuing improper use of this type of report, as exemplified in the complaints and information that the office has received regarding the exclusive use of these reports as a basis for carrying out mass arrests and searches, and to support accusations.

40. The High Commissioner is unaware of any progress regarding the fulfilment of the obligation to impose disciplinary sanctions on public servants who in their statements, actions or omissions discredit or endanger the work of human rights defenders.

41. Regarding the recommendation to undertake an independent study to develop comprehensive training in human rights and international humanitarian law for members of the Security Forces, a positive response by the Minister of Defence to a proposed cooperation project presented in 2003 by the office of the High Commissioner is still pending.

### **B. The internal armed conflict**

42. The commanders and members of the illegal armed groups FARC-EP, ELN and AUC have persistently failed to fulfil their obligations in the field of international humanitarian law. All continue to commit grave breaches that victimize the civilian population, including acts of terrorism, homicides of protected persons, hostage-taking, use of antipersonnel mines, recruitment of children, sexual violence and blockades of food or medicines (see annex III). Given the gravity of the events occurring over this period, the office of the High Commissioner has suggested to the Government on various occasions that it assess the advisability of withdrawing its reservation to the Rome Statute, which limits the jurisdiction of the International Criminal Court to judge war crimes committed in Colombia to a period of seven years.

43. The High Commissioner welcomed the measures taken by the Government to destroy stored antipersonnel mines in compliance with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction (Ottawa Convention). It is necessary that efforts continue to prevent and limit the risks that mines continue to represent for the civilian population, especially for IDPs and returnees.

44. Within the framework of military operations to regain control of the territory and to strike at the illegal armed groups including the Plan Patriota, the military forces have occasionally failed to observe the humanitarian principles of limitation, distinction, proportionality and protection of civilians. They have in some cases impeded humanitarian access to exposed populations. There have been allegations by the civilian population of abuses by the so-called "peasant soldiers". The lack of adequate training in respect for human rights is probably one of the reasons for many of these abuses and violations.

45. The lack of clarity in government versions regarding various operations, hasty statements made by commanders blaming civilians and exonerating members of the armed forces of responsibility, and the transfer of trials for acts constituting grave human rights violations or war crimes to the military criminal justice system (e.g. trials relating to the events at Guaitarilla, Cajamarca and Arauca) constitute ongoing challenges for the State regarding the respect for and the guarantee of human rights and the observance of international humanitarian law. To these may be added serious cases of internal corruption, abuses committed during the execution of the Plan Patriota and information about ongoing links between members of the security forces and paramilitary groups.

46. The Government continued to promote the demobilization of members of illegal armed groups. To this end, the Government presented in April a second version of a legal framework



for “Justice and Truth” - initially entitled “Alternative Penalties” presented in 2003, and on that occasion the office was not consulted or invited to provide comments. For the second draft, the Government had taken into account some observations of the office, which signified progress.

47. However, further revision remains necessary in order for the document to be in accordance with international standards. On the other hand, at the time of finalizing this report, the Government had not yet presented to Congress a legislative initiative that would adequately respect the rights to truth, justice and reparations for the victims as a basis for a legal framework for any negotiating process and demobilization. However, some members of Congress presented a certain number of drafts and draft proposals before the end of the legislative session. One draft proposal elaborated by a group of members of Congress should be highlighted, as it meets the international standards in this field. The High Commissioner hopes that an appropriate legal framework that respect the rights to truth, justice and reparations for the victims will be put in place as soon as possible. Such a framework should respect the international standards and in this way fruitfully contribute to the negotiation processes.

### **C. Rule of law and impunity**

48. In 2004, various draft bills were submitted in which it would have been advisable to take into account the international human rights and international humanitarian law standards. Even though a number of them have not been adopted, some were aimed at overemphasizing military powers and limiting or reducing the judicial guarantees for citizens, which constitutes an important element for the rule of law.

49. On 30 August, the Constitutional Court declared unconstitutional Legislative Act No. 02 of 2003, which had endowed military personnel with judicial police powers in a manner incompatible with international treaties, allowing them to carry out detentions, raids, searches and wiretapping without a court order. Consequently, the draft bill of a statutory law that would regulate these powers was left without a legal basis.

50. Colombia has ratified the Convention against Transnational Organized Crime (Palermo Convention), and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities. Congress approved the Inter-American Convention against Terrorism, and debated a draft bill to approve the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. A bill was submitted to Congress to modify the criminal classification for trafficking in people in accordance with international norms.

51. Congress approved law No. 906 of 2004 adopting the new Criminal Procedure Code, which will progressively come into effect in January 2005. The Code had been challenged before the Constitutional Court as being in violation of the rights to equality, due process and judicial guarantees. The Penitentiary and Prison Code was also modified by decree No. 2636 of 2004, as it unduly awarded judicial police powers to the directors-general, regional directors and prison directors of the Instituto Nacional Penitenciario y Carcelario (INPEC) (the National Institute of Prisons and Penitentiaries) to investigate crimes committed within the prisons.

52. No significant progress has been detected in the reform of the Code for Minors, in accordance with the recommendations of the Committee on the Rights of the Child. The ratification of the Inter-American Convention on Forced Disappearance of Persons and of the Worst Forms of Child Labour Convention, 1999 (No. 182) of the ILO is still pending. No steps have yet been noted aimed at recognizing the quasi-judicial jurisdiction of the treaty bodies.

53. The High Commissioner is aware of certain proposals aimed at reducing the powers of the Constitutional Court. Although these proposals have not materialized, she wishes to emphasize that guarantees in the exercise of control functions are of fundamental importance in a State in which the rule of law is observed, in order to strengthen and confer legitimacy on the Government's own security policies. The High Commissioner would also like to underline the importance of the work of the Constitutional Court as a means for the State to continue to defend itself against the illegal armed groups using methods consistent with a State in which the rule of law is observed.

54. The Government has carried out certain actions aimed at promoting the gender perspective in the political, economic, social and cultural fields. Specifically, in May 2004, the Observatory for Gender Affairs began to investigate, document, systematize, analyse and shed light on the situation of women and gender equality in Colombia. Gaps and weaknesses continue to exist in the interpretation of a gender perspective in other public policies, such as those on domestic violence, sexual violence, attention to the displaced population and reintegration and demobilization programmes.

55. Regarding the policy to combat impunity, activities undertaken by the Office of the Vice-President and its programme to combat impunity, as well as work within the Special Committee to promote investigations into human rights violations and breaches of international humanitarian law, led to progress in investigations into various cases, mainly through judicial procedures leading to arrests and indictments. It is to be hoped that these will soon result in finalized trial proceedings.

56. In November, the Criminal Court Chamber of the Supreme Court handed down a ruling confirming the acquittal of Carlos Castaño, (the disappeared leader of the AUC) accused of having masterminded the homicide of Senator Manuel Cepeda in 1994. This decision stands out in terms of the problem of prevailing impunity in the country. In another case, a member of the military sentenced for the attempted murder of the then trade unionist and current congressman Wilson Borja allegedly "escaped" from prison.

57. The creation of four new regional human rights offices by the Attorney-General's Office is worth noting, along with the establishment, as a follow-up to the High Commissioner's recommendation, of a central subunit of the Unit for Human Rights and International Humanitarian Law charged with aiding investigations into links between public servants and illegal armed groups.<sup>5</sup> Throughout 2004, the need to establish a career development system as soon as possible in the Attorney-General's Office that would reinforce guarantees for prosecutors' independence was evident. During 2004, several prosecutors lost their posts due to discretionary decisions by the Attorney-General, without any disciplinary process having taken place. Within the framework of the letter of understanding signed with the Attorney-General's Office for follow-up on the recommendations of the High Commissioner, the office has presented observations and recommendations in relation to the design and implementation of a

career system for prosecutors. The High Commissioner considers that these observations and recommendations throw light on challenges relating to judicial independence and the combating of impunity.

58. The High Commissioner has noted a weakening in court procedures due to frequent use, in a less than rigorous manner, of testimonies by demobilized persons or former members of the illegal armed groups reintegrated into society, as well as military intelligence files. Up until now, the office has been unable to identify any effective measures taken by the State to sanction public servants involved in these types of procedural irregularities. At various times during these trials, members of human rights organizations and trade unions have been accused.

59. The prison situation continues to be critical. The Procurator-General has issued warnings regarding the risk of human rights violations in the country's prisons, caused by problems resulting from extreme overcrowding, unhealthy sanitary conditions and solitary confinement. In order to address this situation, the Ministry of the Interior and Justice and INPEC need to continue to take measures to define and implement a policy for prisons and jails that is more in line with international norms.

60. The High Commissioner was not aware of any actions taken by the Minister of Defence to suspend personnel as a preventive measure in cases of grave human rights violations. However, she was aware of the application of such measures and even of the dismissal of members of the Security Forces for corruption, offences in the discharge of their duties and causing injuries, among others things.

61. The High Commissioner has observed that government policies in the fight against paramilitarism, and particularly against links between public servants and paramilitary groups, need to be strengthened. Increased infiltration by and influence of those groups at various levels of departmental and local administrations, as well as at the social level, is evident. State policies have not yet been sufficiently able to address this concern at the national or regional level. This situation continues to pose a risk to respect for the rule of law.

62. Regarding the demobilization of paramilitaries, the legal situation of each individual has not been clarified, including those who may have committed grave crimes constituting war crimes or crimes against humanity. Nor is there much clarity regarding the treatment to be applied in cases of links between demobilized persons and drug-trafficking. This lack of clarity can contribute to impunity.

63. One task with large-scale implications remains - how to stop, counteract and rid the country of the strong influence of paramilitarism in various places, administrations and institutions. Part of this task implies taking more concrete and appropriate steps to sever links between public servants and paramilitary groups. State officials must also avoid making comments expressing satisfaction or understanding regarding paramilitarism.

#### **D. Economic and social policies**

64. Economic and social policies adopted by the Government did not lead to the necessary progress to narrow the inequality gap, confront extreme poverty, diminish levels of illiteracy and unemployment and increase access to health care and housing. Official figures show progress in

increasing the number of places available in primary education. In spite of this, more than 30,000 boys and girls of primary-school age are not currently enrolled in school. No progress has been made in making primary education free of charge.

65. The poverty line indicator shows that 64 per cent of the population live in poverty. According to the Comptroller General's Office, 31 per cent of poor Colombians are indigent.<sup>6</sup> In addition to the high poverty rate, the inequality gap continued to be wide. According to figures provided by the United Nations Development Programme (UNDP), the poorest 20 per cent of the population receive 2.7 per cent of the total gross domestic product (GDP), whereas the richest 20 per cent receive almost 62 per cent.<sup>7</sup> In terms of the Gini coefficient, the World Bank ranks Colombia the third most unequal country in the Americas.<sup>8</sup>

66. The annual growth rate of about 3.6 per cent in 2004 does not seem to have increased the generation and stabilization of formal employment. Unemployment and underemployment remain high.<sup>9</sup> This situation also has an impact on the rights to health, social security and housing, because the general health-care system, the pension system and conditions of access to bank credit all create barriers for families in the informal sector of the economy. In 2004, problems concerning the pension system became more evident.

67. Coverage by the health-care system continues to be very low.<sup>10</sup> Almost 40 per cent of the population remains unaffiliated. The situation of public hospitals has worsened during the year, particularly due to the scarcity of resources and services.

68. An increase was observed in housing construction. However, this particularly benefited the highest social strata.<sup>11</sup>

69. It is worth noting the incorporation of a gender perspective into the statistical analyses of the National Department of Statistics (DANE). It is hoped that changes planned by the new administration of DANE will not affect this important initiative aimed at facilitating the assessment of the differentiated impact of public policies. It is also hoped that this institution will benefit from the preparations for the 2005 census made by the previous administration, which had been working for several years on designing a methodology, indicators and socioeconomic variables for the upcoming census. The need exists for a census that can adequately gather and provide the relevant data in order to develop consistent social and economic policies and thereby make progress with respect to the rights to employment, health, education and housing, among other economic and social rights.

### **E. Promotion of a culture of human rights**

70. The Government undertook activities aimed at reaching a consensus with the institutions of the executive branch on designing a national human rights action plan. The High Commissioner trusts that the participation of other State institutions will be enlarged and that participation by civil society organizations will be ensured in order to achieve a consensus among all parties. The High Commissioner also trusts that public policies will incorporate international recommendations regarding human rights and international humanitarian law, along with a comprehensive gender perspective. The latter must make it possible to counteract existing

discrimination against and cultural stereotyping of women. It must be mentioned that in December 2004 an agreement on technical cooperation and advisory services was signed between the Vice-President and the office in Colombia on this matter.

71. Recognition is due for work on the design of the national plan for human rights education which is being spearheaded by the Ombudsman's Office and the Minister of Education, with support from other parts of the executive branch and representatives of civil society. The High Commissioner trusts that prompt completion and dissemination of this plan will make it possible to carry out the adjustments necessary to initiate its participatory implementation as soon as possible.

#### **F. Advisory services and technical cooperation provided by the office in Colombia of the High Commissioner**

72. The High Commissioner, through the permanent presence of her office, has continued to support the Government and the State in the design and application of policies and programmes aimed at improving the humanitarian situation and that of human rights. Her office has provided advisory services and technical cooperation to the national authorities, particularly to promote implementation of the international recommendations. The High Commissioner wishes to point out that the Government and State institutions of Colombia should take greater advantage of the opportunities for cooperation offered by the office.

### **III. SITUATION OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW**

#### **A. Basic definitions and observations on statistics<sup>12</sup>**

73. Actions and omissions that affect rights established in international human rights treaties or in the norms of general international law constitute violations of those rights when carried out by public servants or committed with the acquiescence of the authorities. Responsibility for omission exists when there is failure to carry out the duty to guarantee these rights, to the extent that such failure is not deliberate and there has been no participation by State agents in the preparation, commission or cover-up of the violation. Responsibility for commission exists when State agents are involved in preparing the actions, participating in them, or participating in a cover-up or in providing protection to the perpetrators. Many of the violations, owing to their serious, massive or systematic nature, constitute crimes against humanity and are subject to the jurisdiction of the International Criminal Court.

74. Within the framework of the Colombian armed conflict, breaches of international humanitarian law are actions or omissions in violation of common article 3 of the Geneva Conventions of 12 August 1949, Additional Protocol II thereto, international criminal law and customary law. All parties involved in the hostilities, be they the State or illegal armed groups (guerrillas or paramilitaries), must comply with the obligations imposed by international humanitarian law. Many of the breaches indicated in this report, committed as part of a plan or policy or as part of a large-scale commission of such crime, constitute war crimes. Several of these breaches could also constitute crimes against humanity.

75. The High Commissioner bases her work and the formulation of her observations, evaluations and recommendations on three sources: a thorough study of official data and statistics; direct, systematic and analytical observations throughout the country; and the systematic processing of complaints, in accordance with clear definitions established in international instruments of human rights and international humanitarian law.

76. In studying the situation of human rights and international humanitarian law, it should be pointed out that no official statistical system exists in Colombia that adequately covers violations and breaches in accordance with international instruments.

77. With regard to human rights - civil and political as well as economic, social and cultural rights - statistics rarely include relevant indicators. In general, neither parameters in accordance with international human rights norms nor unified criteria for processing information are used.

78. With regard to international humanitarian law, official statistics refer almost exclusively to conduct on the part of members of the illegal armed groups. Also, these statistics do not adequately cover certain breaches of international humanitarian law, such as cases of torture, attacks and threats against the civilian population, indiscriminate attacks, attacks on civilian property and on medical missions, sexual violence, and the recruitment of minors.

79. Statistics relating to violations of human rights and breaches of international humanitarian law show weaknesses, omissions, lack of precision and contradictions.

80. In light of the above, it may be deduced that it is important to avoid making statistical inferences without an appropriate and contextual analysis, as this could lead to fallacies or hasty or inaccurate conclusions. In order to comment on or evaluate State security policy from a human rights perspective, it is necessary to have solid statistics based on reliable and precise concepts and data.

81. The above observations are made with the aim of encouraging the development of an official system of statistics that would adequately cover the situation of human rights and international humanitarian law. The High Commissioner has specifically included a new recommendation in this respect.<sup>13</sup>

## **B. Situation of human rights<sup>14</sup>**

82. The human rights situation continued to be critical, with respect to both civil and political rights as well as cultural, economic and social rights.

83. Despite efforts to strengthen respect for human rights, reports were received in 2004 alleging violations of the rights to life, integrity, liberty and security of the person, due process, respect for privacy and intimacy, as well as the fundamental freedoms of movement, residence, opinion and expression. Various cases reflecting this situation are included in annex II to the present report.

84. The office in Colombia continued to record allegations<sup>15</sup> of human rights violations attributed to the direct action of public servants, particularly members of the security forces. Responsibility is attributed to other State institutions, such as the Attorney-General's Office, for having been associated with those actions or being directly involved in carrying them out.

Several of these cases affected vulnerable groups, including human rights defenders, trade unionists, indigenous and Afro-Colombian communities, journalists, persons deprived of their liberty, women, social leaders, and victims of abuses due to their sexual orientation. In some cases, omission on the part of the authorities or complicity with illegal armed groups, particularly paramilitaries, invoked the responsibility of the State.

85. In comparison with 2003, there was an increase in allegations regarding extrajudicial executions and violations of due process. A large number of allegations continued to be reported concerning arbitrary detentions, illegal searches, torture or cruel, inhuman or degrading treatment, and forced disappearances. In addition, excessive use of force and other abuses of authority in repressing acts of protest, and attacks on freedom of opinion and expression were also recorded. There were also reports of violations of personal integrity and dignity through acts of sexual violence. Many of these reports concerned members of the security forces.

86. In the case of the death of five peasants in Cajamarca (Tolima) in April, the authorities initially attempted, and with unusual speed, to explain the deaths as having occurred in combat or due to a military error. In another controversial incident in March, members of the army killed seven members of the police and four civilians in Guaitarilla (Nariño). Attention is drawn to cases of extrajudicial executions in which the dead were initially portrayed by the army to the media as guerrillas or paramilitaries killed in combat. The Attorney-General's Office opened an investigation for homicide against members of the Reveiz Pizarro Battalion for the execution of three trade unionists in Arauca (Arauca), in August, on grounds that the fight alleged to have occurred by the accused military personnel and other government authorities never took place, and that the trade unionists had been extrajudicially executed.

87. Repeated reports received by the office, along with direct observation in the field, indicate that links between paramilitary groups and public servants, members of the security forces and government employees continued.<sup>16</sup> While in certain cases actions were carried out, as in the city of Cúcuta, in the majority of them no appropriate sanctions against this type of conduct were reported. In certain cases, civil or military authorities denied that the events had taken place, without having duly investigated the allegations.

88. The administration of justice was principally affected in terms of judicial independence and impartiality, respect for due process and judicial guarantees, and the presumption of innocence. Problems persisted relating to access to justice in various regions of the country, along with high rates of impunity in cases of human rights violations and breaches of international humanitarian law.

89. Reports were received of violations of the independence of the judiciary, specifically involving prosecutors attached to security bodies, a situation which compromises their autonomy, above all in cases involving members of those bodies, and particularly when they are located in the same buildings. This also limits the ability of victims and witnesses to give testimony without fear or additional exposure to risk. Other allegations regarding independence of the judiciary raised the question of the firing of several prosecutors, some of whom had been forced to undergo a polygraph test. There were no investigations to determine whether they had acted in an irregular manner or not, which would have guaranteed that the decision to fire them did not result from reasons having to do with the investigations they had been conducting.

90. The office continued to be informed of cases of human rights violations and breaches of international humanitarian law inappropriately investigated by the military criminal justice system, particularly cases of killings of protected persons. The institutions failed to act in a consistent manner; in some cases, the Attorney-General's Office claimed jurisdiction, while in others it considered that it lacked jurisdiction. Also, the Higher Council of the Judiciary resolved some jurisdictional conflicts in favour and some against the ordinary justice system in similar situations that obviously referred to human rights violations or breaches of international humanitarian law.

91. However, it is worth mentioning that there has been progress in the investigation carried out by the Attorney-General's Office in the case of the trade union activists executed in Arauca, as well as the decision by the Higher Council of the Judiciary to confer jurisdiction on the ordinary justice system for the Cajamarca case, reversing its previous decision. It should be pointed out that in November, the Procurator-General's Office requested that the military criminal justice system reverse its decision to close the investigation against 12 members of the military implicated in the Guaitarilla case.

92. Various allegations of homicide, forced disappearances, torture and arbitrary arrests committed by members of the security forces were transmitted by the Procurator-General's Office to the police and the army (branches of the security forces) for disciplinary investigations. Attention is also drawn to the halting of certain disciplinary proceedings, even in cases where the justice system had imposed criminal sanctions against public officials found to be responsible. On the other hand, the actions by the Procurator-General's Office with regard to the progress or successful termination of certain cases, such as the Bojayá case, are noteworthy.

93. Staff of the Attorney-General's Office continued to play a leading role or to provide support for the practice of mass arrests, as well as individual arrests and searches based on investigations and evidence that were not solid, on military intelligence reports, on anonymous accusations or testimony of doubtful credibility. It was alleged that on repeated occasions, blank arrest warrants were provided or were issued after the actions, with the tolerance or direct involvement of prosecutors. The frequent use of testimony by demobilized persons or those who have been reintegrated into society has been observed at a number of courtroom trials. Cases were reported of demobilized persons providing false testimony in exchange for money or legal benefits. Several of these trials involved members of human rights organizations or trade unions. It is relevant in this context to mention the arrest in August of a former member of an illegal group reintegrated into society who had served as a witness in a number of trials and who was denounced for receiving money in exchange for false testimony. The office received reports of the existence of military intelligence files accusing human rights organizations of being linked to guerrilla groups.<sup>17</sup>

94. The practice by members of the security forces, particularly the army, of carrying out individual and massive arrests based on the precarious foundations previously referred to, with or without court authorization, continued mainly to affect civilians living in regions where guerrillas continued to be present or dominant. Attention is drawn to the fact that most arrests took place outside the judicial system. According to information supplied by the National Police, only 17 per cent of some 259,400 arrests carried out as at 10 October 2004 followed up on prior court orders, whereas in an overwhelming majority of the remaining 82 per cent of cases (some 205,300) the persons were apparently caught in flagrante delicto. About 8 per cent of



people arrested by the various State security entities were arrested with a warrant, and 2 per cent were administrative arrests. The rest were apparently arrested in flagrante delicto. Attention is drawn to the improper application of this concept, as it is reported that more than 50 per cent of the arrests are based on suspicion of belonging to illegal armed groups.<sup>18</sup>

95. The Procurator-General and the Ombudsman drew attention, on various occasions, to excesses committed during procedures specifically linked to mass arrests.<sup>19</sup> The consequences of these mass arrests, characterized by dubious evidence, procedural irregularities and tampering, not only affect the presumption of innocence, but also cause stigmatization by displaying the name, and sometimes the photograph or picture of the arrested persons, before the media and the public. This also places them in a situation of risk that could even lead to their deaths, as occurred with Professor Alfredo Correa de Andreis, the victim of a homicide a month and a half after having being freed by the Attorney-General's Office.

96. Allegations were made in certain cases of direct participation by public officials in tampering with witnesses and evidence, thereby undermining the credibility of the court. In its report on the investigation into the Guaitarilla case, the Procurator-General's Office observed that all the institutions taking part in it had committed irregularities. Several allegations were also made about the armed forces' tampering with evidence, altering crime scenes and committing other irregularities in carrying out procedures and operations. The High Commissioner is unaware of any measures taken against staff of the judiciary or members of the security forces responsible for these irregularities. In certain zones, allegations that prosecutors had failed to fulfil their obligation to remove bodies according to judicial procedures, as well as cases of obstruction by members of the security forces, were reported.

97. Additionally, it is worth noting that some cases of alleged sexual violence against women and girls were not properly investigated. Instead, victims tended to be stigmatized and, on occasion, investigations were even opened against them. In a case of an accusation of rebellion against a woman who had been sexually abused by a member of the guerrillas, employees of the DAS and the Attorney-General's Office were denounced for having participated directly in procedural irregularities, as evidenced in the court decision that revoked her detention. There is no record of effective measures having been taken to sanction the public officials involved in those irregularities or to prevent their recurrence. Allegations are frequently not investigated. Nor was progress made regarding investigations into allegations of sexual violence.<sup>20</sup>

98. The human rights situation in the country's prisons is one of continuous crisis. Growth in the prison population is currently higher than at any time in the country's history. Nationally, prisons are at 38 per cent over capacity; there are 68,000 inmates occupying 49,600 places in the prisons of Riohacha, Valledupar, Arauca, Bucaramanga, Medellín, Cali and Itaguí. A similar situation prevails in the women's prisons in Cali and Popayán. Conditions of extreme overcrowding are equivalent to cruel and inhuman or degrading treatment. INPEC recorded a large number of disciplinary investigations, including offences committed in the line of duty as well as those constituting cruel, inhuman or degrading treatment. Many reports are investigated by the institution itself, after having been referred to its jurisdiction by the Procurator-General's Office.

99. The majority of violations of the rights of women and girls remain unpunished, due to a lack of official investigations, the low number of complaints because of shame, lack of

credibility of the justice system, and underreporting in cases of death or sexual violence. Access to the courts and the manner in which such crimes are dealt with have also been affected by the absence of training programmes for court officials on gender issues, as well as by sexist practices in the justice system, especially in penal matters. The adoption of Law No. 882 of 2004, which decriminalizes sexual abuse on the grounds that sexual abuse is physical abuse and therefore is already penalized, is not in accordance with international regulations regarding protection of women and children against violence. It also underestimates sexual violence as a specific and grave problem, ignores the systematic nature of the practice, and makes this gender violation invisible, thereby contributing to impunity.

100. The rights of women, especially women heads of household, rural, indigenous, Afro-Colombian and displaced women, continue to be affected by sexual discrimination as well as by diverse forms of gender violence. The *tutela* (legal action to seek immediate relief for violation of a constitutional right) has in some cases made it possible to protect the rights of women and girls, and specifically to guarantee their fundamental rights.

101. The social and economic picture continues to show high levels of poverty and inequality. Availability, access, continuity and quality regarding the rights to employment, housing, health and education are far from satisfactory. High figures persist for unemployment and underemployment.<sup>21</sup> The situation of hospitals and pensions continues to worsen and coverage by the health-care system remains low.<sup>22</sup> Regarding the right to housing, a rebound in construction has been observed, but largely to the benefit of social strata 4, 5 and 6, whilst for social strata 1, 2 and 3, insufficient availability of house ownership and limited access to subsidies persisted.

102. Regarding the right to health, use of the *tutela* by many people in order to gain access to this basic service has been notorious.<sup>23</sup> This action is principally undertaken by people covered by some type of insurance.

103. Regarding the right to education, efforts by the State to increase coverage and improve quality should be acknowledged.<sup>24</sup> In spite of this progress, neither the recommendation of the High Commissioner to guarantee universal free primary education, nor the recommendation aimed at reducing the inequality gap has been fulfilled.<sup>25</sup>

### **C. The overall situation of international humanitarian law<sup>26</sup>**

104. The office in Colombia continued to record grave breaches on the part of the illegal armed groups, particularly FARC-EP and the paramilitary groups, even though a number of the latter have declared a cessation of hostilities. These illegal armed groups persist in making the civilian population their main target through indiscriminate attacks, homicides, massacres, hostage-taking, acts of terrorism,<sup>27</sup> forced displacements, use of antipersonnel mines, recruitment of minors and sexual slavery and violence against women and girls. Civilians, particularly ethnic groups, are affected by the practice of restrictions on the transportation of food, medicines and people, including actions leading to the confinement or the isolation of communities under siege. An increase was recorded in breaches affecting teachers, mayors and former mayors. Deaths from antipersonnel mines rose, mostly in the rural zones.

105. Using existing official statistics, it is not easy to adequately identify indicators referring to homicides of protected persons in the context of the internal armed conflict. For example, the Observatory of the Office of the Vice-President recorded 42 massacres with 234 victims during the first 10 months of 2004, the departments of Antioquia, Valle, Casanare and Meta being most affected. Hostage-taking continues to affect the civilian population. The Office of the Vice-President reported the taking of a total of 1,159 hostages during the first 10 months of the year, 46 per cent of whom were freed by their captors, 26 per cent remain in captivity and 20 per cent were rescued by the security forces. Among the illegal armed groups, FARC-EP continues to bear the greatest responsibility for these crimes.<sup>28</sup> Attention is drawn to the fact that in spite of the commitment to a cessation of hostilities and their announced demobilization, the paramilitary groups increased their share of kidnappings from 8 per cent to 11 per cent of the total, more than ELN (9 per cent) and less than FARC-EP (21 per cent).

106. Offences against personal dignity and other forms of indecent assault against women and girls by the illegal armed groups continued to be reported in different parts of the country, generally accompanied by hostage-taking, torture, displacement, forced nudity and other forms of physical, sexual and psychological aggression. Sexual slavery continued to affect the rights of women and girls, some as young as 12. Sexual slavery is generally accompanied by forced birth control and forced abortions. These situations also imply a high risk of sexually transmitted diseases or HIV. Cases were reported of women in Cúcuta who, after having been forced to have sexual relations with paramilitaries, were declared “a military objective” by the guerrillas.

107. Breaches were also recorded attributed to members of the security forces who failed to respect the immunity of the civilian population, particularly homicides of protected persons, indiscriminate attacks, forced displacements, blockades on deliveries of food and medicines to communities, and sexual violence against women and girls.

#### **D. Guerrillas<sup>29</sup>**

108. These illegal armed groups continued to violate international humanitarian law and its principles of limitation, distinction, proportionality and protection of the civilian population. FARC-EP continued to commit grave breaches such as murders of protected persons, torture and hostage-taking, which affected many civilians, including women, returnees, boys and girls, and ethnic groups. It was reported that on three occasions, twice in Catatumbo (Norte de Santander) and once in San Carlos (Antioquia), people who cultivated coca were massacred. In other cases, the victims were IDPs who had returned to their places of origin, supposedly with the “authorization” of the guerrilla group, as occurred in Antioquia. Responsibility was also attributed to the guerrilla groups in selective killings of and death threats against public officials, teachers and indigenous persons, among others. These include the homicides of the mayor of Rivera (Huila) in August; a teacher in the municipality of Tame (Arauca) in April, and a 70-year-old Arhuaco *mamo* (tribal elder) in November in the Sierra Nevada de Santa Marta.

109. Besides failing to unconditionally release people taken as hostages and respect international norms regarding those who have surrendered or who have been put hors de combat, FARC-EP, and to a lesser extent ELN, continued the practice of hostage-taking for the purposes of economic extortion and political pressure. Reports were received of torture and killing of hostages, such as in the case of five hostages found dead and showing signs of torture in the municipality of Corinto (Cauca) in January. In August, five members of a medical unit who

were participating in a day of vaccinations were taken hostage in the department of Arauca. The practice of recruiting minors continued. FARC-EP are also blamed for attacks against the civilian population and indiscriminate attacks, such as the one in the municipality of Anza (Antioquia), where members of FARC-EP shot at civilians and threw a grenade into a public building, killing two and wounding seven others. Acts of terror were also recorded, such as the explosion of a car bomb in Tame (Arauca) in May, in which 4 civilians, including a boy, died and 25 were wounded, along with the attack on a discotheque in Apartadó (Antioquia) that left 6 civilians dead, including a 4-year-old girl, and 22 injured. Responsibility is also attributed to FARC-EP for forced displacements in the departments of Antioquia, Caldas, Chocó and Nariño.

110. Restrictions on the free movement of people and goods continued to be imposed through illegal roadblocks or river checkpoints and generalized death threats, like the blockade of the Carare river (Santander) in April, most heavily affecting the inhabitants of rural areas. There were reports of the use of prohibited weapons and attacks against civilian property, such as the use of gas cylinders in San Miguel (Putumayo) in September, wounding two protected persons and causing widespread damage to civilian property.

111. FARC-EP and ELN continued their frequent use of anti-personnel mines. The Observatory on Mines of the Office of the Vice-President attributed responsibility for incidents to FARC-EP in 61 per cent of cases and to ELN in 10 per cent during 2004. The victims included boys and girls, particularly from indigenous communities, such as children of the Embera Katío ethnic minority wounded in April and June in the Department of Córdoba. FARC-EP are reportedly responsible for recruiting girls, forcing the use of birth control and compulsory mass HIV testing, and sexual enslavement of women and girls. They are also blamed for illegal attacks, killings and death threats against women for having had relations with members of the security forces or the paramilitary groups. Four women, one of whom was pregnant, were killed in October in Colosó (Sucre) under such circumstances.

### **E. Paramilitaries<sup>30</sup>**

112. The paramilitaries continued to commit breaches, along with violations of the cessation of hostilities.<sup>31</sup> Grave breaches were recorded, including massacres, homicides, hostage-taking and forced displacements. Attention is drawn to the large number of breaches, their gravity, and the impunity with which they were carried out, taking into account the declared cessation of hostilities.

113. Massacres attributed to paramilitaries were reported in Antioquia, Arauca, Bogotá, Córdoba, Guajira, Norte de Santander, Putumayo, Tolima and Risaralda. Some of these affected indigenous communities; others included hostage-taking, displacements, forced disappearances, homicides carried out with cruelty such as a person being beaten to death with a mortar in Risaralda, and sexual violations of women and girls. Cases continued to be recorded of homicides, both individual and collective, as well as threats, for which members of the army or other government employees and paramilitary groups were reportedly responsible, either by omission on the part of the authorities or as a result of joint or coordinated actions in which people executed by the paramilitaries were later reported by the army as killed in combat.

114. Forced disappearance continued to be a strategy employed by paramilitary groups. 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. In violation of the cessation of hostilities, 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 councillor - 8 of whom were subsequently killed.

115. Violent confrontations between the Centauros Bloc of AUC, which is currently in the process of negotiations, and the Peasant Self-Defence Forces of Casanare, have led to the displacement of hundreds of persons,<sup>32</sup> numerous killings and forced disappearances. The calls by the Government for an immediate cessation of combat and demobilization by both groups have not had any effect.

116. Reports also continued to be received of abuses of women and children attributed to paramilitary groups, in particular rape, threats, torture, selective killings, imposition of codes of conduct and sexual slavery.

#### **F. Security forces<sup>33</sup>**

117. The office continued to receive allegations relating to breaches of international humanitarian law, such as killings of protected persons, lootings and forced displacements, attributed to members of the security forces. Such reports were received from zones in which important military operations were carried out, such as Caquetá, Cauca and Putumayo, as well as from zones in which the security forces have had an ongoing presence, such as in Antioquia, where an increasing number of reports were received concerning members of the army's Fourth Brigade. The office observed a rise in the number of reports concerning sexual violence by army personnel. Reports were also received of breaches of international humanitarian law attributed to peasant soldiers.

118. The office received allegations, attributed to members of the army, of massacres in Antioquia, Arauca and Boyacá. Complicity on the part of paramilitaries was reported in some of these cases. The deaths of several civilians caused by military operations in violation of the principles of distinction and proportionality were also reported. Attention is drawn to continued reports received by the office of cases in which coordinated operations have been carried out by members of the security forces and paramilitary groups, and cases in which the victims had been detained by members of the paramilitary forces and subsequently reported by the army as having been killed in combat. Some of these cases have, inappropriately, been passed on to the military justice system.

#### **IV. THE SITUATION OF ESPECIALLY VULNERABLE GROUPS<sup>34</sup>**

119. The armed conflict, and in particular criminal actions by the illegal armed groups who ignore the humanitarian principles of distinction and the immunity of the civilian population, has affected the situation of various particularly vulnerable groups. These groups have also suffered from the effects of certain government policies and from actions by some authorities alleged to have been responsible for committing human rights violations against them.

120. In this context, the vulnerable situation of human rights defenders, including trade unionists, women's organizations and other social leaders, was affected by homicides, threats

and harassment by illegal armed groups, particularly the paramilitaries. Certain public statements by high-level government officials indiscriminately questioning the work of human rights defenders and their organizations contributed to polarization and an increase in risk factors, thereby limiting the impact of State efforts for their protection. Allegations were received regarding arbitrary arrests, illegal searches, violations of due process, and violations of the right to freedom of expression and opinion, among others.

121. Various communities continued to be at risk, particularly those under threat of attack or displacement and communities that were already displaced, or lived under blockade or under siege. The total number of internally displaced persons continued to rise in spite of a reduction in new cases of forced displacement, although this trend appeared to be reversing during the second half of 2004. The State undertook significant efforts to devote attention to those communities. Weaknesses continued to exist regarding durable and sustainable solutions, particularly with respect to the policy on returns, as well as regarding differentiated attention for women and ethnic groups.

122. The indigenous and Afro-Colombian communities suffered from the impact of the armed conflict on their ethnic and cultural identities following invasions of their territories, and from the more generalized situation of exclusion and discrimination that continues to affect them. The most affected communities were those of the Sierra Nevada de Santa Marta, the coffee-growing region, the Chocó area, and those in zones in which the Plan Patriota is being carried out. In this context, the killings, threats and other attacks against indigenous leaders, particularly by the AUC and FARC-EP, should be stressed. Homicides were also alleged to have been committed by members of the security forces, as well as for mass and arbitrary arrests. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people highlighted the danger of extinction faced by several communities in the departments of Amazonas, Putumayo, Caquetá and Guaviare.

123. Children continued to be victims of the armed conflict, in particular as a result of the forced recruitment of thousands of boys and girls, hostage-taking, displacements and the use of antipersonnel mines. Sexual and labour exploitation persisted, along with domestic violence and inequality in the enjoyment of the economic, social and cultural rights of childhood. The office was informed of the occupation of schools by security forces, which clearly contravenes provisions of international humanitarian law.

124. The rights of women and girls continue to be violated due to inequality, discrimination and diverse forms of violence. The security, particularly of rural, indigenous and Afro-Colombian women and girls and of those who are organized, displaced, confined or are returnees, has deteriorated as a result of the armed conflict and the use of sexual violence and social control by the illegal armed groups. In spite of efforts by the State, weaknesses persist in gathering information on the specific situation of women; this affects its ability to respond appropriately to their needs. The judicial system continues to be ineffective in dealing with cases of gender violence.

125. Journalists and other opinion makers were the victims of homicides and threats by illegal armed groups. Allegations were also made of the excessive use of force by members of the security forces and of violations by public officials of the right to freedom of expression and opinion. This situation as a whole led to a climate of indirect censure and intimidation, and to

the uncritical use of information. Some allegations examined by the office indicate that the authorities used pressure to have information on the armed conflict and other statistics favourable to the Government published.

126. Hostages and their families have been particularly vulnerable owing to the persistence of kidnapping and the lack of compliance by illegal armed groups with humanitarian obligations. In addition, they have difficulties in the field of civil and economic rights because of gaps in existing legislation. Victims of forced disappearance are in a similar situation.

127. Local officials, particularly mayors and former mayors, councillors and former councillors, public officials, judicial officers, members of the Unión Patriótica and the Communist Party, doctors and business people were also particularly vulnerable to actions by illegal armed groups. Lesbians, gays, bisexuals and transgenders were also victims of abuses and discrimination, including mistreatment and acts of “social cleansing”, because of their sexual orientation.

## V. RECOMMENDATIONS

128. **The High Commissioner puts forward 27 concrete and priority recommendations addressed to the national authorities of the three branches of Government, the supervisory bodies responsible for the protection and promotion of human rights, representative sectors of civil society, the international community, and the illegal armed groups.**

129. **The recommendations are the practical and forward-looking conclusions of an analysis carried out on the basis of systematic and analytical observation and dialogue with the State authorities and civil society organizations. The High Commissioner is firmly convinced that the situation of human rights and international humanitarian law would show tangible improvement if the recommendations were implemented in a consistent and comprehensive manner in 2005.**

130. **As in the two previous annual reports, and in order to underline the fact that this is an implementation process that requires coherence over time and with regard to all the topics, the recommendations are grouped under the following six headings: prevention and protection; the internal armed conflict; the rule of law and impunity; economic and social policies; promotion of a human rights culture; advisory services and technical cooperation on the part of her office in Colombia.**

### A. Prevention and protection

131. **The High Commissioner encourages the Government to adopt norms to regulate the composition and functions of the Interinstitutional Early Warning Committee (CIAT), and to establish sanctions to be imposed when warnings issued by that committee are not acted upon. The High Commissioner also encourages the Government to guarantee the sustainability of the early warning system of the Ombudsman’s Office and CIAT by providing timely budgetary allocations.**

132. **The High Commissioner encourages the Government and the Congress to ensure the sustainability of programmes for the protection of human rights defenders and other**

groups, under the responsibility of the Ministry of the Interior. The High Commissioner urges the adoption of necessary measures so that public officials in the executive branch show due respect for the individual and collective work of human rights defenders, including women's organizations, indigenous and Afro-Colombian communities, trade union leaders and other social leaders. To this end, the High Commissioner urges that conduct of public officials whose statements endanger the lives, integrity or security of those persons be criminalized and subject to appropriate disciplinary sanctions.

133. The High Commissioner encourages the Government to take special and urgent measures to defend indigenous communities at risk of extinction and to comply with the rulings of the Constitutional Court, especially T-25 of 2004, regarding prevention and attention with regard to internally displaced persons and other communities at risk. The State is also encouraged to assume its responsibility in accordance with international principles and norms.

134. The High Commissioner urges the Government and the Congress to provide the Procurator-General's Office and the Ombudsman's Office with the necessary resources so that they can establish a presence in zones with a high percentage of indigenous, Afro-Colombian and displaced populations and in zones where these institutions are still not present. For these purposes, the High Commissioner invites the Procurator-General and the Ombudsman to present in a timely fashion, during the first half of 2005, a plan for their expanded territorial presence.

135. The High Commissioner encourages the Procurator-General to establish and carry out, in coordination with the Ministry of Defence, an annual review of military intelligence files on human rights defenders and organizations, with the aim of examining the veracity and impartiality of the information contained in them and removing erroneous or tendentious data.

136. The High Commissioner encourages the Minister of Defence to sign a framework agreement for cooperation with the office in Colombia so that, on the basis of an independent study, progress can continue in training on human rights and international humanitarian law for all members of the security forces in a comprehensive, systematic and operational manner.

#### **B. The internal armed conflict**

137. The High Commissioner demands that the leaders and other members of FARC-EP, ELN, AUC and other guerrilla and paramilitary groups respect the right to life, personal integrity and individual liberty of all civilians. They are especially urged to abstain at all times from attacks on the civilian population and from indiscriminate attacks; the unacceptable practices of kidnapping, recruitment of minors and sexual violence; and acts of terrorism. The High Commissioner therefore also demands that the leaders issue clear orders to all members of their groups and ensure obligatory observance of humanitarian norms.

138. The High Commissioner demands that FARC-EP, ELN, AUC and other illegal armed groups immediately and unconditionally release all persons held as hostages. They



are also called upon to recognize, without restrictions, the guarantees established under humanitarian norms for other persons deprived of their liberty for reasons relating to the internal armed conflict.

139. The High Commissioner demands that the members of FARC-EP and ELN fulfil international obligations prohibiting the use, storage, production and transfer of anti-personnel mines.

140. The High Commissioner urges all those directly participating in the hostilities to fully observe the humanitarian principles of limitation, distinction, proportionality and protection of the civilian population, and to guarantee humanitarian access to exposed populations.

141. The High Commissioner requests the Government to consider the possibility of withdrawing its reservation to the Rome Statute, by means of which it has not accepted the jurisdiction of the International Criminal Court for a period of seven years with respect to war crimes committed in Colombia.

142. The High Commissioner calls upon all the illegal armed groups to implement an effective cessation of hostilities as soon as possible, to be reciprocated by the Government. The High Commissioner also urges that dialogue and negotiations be initiated urgently between the Government and the illegal armed groups, aimed at overcoming the internal armed conflict and reaching a lasting peace. Such dialogue and negotiations should give priority, from the outset, to international humanitarian law and human rights. Regarding the negotiations, the High Commissioner urges the Government and Congress to establish, as soon as possible, a legal framework with appropriate mechanisms that fully recognize and guarantee the rights to truth, justice and reparation of the victims. The legal framework should also take due account of the situation of women and ethnic minorities.

### C. The rule of law and impunity

143. The High Commissioner urges the Government and the Congress to comply fully with the obligations assumed by Colombia as a State party to international human rights and international humanitarian law instruments, the Rome Statute of the International Criminal Court and international labour law. The State is encouraged to ratify pending international treaties and to proceed with the formal ratification of those that have been approved. The State is encouraged not to undertake changes in regulations that would be incompatible with international instruments or that would weaken judicial control over actions by the State and limit the right of *tutela*.

144. The High Commissioner encourages the Government, the Congress and the judicial branch to promote appropriate rules and mechanisms to address the problem of impunity, with a special focus on gender. The High Commissioner also requests that the institutions that make up the Special Committee on the conduct of investigations into human rights violations and breaches of international humanitarian law make progress, in a prioritized, coherent and sustainable way, with regard to the selected cases so as to lead to their judicial conclusion.

145. **The High Commissioner encourages the Attorney-General to implement the career system for its officials and employees; to implement in 2005 the recommendations formulated in the evaluation of the Unit for Human Rights and International Humanitarian Law; and to promote necessary legislative and administrative measures to ensure the effectiveness and efficiency of the programme for protection of victims and witnesses of the Attorney-General's Office. The High Commissioner also urges the Attorney-General to respect and guarantee the independence of the prosecutors.**

146. **The High Commissioner urges the Minister of Defence and the Attorney-General to apply international principles and norms that govern the concept of flagrante delicto and that prohibit, except under exceptional circumstances, detentions and searches without a prior court order. The High Commissioner also urges them to ensure respect for the presumption of innocence and guarantees of due process, and to sanction those officials who infringe these principles.**

147. **The High Commissioner urges the Minister of Defence to use the suspension of officials from active service as a preventive measure. The High Commissioner also urges the Minister to issue instructions that ensure that officials of the military criminal justice system do not claim jurisdiction in cases of human rights violations and breaches of international humanitarian law, or other crimes unrelated to military service. The High Commissioner also urges the Attorney-General to issue clear instructions so that prosecutors do not cede jurisdiction to the military criminal justice system in cases unconnected to that jurisdiction. The High Commissioner requests the Higher Council of the Judiciary to resolve conflicts over jurisdiction in accordance with constitutional jurisprudence and international norms.**

148. **The High Commissioner encourages the Procurator-General to rigorously exercise disciplinary powers with regard to investigations of grave human rights violations and breaches of international humanitarian law, including those affecting persons deprived of their liberty. The High Commissioner urges the Ombudsman's Office to exercise permanent oversight with regard to prisons and jails. The Director of INPEC is asked to guarantee access by defence lawyers to detention centres. The Ministry of the Interior and Justice and INPEC are encouraged to effectively integrate human rights norms into the regulations, practices and training programmes for their officials, as well as to implement the recommendations formulated by the office of the High Commissioner within the framework of the project for cooperation and assistance.**

149. **The High Commissioner encourages the Attorney-General to ensure that the sub-unit in charge of investigating presumed links between public officials and illegal armed groups attached to the Unit for Human Rights and International Humanitarian Law concentrates its work on exploring links between paramilitary groups and members of the security forces, civilian employees and other private individuals. The High Commissioner also encourages this unit of the Attorney-General's Office, in coordination with other units, to include the economic, financial and legal aspects of those links in their investigations. The High Commissioner also requests the Attorney-General to revise the structure of prosecutors attached to the security forces and other security bodies.**

150. The High Commissioner requests the President, as Head of State and Supreme Commander of the Armed Forces, to adopt the necessary measures to sever all links between public officials and members of paramilitary groups and to effectively dismantle the structures of the paramilitary.

#### **D. Economic and social policies**

151. The High Commissioner urges the Congress and the Government to apply a consistent policy, based on updated statistics compiled in accordance with internationally recognized methodologies, including a focus on gender, to reduce the inequality gap, address extreme poverty, reduce illiteracy and unemployment, and guarantee to effective exercise of the rights to health, education and housing. Primary education should be free, and health services and housing subsidies should be guaranteed for the least protected sectors.

#### **E. Promotion of a culture of human rights**

152. The High Commissioner encourages the Government and organizations of human rights defenders to continue institutionalizing stable forums for dialogue, both at national and regional levels, in order to heighten understanding and respect and improve the promotion and protection of human rights throughout the country.

153. The High Commissioner requests the Government to incorporate pending topics regarding the implementation of the recommendations of the High Commissioner into the draft national plan of action on human rights and international humanitarian law. The High Commissioner also urges that the draft plan of action be completed no later than October 2005, and that it be the product of a consensus with wide-ranging sectors of society, and include a comprehensive gender focus.

154. The High Commissioner urges the Ombudsman's Office to assume the task of overseeing the promotion, exercise and dissemination of human rights throughout the country. The High Commissioner also invites the Minister of Education to finalize and disseminate the national plan for human rights education, and begin its implementation as soon as possible.

#### **F. Technical cooperation and advisory services provided by the office in Colombia of the High Commissioner**

155. The High Commissioner encourages the development of a public statistical system that adequately covers human right violations and breaches of international humanitarian law and facilitates their analysis under established international parameters. To this effect, the High Commissioner proposes that in 2005, a joint project be undertaken between the Office of the Vice-President, the Ombudsman's Office, the Procurator-General's Office, the Attorney-General's Office, the Ministry of Defence, DANE, other State entities, non-governmental human rights organizations and academic institutions, with assistance and advice provided by the office in Colombia.

156. **The High Commissioner urges the State to implement, in a coherent and effective manner, the international recommendations, including those in the present report. The High Commissioner requests the Vice-President, the relevant ministers, the High Commissioner for Peace and other State entities adequately to coordinate among themselves actions aimed at implementing the recommendations. The High Commissioner requests that the updated timetable for implementation of the recommendations be published during the first half of 2005. The High Commissioner invites the various State entities to make use of the advisory capability of her office.**

157. **The High Commissioner invites the branches and entities of the State and civil society organizations to benefit fully from the technical cooperation and advisory services offered by her office in Colombia. The High Commissioner also invites the international community, particularly the group of countries that signed the London Declaration of July 2003, to provide the necessary financial and technical support so that the various State institutions, non-governmental organizations and her office may effectively contribute towards the implementation of the recommendations formulated by the High Commissioner.**

#### Notes

<sup>1</sup> On 13 December 2004, the Inter-American Commission on Human Rights published its Report on the Demobilization Process in Colombia, within the framework of the advisory services to MAPP-OAS. On the same date, the Council of the European Union expressed its support for the Government of Colombia in its search for a negotiated solution to the internal armed conflict and called for an early adoption of a comprehensive legal framework for the process of disarmament, demobilization and reintegration of the illegal armed groups.

<sup>2</sup> The internal disputes and confrontations reported during 2003 between the Cacique Nutibara Bloc and the Metro Bloc ended with the disappearance of the latter group and the killing of its main leader, “Comandante Rodrigo”, or “Doble Cero”, in May 2004.

<sup>3</sup> UNIFEM, *Early warning and gender: Observatories and information systems in Colombia*, p. 19.

<sup>4</sup> The budget for 2000 has been increased by 9 per cent over the previous year. In 2003, an average of 435 requests for protection were attended to each month, whereas the monthly average during the first eight months of 2004 rose to 464 requests.

<sup>5</sup> See resolutions No. 04234 of 1 September and No. 4749 of 4 October 2004 issued by the Attorney-General’s Office.

<sup>6</sup> Cf. General Controller of the Republic (Contraloría General de la República), Evaluation of the social policy 2003, March 2004, p. 43.

<sup>7</sup> UNDP, Human Development Report 2004, annex 1.

<sup>8</sup> David de Ferranti, Guillermo E. Perry, Francisco H.G. Ferreira, Michael Walton, “*Desigualdad en América Latina y el Caribe: ruptura con la historia?*”, Executive Summary, World Bank, 2003, p. 9.

<sup>9</sup> See note 19 below.

<sup>10</sup> According to the latest report on the regional situation presented by DANE and the Banco de la República, 16 million people have no access to the general health-care system.

<sup>11</sup> According to a study carried out by the Centro de Estudios de la Construcción y el Desarrollo Urbano Regional (Centre for Studies on Construction and Regional Urban Development), 9 per cent of families last year lost ownership rights over their homes. In 2004, construction of subsidized housing fell to levels lower than those of 1999. While overall construction increased by 13 per cent, a 2.5 per cent decrease was reported in outlays of credits for subsidized housing.

<sup>12</sup> See annex IV.

<sup>13</sup> See the recommendations at the end of this report.

<sup>14</sup> See annex II chapter B, for examples of cases of reports of human rights violations.

<sup>15</sup> The office only considers denunciations as being credible after carefully studying and comparing them with different sources, including its own direct observations.

<sup>16</sup> The conclusions included in the final report of a special mission of the National Police are evidence of this situation, which indicate that “the large number of internal investigations for links with criminal structures, in particular the paramilitaries is worrying”. This mission had as its objective to analyse the situation of the institution and to formulate recommendations to prevent and correct conduct that compromises ethical standards.

<sup>17</sup> Based on this information, the residence of a human rights defender was raided in an arbitrary way, as well as the premises of an NGO in the department of Santander.

<sup>18</sup> Application of the notion of flagrante delicto to rebellion and criminal conspiracy - crimes associated with people assumed to be part of guerrilla or paramilitary groups - of prior judicial investigations, and to the capture of stigmatized persons carried out without a court order, whether because of their statements or opinions, or because they live in zones controlled by those groups.

<sup>19</sup> “*Informe Capturas Masivas Período 2003-2004*”, Procurator-General’s Office, Bogotá D.C., 18 February 2004. See also statements by the Ombudsman requesting a review of massive detentions; *El Tiempo*, 10 September 2004.

<sup>20</sup> The Presidential Counsellor for Equality and Women states that investigations into sexual violence within the framework of the armed conflict does not exist. See annexes II and III about women situation and allegations on this matter.

<sup>21</sup> The average unemployment in 2004 of 14 per cent fell more heavily on women (18 per cent) than on men (11 per cent). A high rate of underemployment continued to be recorded (33 per cent), also having a greater effect on women (23 per cent), than men (26 per cent). Only 15 per cent of the working age population pays into the pension system.

<sup>22</sup> According to the Ministry of Social Protection, 39 per cent of the population is not insured under any of the established health-care regime and almost half of the uninsured are from the poorest sectors. People in that situation have to cover their health-care services out of their own pockets or resort to the network of public hospitals, most of which lack the capacity to provide attention to them. Of the 61 per cent of the population that is insured, 32 per cent are affiliated to the contributory regime while 29 per cent are insured under the subsidized health-care regime. The latter is designed for the poorest sectors and the informal sector of the economy. This dual system generates inequality in terms of access and quality regarding the right to health.

<sup>23</sup> Ombudsman's Office, "La Tutela y el Derecho a la Salud, Causas de las Tutelas en Salud" (The Tutela and the Right to Health, Causes of Tutelas in Healthcare) Bogotá, August 2004.

<sup>24</sup> Programa de Promoción de la Reforma Educativa en América Latina y el Caribe, (Programme for the Promotion of Educational Reform, PREAL), Fundación Corona, *Informe de progreso educativo, Colombia, entre el avance y el retroceso*, 2003, p. 6.

<sup>25</sup> According to the Ministry of Education, the national illiteracy rate for people over the age of 14 is 7.6 per cent, while in certain departments rates are much higher (i.e. Chocó 20.1 per cent; Sucre 17 per cent; la Guajira 16.4 per cent; and Magdalena 14 per cent). Projections made by that Ministry for 2005 in terms of investment in quality show a budgetary reduction by almost one half.

<sup>26</sup> See annex II.

<sup>27</sup> Acts of terrorism are those included in the prohibition contained in article 4 of Additional Protocol II to the four Geneva conventions of 12 August 1949, including acts or threats of violence the primary purpose of which is to spread terror among the civilian population. The last-mentioned acts constitute a particular form of terrorism and are the subject of a specific prohibition in article 13 of the same instrument.

<sup>28</sup> These statistics also include kidnappings by common criminals, as well as cases in which responsibility is unknown.

<sup>29</sup> See annex II.

<sup>30</sup> See the examples of cases attributed to paramilitary groups in annex II, section C, Breaches of international humanitarian law. See section B of the same annex, Human rights violations, for cases regarding State responsibility for action or omission on the part of government employees in acts committed by paramilitary groups.

<sup>31</sup> Examples of these breaches were included in the reports of the OAS mission in support of the peace process in Colombia (MAPP/OEA); in a table of breaches of the ceasefire presented in May 2004 by the High Commissioner for Peace, based on reports by the DAS; as well as in the report on the implementation of the ceasefire of September 2004 produced by the Ombudsman's Office.

<sup>32</sup> According to official figures supplied by the RSS (Social Solidarity Network), 2,091 people have been displaced in Casanare during the first six months of 2004, compared to a total of 2,490 people displaced in 2003. It is estimated that 640 people have fled the municipality of Maní (Casanare) alone.

<sup>33</sup> See annex II.

<sup>34</sup> See annex III.

## **Annex I**

### **ACTIVITIES OF THE OFFICE IN COLOMBIA OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS**

1. In 2004, the office in Colombia of the United Nations High Commissioner for Human Rights, in fulfilment of its mandate, carried out its duties of observation, consulting, technical cooperation and promotion and dissemination, for which it received financial support from the following countries.<sup>a</sup>
2. Throughout 2004, the office has maintained a dialogue with the Government, with the national and regional authorities, diverse sectors of the society and the international community.

#### **I. OBSERVATION**

3. The office in Colombia of the United Nations High Commissioner for Human Rights, through its offices in Bogotá, Bucaramanga, Cali and Medellín, carries out its work of observation based on thematic and geographical priorities that enable it to analytically and systematically follow up on the situation of human rights and international humanitarian law in the country. Carrying out this activity facilitates identification of patterns and tendencies the analysis of which makes it possible to design its consulting work with the State and the civil society.
4. On 30 March 2004, the Bucaramanga branch office which covers an important region in the north-eastern part of Colombia was inaugurated. Since then, it has concentrated on consolidating its contacts with State authorities and institutions of the civil society, among other activities.
5. The opening of the Bucaramanga branch office marked the consolidation of efforts begun in January 2002 with the opening of the Cali and Medellín offices. This deployment enables the office to obtain first-hand information as quickly as possible and to better focus its cooperation with local counterparts. Through activities involving dialogue, the office also serves as a bridge between State entities and organizations of the civil society, while at the same time supporting and serving as a point of reference for efforts to design and implement regional public policies in human rights and humanitarian law.
6. The presence of the office in different regions of the country, in addition to strengthening relationships with the authorities and the civil society at the local and regional levels, contributes towards prevention and protection of vulnerable populations such as indigenous and Afro-Colombian communities, local organizations of human rights defenders, trade union activists and journalists, among others.
7. In 2004, 226 missions were carried out in the field and 1,211 complaints received, of which 827 were admitted as referring to conduct in violation of human rights and/or breaches of international humanitarian law.



## II. ADVISORY SERVICES

8. The office continued its dialogue with the authorities, particularly with the Office of the Vice-President, various ministries, the Congress, the judicial branch and control organisms. Follow-up was made on the legislative agenda of the Congress, the national legal system was analysed and State policies in fields within its mandate were evaluated. The office provided advice to different State entities and organizations of the civil society in the application and interpretation of international instruments in the field of human rights and international humanitarian law.

9. The office participated in a number of meetings to analyse government policies and programmes and their conformity to international principles and rules. A series of analytical documents was prepared in this respect. Topics analysed included democracy, justice and impunity and the framework of the negotiations, the impact of demobilization, the rights of victims to truth, justice and reparations, the focus on gender in guaranteeing human rights, and the content of economic, social and cultural rights. At forums, workshops and seminars, knowledge of international instruments and mechanisms for protecting human rights was promoted along with the implementation of recommendations issued by international bodies, especially those formulated by the High Commissioner.

10. In March 2004, the office provided support for the visit to Colombia of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. In order to increase the understanding of its mandate, a brochure entitled "Questions and answers about the rights of indigenous peoples" was drawn up. A brochure entitled "Questions and answers about freedom of opinion, expression and information" was also prepared.

11. The office, with the support of the United Nations Development Fund for Women, strengthened the inclusion of a gender perspective in the various areas of work and actively participated in the work of the round table on gender of the United Nations system in Colombia. It also facilitated workshops on developing gender indicators and basic tools to be included in the communication work in the field of gender and women's rights.

12. The office drew up a guide on how to observe and gather and analyse information regarding violations of the rights of women and children. In the context of diverse forums and meetings, it promoted the rights of women and mechanisms for protection and the importance of a gender focus in the realization of human rights.

## III. COOPERATION AND TECHNICAL ASSISTANCE

13. Cooperation and technical assistance provided by the office continued to focus on providing support to action by the institutions of the Government to implement the recommendations formulated by the High Commissioner and accepted by Colombia as international commitments before the international community contained in the Statement of the Chairperson of the Commission on Human Rights at its sixtieth session.

14. During 2004, the office has maintained an ongoing dialogue with organizations of the civil society, which has occasionally led to identifying and jointly formulating projects.

15. In 2004, a number of important tools for the defence and protection of human rights and international humanitarian law were published within the framework of technical cooperation, namely: the *Manual for classification of conducts that violate human rights*; the *Practical guide for evidence in disciplinary investigations regarding violations of human rights and breaches of international humanitarian law*; *International law on human rights*; *Human rights protection for persons who have been deprived of their liberty, basic documents*.

#### **A. National plan of action on human rights**

16. Throughout the year, the office has held meetings with a team of the Presidential Programme for promotion, respect and guarantee of human rights in order to analyse the operational system for the adoption of the national plan of action on human rights and international humanitarian law. The work carried out by that team constitutes an important element for the drawing up of the plan of action, which requires consultation and agreement with broad sectors of the civil society. In December 2004, an agreement was signed between the office and the Office of the Vice-President for technical cooperation in this field.

#### **B. National plan of action on training, respect and the practice of human rights in the educational system**

17. The office provided technical support to the Inter-institutional Committee charged with drawing up the plan of action, presided by the Office of the Ombudsman and composed of representatives of the Office of the Vice-President, the Ministry of Education, an NGO representing the civil society and UNDP. The proposed methodology made it possible to identify priority areas for intervention, applicable strategies and time limits to achieve the objectives, while taking into account the specific cultural and sociological realities in the diverse regions of Colombia. The office took special care to ensure that the plan of action incorporated international recommendations, including those made by the Special Rapporteur on the right to education. During the last phase of the work, planning matrices were drawn up for the plan as a whole and for each of its strategies. As a result, indicators now exist to measure the levels of results and their respective sources for verification.

#### **C. Institutional strengthening**

##### **1. The Attorney-General's Office**

18. The project on institutional strengthening was begun following the signing of the letter of understanding with the Attorney-General in November 2003.

##### **The career system for prosecutors**

19. The office provided advice on the implementation of a career system for prosecutors and officials of the Attorney-General's Office. This implied analysing the draft basic statute of the Attorney-General's Office, together with existing regulations for the system of examinations, which were included in the observations. New regulations on the performance evaluation of prosecutors and officials of the Cuerpo Tecnico de Investigaciones (CTI) (technical investigation unit) are currently being designed and developed.

20. Once the Attorney-General has approved the regulations relating to the system of examinations, conditions will have been created to begin implementing the career system. These regulations, together with specific profiles for each duty, regulations on performance evaluation, and the basic statute, will provide the Attorney-General's Office with the basic tools to appropriately respond to the challenges of the new accusatory system in accordance with international standards.

### **National Unit on Human Rights and International Humanitarian Law**

21. A diagnosis of the work of this unit was begun in August 2004 and is being carried out jointly with the Vice-President's Programme for the Fight against Impunity.

22. Interviews, surveys and analysis of documents are undertaken in order to gather the most complete information possible. Based on this information, an assessment will be submitted to the Attorney-General's Office in February 2005 with short-term, medium-term and long-term recommendations aimed at the institutional strengthening of the National Unit on Human Rights and International Humanitarian Law.

#### **2. Interinstitutional project on the human rights situation of persons who have been deprived of their liberty**

23. Faced with the grave situation in Colombia's prisons, the project aims to encourage the different national institutions to address the ongoing crisis situation in the penitentiary system in a programmatic and coherent fashion.

24. The project is designed and placed within a logical framework of implementation and administration by objectives, thereby seeking to influence the design and evaluation of public policies in the field of prisons. During the year, continuous follow-up was made on the project, including a mission for external monitoring.

25. Within this framework, the office collaborated with the Ministry of the Interior and Justice, INPEC, the Ombudsman's Office and the Procurator-General's Office. It also encouraged the participation of other government sectors such as health care, and of organizations of the civil society, in the search for alternatives aimed at solving the critical situation.

26. In the implementation of the project, the office obtained the formal commitment of the administration of INPEC to implement a series of recommendations concerning the general operation of the prison system, and specific recommendations relating to the operation of six centres located in each of the Institute's regional branches. These recommendations would contribute to guaranteeing the humane treatment of persons deprived of their liberty. The office also presented an educational programme that foresees the development of a specific curriculum in the field of human rights and the integration of this subject into all of the courses given at the National Penitentiary School. It is hoped that the programme will be institutionalized and implemented in accordance with the approved proposal.

27. With respect to organs of control, the project focused on strengthening the programmatic capacity of response of the Ombudsman's Office and the Procurator-General's Office in the context of a situation that increasingly demands their attention, both as concerns individual cases and general situations.

28. Support provided by the office has contributed to the process of defining and establishing technical guidelines for follow-up, within the Ombudsman's Office, on international obligations of the State in the field of the protection of and guarantees for the rights of persons deprived of their liberty. This initiative will facilitate the implementation of an information system to systematically evaluate the functioning of the country's prisons. A training course for officials of the institution responsible for penitentiary issues has now been concluded.

29. The support provided to the Procurator-General's Office has allowed for the adoption and starting up of a plan of action to introduce standardized and systematized verification procedures for the preventive control of the respect for the rights of persons deprived of their liberty and of a system to inform the authorities and the public about its results. Concrete outcomes have been the structuring and strategic definition of its intervention in prison affairs, and information provided to the authorities and the public on the results of its verification, including on various aspects of prisons, such as overcrowding, the use of solitary confinement, administrative benefits, and the right to health care in prison.

#### **D. Training in human rights and international humanitarian law**

30. Human rights training is an essential element of the strategy to address the critical human rights situation in Colombia. In 2004, the office continued to encourage the institutionalization of human rights training in State institutions and in other sectors.

31. Training of government employees. In order to strengthen institutional capacity, several courses were given aimed at setting up networks of trainers or enlarging existing ones. Two courses for 29 judges and magistrates were held with the Rodrigo Lara Bonilla school for legal professionals to enlarge the network of human rights trainers within the judicial branch. Thirty-eight employees of the Military Criminal Justice School completed the training and now are to form a network of institutional trainers. Thirty-six employees of the Colombian Family Welfare Institute were trained to create a similar network.

32. Following the cooperation agreement signed in 2003 with the School for Judges and Prosecutors of Antioquia, two courses on human rights and international humanitarian law were organized for 57 prosecutors and judicial employees in that department. The office gave a basic course on human rights and international humanitarian law at the Office of the President for 25 members of the First Lady's security personnel.

33. Two courses for 40 officials were carried out with the Ombudsman's Office on the use of the manual for the classification of conducts in violation of human rights and international humanitarian law, published in May 2004 within the framework of the project for cooperation and technical assistance signed between the office and the Ombudsman's Office. The initiative seeks to provide those receiving and processing complaints at the Ombudsman's Office with an instrument to enable them to classify the complaints in accordance with national and international parameters on human rights and humanitarian law.

34. Training municipal ombudsmen. At the time of the finalization of this report, the training programme for municipal ombudsmen, after three years of existence, had achieved its goal of training 1,800 municipal ombudsmen chosen during the two legal periods<sup>b</sup> in human rights and international humanitarian law. This activity has allowed to strengthen the commitment, identity and sense of belonging of these officials to the Ministerio Público. Strategies for training and strengthening of the Ministerio Público have underpinned the basic role of the Ministry in consolidating respect for the rule of law. Therefore, the Procurator-General has expressed his desire to begin a discussion on the transformation of the role of municipal ombudsmen.

35. The project made it possible to observe the diverse territorial entities and to use experiences in formulating development plans that would include components for human rights and international humanitarian law, subject to agreement on the part of the municipal ombudsmen.

36. The project has contributed to strengthening the Institute for Studies of the Public Affairs Ministry as the preferred forum for future training of municipal ombudsmen in the field of human rights and international humanitarian law. To continue in this direction is tantamount to contributing towards the sustainability of a process that has generated positive results. The Procurator-General's Office and the Ombudsman's Office should use the Institute to implement the recommendation of the High Commissioner by integrating the municipal ombudsmen into their activities and programmes in the field of protection and promotion of those rights.

37. Civil society and the Church. In implementing the project entitled "Training in the perspective of rights for the pastoral agents of the Diocese of Florencia and the Vicarage of San Vicente del Caguán-Puerto Leguizamo", a process has been carried out to train trainers among priests, nuns, and missionary and lay agents in Caquetá, one of the departments most affected by the armed internal conflict. Two courses were given in Florencia and one in San Vicente del Caguán, with a participation of almost 100 people. It is hoped that in 2005 these ecclesiastical districts will provide support for their networks of trainers so that they may replicate their knowledge and reinforce the Colombian Catholic Church's ability to take on the defence and promotion of human rights.

38. Two activities for basic training in human rights were carried out with NGOs benefiting from the projects entitled Assisting Communities Together (ACT), one in Cali and the other in Medellín.

#### **E. Activities with the United Nations system**

39. The office encouraged and took the lead in the implementation of action 2, the inter-agency plan of action for the integration of the human rights dimension following the Secretary-General's second reform report (A/57/387 and Corr.1). A follow-up group was set up in Colombia, composed of the heads of agency<sup>c</sup> in order to follow up and supervise implementation of the work plan proposed by the technical team consisting of delegates of the agencies that are part of the follow-up group.

40. The technical team has been meeting every month since September 2004, with a work plan and a methodology to ensure the gradual integration of the human rights dimension in the policies, programmes, projects and activities of the United Nations system by the end of 2006.

41. As part of this programme, the office carried out four basic courses on human rights for employees of the system, given in Bogotá, Cali and Medellín, with a participation of 110 employees.

42. *Humanitarian Action Plan for 2005.* The office has provided support to the preparation of the plan of action by formulating observations of a technical nature to clarify the components to be included in the plan as well as lines of action related to its objectives. It also assisted in the process of selecting proposals submitted within that framework; and the 140 proposals that were submitted have qualified and 22 have been given a high priority.

#### IV. INFORMATION, PROMOTION AND DISSEMINATION

43. As concerns publications by the office, it is worth mentioning 20,000 copies in Spanish and 1,000 in English of the 2004 Recommendations for Colombia, 5,000 copies of the report on the human rights situation in Colombia in 2003 and 20,000 handbooks on the Universal Declaration of Human Rights, adapted for children. Ten thousand copies of the 2005 calendar were also printed for distribution throughout the country. The total number of copies of publications disseminated by the office throughout the country reached 80,000.

44. In 2004, the office participated in a number of promotion and dissemination activities (seminars, forums, workshops and conferences), and was present at the Bogotá Book Fair, where all of its publications were for sale to the general public.

45. Within the framework of its work with the communications media, the office organized 10 workshops with journalists and 2 additional ones with the media directors of the United Nations system, the latter for promoting women's rights. Twenty-two papers and 46 press releases were issued and 10 press conferences held as of November. One thousand articles on the work of the office appeared in the national press, along with 350 in the international press, 400 items on the radio and 270 on television. The office gave approximately 32 interviews to the mass media. The office's web page had received 141,153 visits as of 3 December. Advice was also provided to diverse indigenous peoples' organizations on how to handle communications and human rights.

46. Within the framework of International Human Rights Day on 10 December, a free concert was given, entitled "Voices that sing for our rights", with 20,000 people in attendance. The concert was televised nationally and carried out within the framework of an agreement signed with the office of the Mayor of Bogotá and Radio y Televisión de Colombia.

47. The office worked with the Newell Sanford Colombia Company, an organization that donated 6,000 coloured pencils for workshops to promote human rights carried out in public and private schools in Bogotá. Approximately 740 packages of coloured pencils were delivered for workshops in other cities of the country.

48. In carrying out the agreement for technical cooperation signed with Radio Nederland Training Centre<sup>d</sup> the office, through its radio programme "*Naciones Unidas Manos Amigas*" ("United Nations Friendly Hands"), distributed four CDs containing children's stories about human rights. This programme was disseminated among 184 community radio stations and is broadcast by 300 of them throughout the country.

49. The office, in a joint endeavour with the Fundación Dos Mundos and the Villegas Editores Company, prepared a book of photographs containing images of the human rights situation in Colombia. The photographs were selected from those participating in the photojournalism contest in Colombia entitled “Images and Realities” carried out in 2003 by the Fundación Dos Mundos.

#### Notes

<sup>a</sup> Belgium, Canada, Denmark, Finland, Germany, Hungary, Ireland, Italy, Luxembourg, Morocco, the Netherlands, New Zealand, Norway, Pakistan, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States, and the European Commission.

<sup>b</sup> 2001-2003 and the period begun in 2004.

<sup>c</sup> UNHCR, ECLAC, OHCHR, IOM, UNAIDS, WHO/PAHO, WFP, UNDP, UNODC, UNFPA, UNICEF, UNIFEM.

<sup>d</sup> See *Annual Report 2003*, annex IV, para. 33.

## **Annex II**

### **REPRESENTATIVE CASES OF VIOLATIONS OF HUMAN RIGHTS AND BREACHES OF INTERNATIONAL HUMANITARIAN LAW**

#### **Introduction**

1. The principal violations and breaches that the Office in Colombia of the High Commissioner received reports of during 2004, including identified modalities, attribution of responsibility and the most affected groups, are listed here. They are paradigmatic cases that the Office has exhaustively examined in accordance with its mandate and working methods.

#### **I. HUMAN RIGHTS**

##### **Civil and political rights**

###### *Right to life*

2. This right was affected by a marked number of extrajudicial executions, both individual and collective, directly attributed to members of the security forces. They include the execution of one person and attempted execution of three others in June, in the municipality of Bolívar (Valle), and a homicide in Puerto Guzmán (Putumayo) attributed to members of the battalion of peasant soldiers attached to the army's Fortaleza Platoon No. 5.

3. Reports were received regarding executions of civilians attributed to army personnel and which were subsequently presented as guerrillas killed in combat. This occurred specifically with members of the army's fourth brigade in Medellín, where alterations of the crime scene were also reported, as well as in the Oriente Antioqueño. The massacre of four peasants, which took place between 31 December 2003 and 1 January 2004, in Granada, and other executions in the La Cruz neighbourhood of Medellín in September, including that of an adult and a minor (both ex militia members who were police informants), are representative of this phenomenon. This also occurred in other regions of the country. For example, in March, in Puracé (Cauca), extrajudicial executions of minors were reported that were attributed to members of counter-guerrilla battalion No. 37, Macheteros del Cauca. An individual execution by members of the army's Alfonso Manosalva Flórez battalion in March in Quibdo (Chocó) was reported in which it was alleged that a firearm had been planted on the victim's body.

4. In another notorious case, the Office recorded the allegation of the massacre of three trade unionists by members of the army in August, in Saravena, Arauca. The authorities hastily supported the version of army personnel referring to deaths in combat. Judicial and disciplinary investigations pointed to the existence of extrajudicial executions. Responsibility is also attributed to the army in the deaths of seven members of the police and four civilians in Guaitarrilla, Nariño, in March, as well as those of five civilians in Cajamarca (Tolima), in April.

5. Indigenous communities were particularly affected. The Office reported the extrajudicial execution of a member of the Kankuamo tribe, whose community is the subject of precautionary measures on the part of the Inter-American Commission on Human Rights (CIDH), attributed to army personnel attached to the La Popa Battalion in March, in Atánquez (Cesar). The Office



also received reports of the massacres of Wuayuu indigenous people in April and of Wiwas in January and April, by paramilitaries in La Guajira, in which members of the army were alleged to be responsible by omission.

6. Executions and massacres carried out by paramilitaries, in which well-founded information was received indicating responsibility on the part of the State, continued to be recorded. Allegations were made regarding the omission or connivance on the part of local authorities in the execution in April of a political leader and human rights defender, a beneficiary of the Ministry of the Interior's programme for protection, along with his bodyguard, by members of the AUC, in Cúcuta (Norte de Santander). Other reports linked responsibility to members of the Vargas 21 battalion for complicity in the execution of a minor in January, as well as the execution in February of a woman human rights defender and president of the community action board of the village of Puerto Esperanza, along with her son. These events took place in El Castillo and were attributed to paramilitaries of the Centauros Bloc in Meta. In the latter case, the presence of members of the army among the paramilitaries carrying out the action was reported.

7. This year, State responsibility for failure to act, and even connivance, with respect to homicides perpetrated by paramilitaries in the Comuna 13 of Medellín (Antioquia) continued to be observed, in spite of strong military and police control. Omission on the part of the authorities was denounced in the homicide of the community leader and ex-member of the Asociación Mujeres de la Independencia (AMI) in October, in that same locality.

8. Reports were received of connivance following joint actions by members of the Security Forces in the massacre of six coca field workers, in May, in San Luis, Oriente Antioqueño. According to the information received, army personnel carried out the action and the paramilitaries obstructed access by the authorities to remove the bodies according to judicial procedures. The massacre of four persons, in February, was jointly attributed to members of Bajes artillery battalion and paramilitaries of the old Cacique Nutibara Bloc, in Granada, Antioquia. Another allegation is related to the massacre in February of four persons by members of the army's fourth brigade, in Medellín (Antioquia). The victims had been threatened by paramilitaries in the Bajo Cauca Antioqueño. In this last case, allegations were also made regarding manipulation of evidence by army personnel.

9. The Office recorded an increase in allegations of extrajudicial executions in which civilian victims had been killed by paramilitaries and subsequently presented by the army as guerrillas or paramilitaries killed in combat, such as in the extrajudicial executions in March of a member of the Kankuamo tribe, in Valledupar (Cesar), and of two minors, one from the Wiwa tribe, in February in San Juan de Cesar (Guajira). The victims had been detained at paramilitary roadblocks by the Northern Bloc of the ACCU, and subsequently presented by the army as paramilitaries killed in combat.

#### *Right to personal integrity*

10. Reports were received of violations of the right to personal integrity resulting from acts of torture and cruel, inhumane or degrading treatment, as well as due to the excessive use of force by members of the security forces and other security employees.

11. The Office received reports of torture and cruel, inhumane or degrading treatment of members of the Embera Wounaan community of Gengadó and Guijaradó, in Río Quito (Chocó) in March, attributed to soldiers of the Alfonso Manosalva battalion of the army's Fourth Brigade. Allegations were also made regarding the torture of a person in September who had been arbitrarily detained in the Comuna 13 in Medellín (Antioquia) by members of the military of the Pedro Nel Ospina Engineers Battalion No. 4, attached to the same brigade.

12. Cases were reported of extrajudicial executions in which the cadavers showed signs of torture, such as those of two minors, in June, in Cali (Valle), attributed to members of the National Police. However, there was persistent under-reporting of torture in the forensic reports carried out on the cadavers of the victims. There was also under-reporting of rapes.

13. Persons in jails or penitentiaries were also affected by these violations. The Procurator-General's Office investigated the responsibility of employees of INPEC for torture in Valledupar (Cesar), Barranquilla (Atlántico) and La Dorada (Caldas). Cruel, inhuman or degrading treatments were also reported against inmates of the prison in San Isidro (Cauca). The INPEC is investigating more than 80 reports of this kind of treatment.

14. Reports were received regarding the use of excessive force on the part of members of the security forces, such as actions attributed to the Escuadrón Móvil Antidisturbios (Mobile Anti-riot Squadron) during a public demonstration against the FTA in Cartagena (Bolívar), which produced many wounded, including seven journalists, as well as during a peaceful demonstration by the population against the "toll" in May, on the Bello - Hatillo highway (Antioquia). The Office received reports of excessive use of force attributed to the National Police in operations in Cali (Valle) against members of a civil association, including beneficiaries of precautionary measures by the CIDH (Inter-American Court of Human Rights), and against demonstrators belonging to social organizations and trade unions, during the May Day march.

#### *Right to individual liberty and personal security*

15. This right was affected by forced disappearances and illegal or arbitrary detentions. Most of the forced disappearances were attributed to paramilitary groups. In some cases, investigations are being carried out regarding responsibility of government employees, especially of the army. It should be noted that forced disappearance is very under-reported. Allegations were made regarding complicity by soldiers attached to the army's Fourth Brigade in the disappearances of two persons in October 2003. The victims had been tortured by members of the army and, after their disappearance, were found in March 2004 by members of the Technical Investigation Corps of the Attorney-General's Office (CTI), in a common grave chopped into pieces, supposedly executed by paramilitaries. The Procurator-General's Office investigated responsibility on the part of the State, attributed to members of the army, and to a lesser extent of the National Police, in reports of forced disappearances, particularly in the departments of Antioquia, Tolima, Bolívar, Caquetá, Cesar, Magdalena, Guaviare and Atlántico.

16. The Office in Colombia received information regarding massive detentions, with or without court orders, based for the most part on weak declarations or indications provided by informants or demobilized persons, as well as on intelligence reports. Representative examples are the detentions of 32 people by members of the National Police and the Attorney-General's

Office in February in Chaparral (Tolima), and those of 24 persons by employees of the DAS, the Attorney-General's Office and the army in Corinto (Cauca), in June. The same bases gave rise to individual arrests affecting human rights defenders and leaders. These include the detention in June of a defender by members of the SIJIN in Barranquilla (Atlántico), who was subsequently freed, and the detention, without a court order, of a member of the Asociación de Negros Unidos (Association of United Blacks) of the Yurumanguí River, by the Marine Corps, in August, in Buenaventura (Valle).

17. In various cases, the actions by the Attorney-General's Office were questioned for having supported those procedures by providing blank arrest warrants or warrants drawn up a posteriori. In the detention in Santa Rosa (Cauca) of 24 persons, 5 women and 19 men, by members of the High Mountain Battalion No. 4, the DAS, the Attorney-General's Office and the CTI, denunciation was made that the Attorney-General's Office had arrived with a blank arrest warrant which it then proceeded to fill in based on the statements of a hooded informant. The stigmatization caused by arbitrary arrests, in which the victims are also exhibited to the media as belonging to illegal armed groups, put their lives at risk. A case in point was that of Professor Alfredo Correa de Andreis, executed in September, in Barranquilla (Atlántico). The victim had been arrested in June and accused of the crime of rebellion based on information provided by a person reintegrated into society. His execution took place 15 days after he was freed due to the lack of evidence against him.

#### *Right to due process*

18. Reports continue to be received of violations of due process resulting from the lack of respect for the independence and impartiality of the justice system for procedural guarantees and for the principle of the presumption of innocence.

19. Various cases were reported involving irregularities arising from tampering with evidence and witnesses attributed to employees of the Attorney-General's Office and to members of the DAS and the army. The use of testimony by persons falsely claiming to be demobilized and by cloned witnesses were attributed to members of the DAS and the Attorney-General's Office in the investigation of human rights defender Amaury Padilla, arrested in December 2003 in Cartagena (Bolívar) and subsequently freed in June 2004. Another case in point is that of Rina Bolaño, a bacteriologist kidnapped by the FARC-EP and the victim of a rape by a commander of that armed group in August 2003, who was accused of rebellion by the presumed perpetrator of the rape who had subsequently been reintegrated into society. Allegations were made that members of DAS had tampered with testimony against her with complicity on the part of the prosecutor, information which was contained in the decision revoking her arraignment and freeing her. In August 2004, the investigation against her was terminated, however the trial for the crimes initially committed against her made no headway. In another case, the Procurator-General's Office determined that members of the army and employees of the Attorney-General's Office had tampered with the crime scene in the case of the extrajudicial executions of seven members of the police and of the Gaula (special police anti-kidnapping unit) and of four civilians by members of the army in Guaitarilla (Nariño) in March.

20. Obstruction of justice, along with violation of judicial independence and autonomy, was reported in cases in which several prosecutors were relieved of their duties by the

Attorney-General, invoking his discretionary powers. It was alleged that, in some of these cases, the findings of the prosecutors' investigations had led to their being fired. In addition, violations of the rights to honour, reputation and dignity as well as the presumption of innocence were observed when it was stated that these decisions were based on the policy of the Attorney-General's Office to purge corrupt officials, without the benefit of judicial or disciplinary investigations. This occurred, for example, in the cases of prosecutor Alvaro Bayona and prosecutors Omaira Gómez and Aidee López in Bogotá in April.

21. Judicial independence was violated following the taking over by the military criminal justice system of cases of grave human rights violations and breaches of international humanitarian law. In several of these cases, specifically those related to allegations of homicides of protected persons, the Attorney-General's Office itself remitted the investigations to military jurisdiction. Examples of this include the trials in the case of Guaitarilla, mentioned above, and in other executions and homicides, such as those of a woman in July in the Comuna 13 of Medellín (Antioquia) and another in March of a person in Quibdo (Chocó) attributed to members of the army. A similar allegation was made in connection with a homicide in June in Bolívar (Valle), attributed to members of the Police, and another in February in Cali (Valle) attributed to a soldier from the air base. It must be pointed out that jurisdictional conflicts arose in other cases, such as in Cajamarca, where the killing of five civilians is attributed to army personnel. The Higher Council of the Judiciary decided in a second opinion to reverse its previous decision and sent the investigation to the ordinary justice system.

*Right to freedom of movement and residence*

22. The principal violations of this right are forced displacements in which responsibility is attributed to the security forces for direct action or by omission or connivance in operations by illegal armed groups, particularly paramilitaries. Several of these examples also constitute breaches of international humanitarian law and are reported in the corresponding chapter.

*Right to privacy and inviolability of the home*

23. This right was affected by the carrying out of illegal or arbitrary raids and searches with court orders based on flimsy legal foundations, generally under the heading of so-called voluntary raids or searches which are carried out in spite of the lack of a court order on the ground that the persons to whom these actions are aimed have supposedly given their consent. Examples of the latter were reports received regarding several raids in Puerto Leguizamo (Putumayo) carried out in early 2004 by members of the Security Forces and employees of the Procurator-General's Office and the Attorney-General's Office. Reports were also received of a raid carried out by the Attorney-General's Office and the Gula, at a farm belonging to the parents of a human rights defender in May in Aratoca (Santander). In addition, reports were received concerning an illegal raid by employees of the DAS and the Attorney-General's Office in the home of a female human rights defender, a leader of the CREDHOS and of the Fundación Mujer y Futuro, in October, in Bucaramanga (Santander).

*Right to freedom of opinion and expression*

24. Violations were reported of the right to freedom of expression and information through attempted extrajudicial executions, threats, arbitrary detentions, and the excessive use of force against journalists. The Office recorded reports of threats against two journalists at La Opinión newspaper in May, attributed to employees of the DIJIN and a colonel from the National Police, in Cúcuta (Norte de Santander). One of the journalists had to leave the country. Another case was recorded in June in Puerto Asís (Putumayo), involving the arbitrary arrest of two journalists without a court order and without informing them of the reasons for their detentions, by members of the Navy and the army, who had already seized and inspected all of their journalistic materials, which were returned to them before they were freed.

25. Paramilitaries participated in carrying out certain actions, and well-founded information was received demonstrating responsibility of the State, whether by omission or connivance. An example of omission was denounced in relation to threats against a journalist, a beneficiary of the Ministry of the Interior's Programme for Protection, and which were attributed to paramilitaries. The threats were linked to the journalist's work on SINTRAEMCALI (union) in February in Cali (Valle). Complicity was denounced between public servants and paramilitary groups in threats made against three journalists in June due to their coverage of the arrest of the local mayor accused of links to paramilitary groups. The journalists subsequently received information about plans to kill them. Responsibility was attributed to paramilitaries working in complicity with local municipal authorities.

26. Freedom of expression and information was also affected by threats against journalists at *Semana* magazine in Bogotá in October, after the weekly published excerpts from recordings of conversations between the High Commissioner for Peace and paramilitary leaders who were negotiating with the Government at Santa Fe de Ralito. Allegations were also made regarding violations of freedom of opinion and expression carried out against the musical group Los Pasajeros. The musicians were detained by the judicial police and accused by the prosecutor working with the Elite Anti-terrorist Group, using intelligence reports based on statements by informants and former members of illegal groups reintegrated into society. They were freed in December. The members of the group were apparently persecuted for their activities at protests and trade union demonstrations. It was reported that the commander of the Metropolitan Police of Medellín declared that their songs were a clear apology for subversion.

## **II. INTERNATIONAL HUMANITARIAN LAW**

### **Homicides and threats against protected persons**

27. Civilians continued to be the victims of individual and collective homicides by members of the illegal armed groups. Reports were received of several massacres perpetrated by members of the FARC-EP in Antioquia, including the killing of three men in April, and the murders of seven peasants, in July, both in San Carlos, and of five peasants in Cocorná in May. Collective homicides against people working with illegal crops and attributed to the FARC-EP were also reported, such as that of 34 peasants in June and another of 9 peasants in August, both in Tibú (Norte de Santander). The killing of a community leader in February in Tulúa (Valle) was reported.

28. The collective homicide of three Wiwa indigenous persons, in January in San Juan del Cesar (Guajira), was attributed to paramilitary groups. This occurrence also led to the forced displacement of 800 members of that community. The collective homicide of 4 persons in March in San Luis (Antioquia), was also denounced, as well as that of 11 others in May in villages of the municipality of Tame (Arauca). There was also a massacre of 11 people, including a pregnant woman and 2 children, in October in Candelaria (Valle). Paramilitary incursions were reported in which individual and collective homicides were denounced, such as those that occurred in Quinchía (Risaralda) in July, taking the lives of 13 people, and in various villages of the Valle del Guamuez (Putumayo), between 15 and 16 August, in which at least 12 people died.

29. Reports continued to be received of selective homicides attributed to guerrilla and paramilitary groups. The killings in June of the private secretary of the mayor of San Vicente del Caguan (Caqueta) and his wife were attributed to the FARC-EP, along with the homicides of the mayor and a city councilman in the municipality of Rivera (Huila), and of a community leader in June in Valledupar (Cesar). The collective homicide of four returnees in September in San Carlos was also reported, as well as that of a schoolteacher in Tame (Arauca) in April. The paramilitary groups were alleged to be responsible for the homicides of a woman schoolteacher and an ex-city council member in October and November in Fortul (Arauca); of a community leader in the Comuna 13 of Medellín (Antioquia) in October; and a teacher in San Calixto (Norte de Santander) in November.

30. Various homicides of members of indigenous communities were reported, some of whom had been the subject of precautionary measures by the Inter-American Commission on Human Rights (CIDH). The FARC-EP were alleged to be responsible for the homicides of a member of the tribal council at the San Lorenzo reservation in July in Riosucio (Caldas); of a leader of the Guambiano tribe in February in Silvia (Cauca); and of a 70-year-old Arhuaco Mamo, or tribal elder, in November in the Sierra Nevada de Santa Marta (Magdalena). The homicides of two members of the Embera Chamís tribe were attributed to the Central Bolívar Bloc of the AUC (paramilitaries), in Riosucio (Caldas) in August, along with the murder of a Kankuamo indigenous leader, by members of the Northern Bloc of the ACCU, in August in Valledupar (Cesar), and the homicide of a member of the Pijao tribe, by members of the Tolima Bloc in Coyaima (Tolima) in August.

31. There were reports of homicides attributed to members of the security forces. These included homicides committed by members of artillery battalion No. 4, attached to the army's Fourth Brigade in Granada (Antioquia) in June, and the killings of two women by members of Anti-Guerrilla Battalion No. 37 in March 2004 in Puracé (Cauca).

32. The Office received information on threats made against populations in order to impede their movement in certain regions of the country, thereby leaving communities blockaded and under siege. The prohibition on entry by certain persons into the Chalán - Colosó - Ovejas zone on the outskirts of Morroa (Sucre) was attributed to the FARC-EP. Similar situations were reported on the Carmen de Bolívar - El Salado (Bolívar) route, where the guerrilla group had issued an order prohibiting travel on the road, as well as on the Carare River in Landázuri (Santander), where they prohibited river transport in April. Members of the National Police were alleged to have threatened people transporting food to the community stores in certain villages of the Medio Atrato Antioqueño in April, impeding their freedom of movement and

intensifying that region's humanitarian crisis. The Office received information regarding threats attributed to members of paramilitary groups acting in complicity with members of the army and with transporters of food between San Juan del Cesar (Guajira) and the Wiwa/Kogui indigenous reservation in April.

### **Attacks against the civil population and indiscriminate attacks**

33. The illegal armed groups continued to violate the humanitarian principles of limitation, distinction and proportionality and failed to respect the immunity of the civilian population, through deliberate and indiscriminate attacks, attributed specifically to the FARC-EP. This group continued indiscriminate use of explosive devices. Information was also received on the use of gas cylinders launched against the civilian population in San Miguel (Putumayo) and in various municipalities in Nariño, gravely wounding civilians and causing material damage to homes. The launching of a grenade and shots fired against civilians gathered in a public place was also reported in January in Anza (Antioquia), causing the deaths of two civilians and wounding seven others. Reports were also made of an attack by the AUC against a house inhabited by civilians, resulting in the death of a seven-year-old boy and the wounding of two women, in Anorí (Antioquia) in September.

34. Indiscriminate attacks were reported, including one attributed jointly to the FARC-EP and the ELN against the police station and the neighbouring houses in Cumbitara, la Llanada, Ricaurte and los Andes (Nariño), in February, killing one civilian and wounding four others.

35. Reports were made that during military operations carried out by mobile brigade No. 9 in San Vicente del Caguán (Caquetá) in April, apparently against the FARC-EP, the army members fired at civilians who had taken refuge near their home in order to protect themselves, gravely wounding a child who subsequently died because she was impeding in seeking medical attention. Bombardments on the part of the Colombian Air Force against the Awa indigenous reservation in Ricaurte (Nariño) in February were also denounced. These bombardments caused the displacement of 200 indigenous people. Also, the Procurator-General's Office is investigating indiscriminate bombardments and machine-gunning of inhabited villages that were attributed to the security forces in the departments of Bolívar, Cauca, Tolima and Caquetá.

### **Acts of terrorism**

36. The guerrilla groups, especially the FARC-EP, continued to commit acts of terrorism. The explosion of a bomb at a discotheque in Apartadó (Antioquia) in May, which caused the deaths of 7 civilians, including a girl, and wounded 22 others, was reported, along with the detonation of an explosive device within a vehicle, causing the deaths of 2 persons and wounding 12, in May, in San Carlos (Antioquia). The Office also received reports regarding the explosion of a car bomb in May in Tame (Arauca), killing 2 civilians including a boy, and wounding 47, as well as that of another car bomb in the eastern part of Cali in June. These actions were attributed to the FARC-EP.

### **Torture and other attacks on personal dignity**

37. Torture of people who were later found dead, attributed to members of the FARC-EP, were reported, such as the case of five people who had been taken hostage and whose bodies

were subsequently found bearing signs of torture in Corinto (Cauca), in January. A similar situation was reported in the case of peasants who were the victims of homicide and who had been previously tortured, in January in Pensilvania (Caldas).

38. Reports of torture that were attributed to the paramilitaries in the Tayrona Park (Magdalena), in August, against a person who was also castrated and whose throat had been slit. There were allegations of tortures during paramilitary incursions in the villages of Flor Amarillo, Piñalito and Cravo Charco, in Tame (Arauca), in May, where several of the victims had been killed after being tortured with electric shocks, and tortures committed against members of the Wayu tribe during an incursion into Bahía Portete, Uribia (Guajira). Acts of torture were alleged in regions under guerrilla control, in which the civilian population was stigmatized and accused by the paramilitaries of collaboration with the guerrillas. It was reported that members of Mobile Brigade No. 8 had tortured two peasants during counter-insurgency operations carried out in April in Cunday (Tolima). It was also reported that the soldiers had initially passed themselves off as guerrilla members.

### **Hostage-taking**

39. Hostage-taking continues to be a practice mainly used by the guerrilla groups and, to a lesser extent, by the paramilitaries. Reports of hostage-taking received by the Office include that of five university students and a woman professor, attributed to the FARC-EP, in September in Frontino (Antioquia), and of four peace indigenous authorities, including the Municipal Mayor, and his driver, attributed to the FARC-EP, in August in Toribío (Cauca). That same group is also accused of taking a boy and a girl hostage in October in Orito (Putumayo), as well as four civilians in Neiva (Huila) in February. The ELN is accused of taking 12 hostages in May in Quibdo (Chocó), and of taking hostage the bishop of Yopal, in July in Paya (Boyacá).

40. The Office received information on cases of hostage-taking attributed to members of paramilitary groups, such as that involving five Embera Katíos, in May, and that of an Embera Katío Governor in May, both in Tierralta (Córdoba). Denunciation was also made of the abduction of former senator José E. Gnecco, in June, on the Santa Marta-Riohacha highway by the AUC under the command of Jorge 40.

41. The FARC-EP were blamed for the killing of a 15-year-old girl whom they had taken hostage as well as the killing of another hostage, the brother of the Minister of Education, in July.

### **Forced displacement**

42. Cases of forced displacement, both individual and collective, continued to occur in 2004 that were attributed to the illegal armed groups. The FARC-EP were accused of several massive displacements in the municipalities of San Francisco, in March and October, in San Carlos, in July and September, and in Cocorná in July. Displacements were also reported in Samaná (Caldas), in April and in Riosucio (Chocó), which were attributed to the same guerrilla group.

43. The paramilitaries were blamed for massive displacements in several communities living on the Opogadó and Bojayá rivers (Chocó), in March and in Hacarí (Norte de Santander), in February, among others.



44. Combats between guerrilla and paramilitary groups generated massive displacements in San Juan (Chocó), in July, and in Maguy Payán (Nariño), May. Cases of displacement were also recorded resulting from combat between the security forces and the illegal armed groups, such as those occurring between May and June in Cartagena del Chairá (Caquetá), and in Ricaurte (Nariño), in February.

### **Children as victims of the armed conflict**

45. Boys and girls continued to be the victims of homicides, threats, indiscriminate attacks, hostage-taking (Putumayo), forced displacement, and acts of terrorism (Arauca), among others.

46. According to the Ombudsman's Office, denunciations were made of 10 homicides of boys and girls of the Wayu tribe, 5 of whom had been burned alive. The Ombudsman's Office reported that a girl was raped by members of the paramilitary groups in the community of Walilparture, Dibulla (Guajira). This Office received information of the torture of a boy accused of theft by the paramilitaries in April in Landázuri (Santander).

47. Cases persist of boys and girls injured by anti-personnel mines. For example, in July, a boy was wounded by the explosion of a mine in Samaná (Caldas), four boys were wounded after accidentally activating a mine, in September in Argelia (Antioquia), and three Embera Katío boys were wounded by anti-personnel mines between April and June, in the Quebrada Cañaveral reservation at Puerto Libertador (Córdoba). These devices had apparently been planted by the FARC-EP.

48. Cases continued to occur of forced recruitment, such as that of 27 boys, attributed to the Centauros Bloc of the AUC, in February in Bogotá, another of a 12-year-old boy, attributed to paramilitaries, in July, in Apartadó (Antioquia), and a third of 11 boys by members of the old Cacique Nutibara Bloc of the AUC, in August, in the Comuna 13 of Medellín (Antioquia).

49. Information has also been received regarding the use of children as informants or in intelligence operations, including demobilized minors, in violation of Directive 13 of 2004, issued by the Procurator-General.

### **Women victims of the armed conflict**

50. The rights of women and girls continued to be affected by the armed conflict. Reports were received of threats against them for merely having relatives or loved ones who were members of the opposing armed group. Peasant, indigenous and Afro-Colombian women continue to be those most affected by this situation, especially those who are organized in groups, displaced, returned from displacement, or confined. In May, for example, a member of the Kankuama tribe was killed in Guatapurí (Cesar). The victim had been executed by the FARC-EP because she had cooked and washed clothing for members of the army. Reports were also made of the massacre of four women, one of whom was pregnant, attributed to the FARC-EP, in October in Colosó (Sucre). The motive had supposedly been the women's personal relationships with members of the security forces.

51. The Office recorded an increase in reports received of rapes and other forms of sexual violence attributed to armed groups participating in the hostilities. Denunciation was made of

sexual slavery of women imposed by the FARC-EP in Tolima, Risaralda and Quindío. Also reported were the rape of a woman and her two daughters by paramilitaries belonging to the Central Bolívar Bloc, in Risaralda, the rape of two Wayuu indigenous girls in Dibulla (Guajira), as well as sexual slavery imposed by members of the paramilitaries in Casanare. The rapes of two girls, attributed to members of the army's Fourth Brigade, were denounced as having occurred in July in Sonsón (Antioquia), as well as forced nudity and the attempted rape of two women members of the Embera Wounaan tribe by soldiers of the Alfonso Manosalva Florez battalion in March in Chocó. Allegations were also made to the effect that two 14-year-old girls had been made pregnant by soldiers of the High Mountain Battalion, due to their proximity to, and occasional occupation of, the local school in Pichindé, Cali (Valle).

52. Women and their organizations have been the victims of threats, tortures and disappearances for opposing the social and political control exercised by the illegal armed groups, particularly the paramilitaries. Reports were made of threats and tortures inflicted upon a woman journalist belonging to the Organización Femenina Popular (Popular Feminine Organization or OFP), whose hair had been cut and whose feet had been burned with hot water by the paramilitaries in Barrancabermeja (Santander) in June. Other organizations that have been threatened include the Casa de la Mujer in Bogotá, the Liga de Mujeres Desplazadas de Bolívar in Cartagena and ANMUCIC in different regions of the country. Some of the latter organization's leaders have had to flee to other parts of the country, while others have been forced into exile.

#### **Attacks against medical units**

53. The illegal armed groups, especially the FARC-EP, continue to carry out attacks on members of medical units. The Office received information that members of the FARC-EP took seven members of a health brigade hostage for two days in August when they were carrying out a day of vaccinations at the Flor Amarillo community (Arauca). Reports were made of the homicide in July, in Dibulla (Guajira), of a member of the Kogui tribe, who was a nurse's aide at the Gonawinda health clinic and was in a meeting with members of the Taninaka community, and of the theft of a municipal boat used for vaccinations, in August, in Puerto Asís (Putumayo). Reports were made of obstruction on the part of members of the army, of the medical unit at Pance (Valle) when they were detained at a military checkpoint in May.

#### **Use of anti-personnel mines**

54. The illegal armed groups persisted in using anti-personnel mines. It was reported that the FARC-EP planted anti-personnel mines in March in San Francisco (Antioquia) and in the municipality of Cocorná (Antioquia), where two peasants and a soldier were wounded. It was discovered that the mines had been planted near a school. The Office recorded the death of one person from the detonation of a mine, in April, in Murindó (Chocó), as well as the deaths of various members of the army due to the use of these devices in Orito (Putumayo). Boys and girls are among the principal victims of mines.

### **Annex III**

#### **SITUATION OF ESPECIALLY VULNERABLE GROUPS**

##### **Human rights defenders, trade unionists and other social leaders**

1. During 2004, the vulnerable situation of human rights defenders was affected by the threats of illegal armed groups, in particular by paramilitaries. In addition, certain public statements by high-level Government officials<sup>a</sup> questioning the legitimacy of the work of their organizations, further worsened their situation. State policy in respect to the legitimacy of their work has not been coherent. The Government continued to promote measures for protection, through the protection programme of the Ministry of the Interior and intensified dialogues with human rights organizations over the last months of the year. At the same time, the statements and attitudes of a number of officials have gone against presidential and ministerial directives to benefit human rights defenders and trade unionists.<sup>b</sup> This contributed towards polarization and elevated risk factors affecting their situation.
2. Homicides, threats and harassments against human rights defenders and trade unionists were recorded. The great majority of these were attributed to members of paramilitary groups but also to members of the FARC-EP. Over the first nine months of 2004, the Government recorded the killings of 27 trade unionists, while the Central Unitaria de Trabajadores (United Union of Workers, CUT) reported 50 killed. More than 50 per cent of the victims were teachers.
3. The Office also received reports of cases in which human rights defenders and trade unionists were the victims of arbitrary detentions, arbitrary or illegal searches, violations of due process, and attacks on freedom of assembly and peaceful protest, attributed to functionaries of the Attorney-General's Office and the Security Forces. Criminal trials of human rights defenders for alleged crimes against the constitutional regime and public security based on weak evidence, such as intelligence reports, and exposed them to death threats. This has led to human rights defenders and trade unionists practicing self-censorship and limiting their own activities, thereby reducing their opportunities for exercising their freedom of opinion, a trend already perceptible last year.
4. Opposition by women and their organizations to social and political control by the illegal armed groups has given rise to attacks on their lives, displacements and exile of their leaders. This situation affects women's organizational processes and participation in forums for peace and democracy. The organizations most affected continue to be the Organización Femenina Popular (OFP), Asociación Nacional de Mujeres Campesinas e Indígenas de Colombia (ANMUCIC), and the Liga de Mujeres Desplazadas de Bolívar.

##### **Communities at risk**

5. The risk factors particularly affected communities threatened with attacks or displacements, and communities that are already displaced, blockaded or under siege. While the total number of displaced persons continued to rise, due to the accumulation of internally displaced persons from previous years who have been unable to resolve their situation, the downward trend in the number of new forced displacements continued, although this situation

seemed to be reverting during the latter half of the year.<sup>c</sup> This reduction could be attributed to factors such as the changing dynamics of the armed conflict, the impact of the security policy, the policy on returns, the existence of communities blockaded by the illegal armed groups, and the negotiations with the paramilitaries. In certain zones of the country, an increase in displacement resulting from confrontations between participants in the hostilities was recorded, such as in the departments of Putumayo and Caquetá.

6. The budget of the Social Solidarity Network increased considerably and significant efforts were made in terms of providing emergency humanitarian aid and strengthening its units for attention and orientation. Little progress was made, however, in providing durable and sustainable solutions, especially as regards the policy on return promoted by the Government. The dismantling of preferential policies for assistance was noted, with the Government choosing to create a general category of the vulnerable population to be attended to within the context of social policy. The Constitutional Court, in addition to questioning the State's response, emphasized the needs of women heads of households, minors and the elderly. No State actions were registered aimed at adequately dealing with domestic and sexual violence or questions relating to sexual and reproductive health among the displaced population. Fifty-two per cent of displaced women report having suffered some type of physical abuse and 36 per cent report having been forced to have sexual relations with unknown persons.<sup>d</sup>

### **Indigenous and Afro-Colombian communities**

7. The internal armed conflict continued to threaten the country's ethnic and cultural diversity. The general downward trend in indicators of certain forms of violence was not reflected in the situation of indigenous and Afro-Colombian communities. There was an increase in confrontations in a number of territories belonging to the ethnic groups. The Office recorded reports of bombardments, homicides, forced recruitments, confinements, food blockades, and the forcing of civilians to serve as guides. The impunity of these acts continues to present a challenge to the administration of justice. The communities most affected were those in the Sierra Nevada de Santa Marta (SNSM), the coffee-growing region, the Chocó area, and in zones in which the Plan Patriota<sup>e</sup> is being carried out. Following his visit to Colombia in early 2004, the Special Rapporteur on human rights and basic liberties of indigenous people, states that "*at least 12 small indigenous peoples in the Amazon are in danger of extinction due to the effects of diverse processes ... the most vulnerable include the Awa, Kofán, Siona, Páez, Coreguaje, Carijona, Guayabero, Muinane-Bora, Pastos, Embera and Witoto peoples in the departments of Putumayo, Caquetá and Guaviare*".

8. Homicides, threats and hostage-taking of indigenous traditional leaders and politicians by the AUC and the FARC-EP are particularly noteworthy. Homicides attributed to members of the Security Forces were also recorded,<sup>f</sup> along with mass and arbitrary arrests of leaders of ethnic groups, as well as various cases of links between members of the Security Forces and paramilitary groups in the Sierra Nevada de Santa Marta. The communities most affected by selective homicides by the paramilitary groups were the Embera Chamí (Caldas), Wayuu (La Guajira), Wiwa (SNSM/La Guajira), and Kankuama (Cesar). Those most affected by killings by the FARC-EP were the Embera Chamí (Caldas), Kankuamas (Cesar), Koguis (SNSM) and Guambiana (Cauca) communities. Hostage-taking by the AUC and the FARC-EP has mainly affected the Embera Katios, Paeces and Awas. Attacks by the illegal armed groups on medical missions affected access to health care and attention for the indigenous peoples.

9. Fumigation continued to be carried out in indigenous territories in the Sierra Nevada de Santa Marta, Norte de Santander, Guaviare and Caquetá. The Special Rapporteur on the situation of human rights and basic liberties of the indigenous peoples “*gathered testimony on abuses and violations of human rights, specifically of indigenous women,*” including physical and sexual violence by armed elements, as well as intra-community and domestic violence by members of their communities.

10. Afro-Colombian communities are the victims of exclusion and discrimination. Their marginalization manifests itself in a high level of extreme poverty (76 per cent), high rates of unemployment (42 per cent), illiteracy three times the average rate, and infant mortality almost four times what it is for other groups.<sup>g</sup> Although collective title to their territories has been successfully transferred to the Afro-Colombian communities, the armed conflict and the presence of illegal armed elements impede their effective exercise of property rights with regard to their territories.

### **Children**

11. A large part of the child population continued to be victim of the armed internal conflict. Thousands of boys and girls form part of the ranks of the illegal armed groups and participate in the hostilities. Children are also affected by hostage-taking, displacements, anti-personnel mines, and the consequences of breaches of humanitarian law committed against their families and communities.

12. A significant number of boys and girls are also the victims of violations of their rights to life, integrity and liberty, due to abandonment, abuse, sexual exploitation and exploitation at work, physical mistreatment and domestic violence. Also, nearly 20 out of every 100 Colombian girls and boys lack birth certificates, making it difficult for the State to provide the protection it owes them. A great many children are also affected by the situation of poverty and inequality, which deprives them of opportunities for developing their personalities, manifested in low levels of access, availability, quality and sustainability regarding the rights to food, health and education. The Ministry of Education reports that 50 per cent of the nearly 1 million boys and girls who work do not attend school.<sup>h</sup>

### **Women**

13. The rights of women and girls continue to be violated by sexist stereotypes and different forms of discrimination,<sup>i</sup> violence and exclusion. In spite of the adoption of certain policies on their behalf, social, political and economic inequalities continue to impede the exercise of their rights under conditions of equality with men. In the labour market, salary differences between men and women persist, and the unemployment rate continues to be higher for women.<sup>j</sup> Women’s share of publicly elected positions continues to be insufficient.<sup>k</sup> Regarding leadership posts in the public sector, while 42 per cent of public servants are women, this proportion does not hold true for leadership posts, in which their share is less than 15 per cent.<sup>l</sup>

14. Women and girls continue to be gravely affected by the different forms of domestic and sexual violence. According to the Institute of Forensic Medicine, sexual violence against women

and girls has increased by 23 per cent as compared to the previous year. In 2004, a larger number of cases of sexual violence (rape, sexual slavery, forced nudity) by guerrillas and paramilitary groups, as well as members of the Armed Forces, were reported.

15. The security of women and girls has been aggravated by the presence of the different armed groups in daily life and as a result of the social control exercised over their lives in the public and private spheres. This particularly holds true for peasant, indigenous and Afro-Colombian women, and especially those who are organized, displaced, returnees or confined. Women and girls have been the victims of threats and attacks on their lives, personal integrity and individual liberty merely for being relatives of, or having relationships with, a member of the armed factions, as well as for obstructing forced recruitment of their sons and daughters, particularly by the FARC-EP and the paramilitaries. Women and girls are the principal victims of trafficking in people.

16. The lack of a comprehensive and differentiated policy for prevention, protection and assistance for women and girls who are victims of the armed conflict, especially women and girls who are displaced, demobilized, or reintegrated into society, is an additional aggravating factor in their situation. The judicial system continues to be ineffective in addressing cases of gender violence. Sexist stereotyping persist in providing attention in cases of domestic and sexual violence, along with a lack of experience in gender affairs on the part of judicial officials. This situation tends to discourage the reporting of cases and increases the lack of confidence in the justice system therefore leading to increased impunity.

#### **Journalists and opinion-makers**

17. The Office received complaints from various journalists and social communicators who reported that they carry out their work in a climate of indirect censorship, intimidation and obstruction to accurate information. It was reported that, over the first 10 months of 2004, 2 journalists were the victims of homicides, 32 of threats, of whom 4 had to leave the country, 4 were victims of the excessive use of force by members of the Security Forces, and 8 were obstructed in terms of freedom of the press resulting from actions by State agents. The majority of threats were attributed to paramilitary groups, followed by unknown sources, and finally the FARC-EP. In addition, impunity continued in cases of threats against journalists. These events have contributed, in various regions, to a situation of self-censorship that has existed for several years, along with the uncritical use of official sources, the provision of inaccurate information, and violation of the right to information. The Special Rapporteur for the promotion, protection and protection of freedom of expression and opinion, in his visit to Colombia in February, pointed out the difficult atmosphere for journalists in fully exercising their profession, and emphasized the concentration of ownership of the media, and the non-acceptance of trade unions within the sector.

18. Certain journalists informed the Office that they had been pressured and intimidated by members of the Security Forces so that they would publish only favourable statistics or “battle reports,” and alleged that they had received threats after having published a version other than that provided by the authorities.<sup>m</sup> As a result of such threats, three journalists had to shut down their news services or modify their reporting style.

### **Hostages, disappeared persons and their families**

19. The practice of hostage-taking by the illegal armed groups has subjected men, women, girls and boys to the illegal loss of freedom and inhumane treatment. Seventy-three per cent of the victims recorded over the first nine months of 2004 were male and 27 per cent female. Twenty-one per cent of these abductions involved minors. This situation occurred in 29 of 32 departments in the country, principally in Antioquia, Bogotá, Meta and Cauca. These hostages are in addition to those who remain in captivity and have not been freed by their captors, thereby increasing the number of families living in uncertainty. The same situation occurs with the families of disappeared persons, with the aggravating factor of under-reporting and the invisible nature of this grave phenomenon. Particular emphasis should be made to the situation of women who are required to act as heads of households and the particular vulnerability of women, girls and boys held hostage. The armed groups committing these war crimes have clear responsibilities for these hostages.

20. The State has responsibilities in terms of assistance and support for the families as well as in seeking appropriate mechanisms to free the hostages without putting their lives at risk.<sup>n</sup> The State mechanism of the Urgent Search Commission for disappeared persons constitutes a tool that should continue to be strengthened.

### **Others**

21. The illegal armed groups persist in attacking officials such as mayors and former mayors, assassinations of which increased in 2004. Municipal councilmen have been the victims of homicides, threats, displacements and hostage-taking, although at lower rates than those previously recorded. Various members of the Unión Patriótica and the Communist Party continued to be subject to homicides, attacks, threats and grave risks, in addition to their political rights being affected. In 2004, an increase was recorded in the number of homicides of members of these groups, who are the beneficiaries of protective measures on the part of the Programme of the Ministry of the Interior. Judicial officials, along with victims, witnesses and others taking part in criminal and disciplinary procedures, have been affected in terms of their security, particularly by the violent acts of the illegal armed groups. In 2004, homicides, attempted homicides and threats were reported against prosecutors, procurators, judges, investigators, and other judicial officials. Doctors constituted another vulnerable group who suffered from arbitrary arrests, threats and other attacks, particularly those practicing in areas of influence of the illegal armed groups. The latter also victimized business people through extortions and hostage-taking.

22. The internal armed conflict reinforced gender discrimination, homophobia and heterosexism. Reports were made of attacks by the illegal armed groups, through physical or psychological abuse or social cleansing, against persons because of their sexual orientation. Such persons were also frequently the victims of abuses and discrimination by the authorities. Allegations were received against members of the National Police in Medellín, Bucaramanga and Santa Marta. The Constitutional Court took action on behalf of the right to equality and

other fundamental rights, emphasizing that a person's sexual orientation constitutes an element that defines their identity and a fundamental component of individual autonomy.<sup>o</sup> Nonetheless, there is a lack of appropriate policies for guaranteeing the rights of lesbians, gays, bisexuals and transsexuals, as well as explicit legislative initiatives to provide criminal and disciplinary sanctions for discrimination against people based on their sexual orientation.

### Notes

<sup>a</sup> These include the President of Colombia.

<sup>b</sup> Presidential Directive No. 07 of September 1999 and Directive No. 9 of the Ministry of Defence of July 2003.

<sup>c</sup> See the following table:

Year	Social Solidarity Network			CODHES		
	Semester I	Semester II	Total	Semester I	Semester II	Total
2002	230 444	181 450	411 894	203 681	208 872	412 553
2003	128 848	84 849	213 697	119 690	87 917	207 607
2004	72 072	42 901 (to September)	114 973	130 346	75 158 (to September)	205 504

For the SSN, the only forcibly displaced persons are those who have registered as such in the Sole Registry of the Displaced Population. Displaced persons may register within a year of having presented the situation. By the end of the first semester of 2005, the SSN will have the consolidated information corresponding to the first semester of 2004. For its part, CODHES uses the registry of the SSN together with other sources, such as the press, the ICRC's assistance records, information provided by the Catholic Church etc. With this, it produces an estimate for a determined period.

<sup>d</sup> National Policy on Sexual and Reproductive Health. Document of the Ministry of Social Protection, page 20, paragraph 1, 2003.

<sup>e</sup> Various indigenous and Afro-Colombian communities that were affected were the subject of cautionary or provisional measures on the part of the Inter-American Human Rights Court.

<sup>f</sup> Memo on indigenous people from the Ministry of Defence.

<sup>g</sup> Report of the Special Rapporteur on Racism concerning his mission to Colombia in September 2003. E/CN.4/2004/18/Add.3, paragraph 34.

<sup>h</sup> The Ministry only reports on child labourers between the ages of 12 and 7 in the urban zone and 10 and 17 in the rural zone.

<sup>i</sup> Report of the Colombian State on implementation of the Beijing platform (1995), May 2004, page 11.



<sup>j</sup> DANE (National Department of Statistics), Ongoing Survey of Families, October 2004. In September, female unemployment was at 17 per cent whereas unemployment among males was 10 per cent.

<sup>k</sup> For the period 2004-2007, 2 women governors were elected out of a total of 32. Just 7.6 per cent of municipal mayors were women.

<sup>l</sup> Mujeres constructoras de Paz y Desarrollo (Women Builders of Peace and Development), Presidential Councillor for women's equality, pages 51 and 52, Bogotá, 2003.

<sup>m</sup> See annex II.

<sup>n</sup> See press release of the office in Colombia.

<sup>o</sup> Sentence T-301-04.

## Annex IV

### NOTE ON STATISTICS

1. Statistical indicators are a powerful tool for the protection of human rights and international humanitarian law. They can be used as an instrument to formulate better policies; supervise progress made; determine undesired effects of laws, policies and practices; determine which actors are influencing the enjoyment of rights and make clear whether or not they are fulfilling their obligations; give prior warning of possible violations and enable preventive measures to be taken; strengthen the social consensus regarding difficult decisions that must be made in the context of limited resources; and throw light on questions that have been ignored or kept quiet.
2. Colombia lacks a statistical system that adequately covers the reality with regard to human rights violations and breaches of international humanitarian law.
3. Current official statistics on violations of human rights and breaches of international humanitarian law suffer from systematic and accidental errors. This could be, among other things, the result of a deficient definition of the indicators, which are not in accordance with international instruments, and the use of a less than appropriate methodology in gathering data.
4. The brief observations that follow are aimed at motivating the establishment in Colombia of a system of official statistics that would adequately collect data on violations of human rights and breaches of international humanitarian law. This would make it possible to have better elements for formulating and putting into practice comprehensive public policies in this field.
5. Regarding human rights, the Office has observed that the official statistics of the executive branch are limited and, with few exceptions, do not include relevant indicators regarding violations to neither civil and political rights, nor to economic, social and cultural rights.
6. For example, they do not record forced disappearances, extrajudicial executions, torture and cruel, inhuman or degrading treatment, arbitrary arrests, rapes and violations of due process in accordance with established international standards. The situation is the same regarding statistics on homicides, which do not adequately differentiate as to whether the perpetrator was an agent of the State or a private individual acting with the consent or acquiescence of the State.
7. An example of the above are the statistics on torture, recorded by the Center for Criminological Investigations (CIC) of the Central Office of the Judicial Police, for the period from 1993 to 30 September 2004. These show that, between 1993 and 2001, there was a yearly average of 1,230 cases of torture at the national level. From 2002 to September of 2004, the recorded number falls to an average of six cases per year. In 2004, the Office recorded 20 cases of events that could be classified, under international norms, as torture or cruel, inhuman or degrading treatment or punishment. According to the internal regulations of the National Police, torture is committed by private individuals having no link to the State. According to

international law on human rights, torture and cruel, inhuman or degrading treatment or punishment can be perpetrated by government employees or private individuals who act with the acquiescence or tolerance of government employees.

8. Another example refers to forced disappearances. The Center for Criminological Investigations of the Police does not record any cases of forced disappearances, despite the fact that this conduct has been classified as a crime in the Criminal Code currently in force. According to Colombian legislation, perpetrators of this crime can be both government employees as well as private individuals who act without any links to government employees. However, according to international law on human rights, forced disappearance can only be committed by government employees or private individuals who act with the acquiescence or tolerance of government employees. It is possible that cases of forced disappearance are being incorrectly included under the statistical heading of kidnappings. According to information supplied by the International Committee of the Red Cross in Colombia (ICRC), more than 200 cases could to date be classified as forced disappearances.

9. Statistics kept by the army incorrectly record acts of terrorism, massacres, the use of unconventional arms, kidnapping, the use of children in warfare, and attacks on protected properties carried out by illegal armed groups as “violations of human rights by illegal groups”. It should be noted that these conducts are breaches of international humanitarian law and are only considered violations of human rights when carried out by government employees or private individuals acting under their orders or with their complicity.

10. In 2004, the Office recorded a large number of reports of cases of people who were executed by the paramilitaries and later presented by the authorities as having been killed in combat. The lack of an independent and impartial investigation into these allegations tends to generate a statistical distortion, because these homicides are included as part of the operational achievements of the security forces.

11. The statistics of the Observatory of the Presidential Program on Human Rights and International Humanitarian Law, based on diverse sources, use definitions that are incompatible with international instruments on human rights. Thus, for example, the extrajudicial execution of three trade union leaders, which occurred on 5 August 2004 and was attributed to members of the military forces, was not considered to be a grave violation of the trade unionists’ human rights. The Ministry for Social Protection does not consider these deaths as “linked to trade union activities,” because they are “in the course of a criminal investigation aimed at determining the circumstances of the manner and place in which these events occurred”. Using this criterion, no human rights violation could be classified as such as long as no court sentence has been handed down.

12. The Observatory records homicides, threats and kidnappings of journalists by illegal armed groups, but does not include cases of the excessive use of force or other attacks on freedom of expression attributed to members of the security forces. In 2004, the Office recorded 40 cases of incidents that could be classified, under international norms, as violations of freedom of expression and opinion.

13. Statistics kept by the Ombudsman's Office, in contrast, show a higher degree of precision and are more relevant in relation to human rights and international humanitarian law. However, they do not appear to be taken into account in the statistics of the executive branch.

14. Regarding breaches of international humanitarian law, there are more official statistics, but the majority of them refer to conduct attributed to members of the illegal armed groups. There are few statistics on conduct attributed to agents of the State.

15. As of August 2004, the Observatory recorded nine homicides of indigenous persons attributed to members of the military forces. However, the indicators up until September of 2004, available on their web page, do not include government employees among those presumed responsible for homicides of indigenous persons.

16. Official statistics on breaches of international humanitarian law also contain holes and gaps. On the one hand, they do not include breaches committed by agents of the State, as may be seen in the data of the Observatory of the Presidential Program on Human Rights and International Humanitarian Law. On the other hand, the majority of these breaches are attributed to unknown perpetrators. The statistics are also subject to evident under-reporting. In 2004, the Office has recorded 248 cases that could be classified, under international norms, as breaches of international humanitarian law. Of this total, 57 cases would be attributable to members of the security forces.

17. Official statistics also reveal imprecision and distortions. One example of this is the parameter of "common homicide" used by the Criminal Investigations Center of the National Police and by the Observatory of the Office of the Vice-President. This denomination includes all types of violent death, with the exception of those arising from traffic accidents. Nor is the parameter precise regarding the ethnic origin of the victim, the status of the perpetrator (State agent or private individual), or the circumstances in which the breach took place.

18. Another example of lack of precision in official statistics is the use of the term "acts of terrorism". The Observatory, in agreement with the Ministry of Defence, understands acts of terrorism as "*events in which explosive artifacts are indiscriminately used, attacking the lives and properties of noncombatants*". According to a resolution adopted by the United Nations, acts of terrorism are understood as, "*criminal acts for political purposes conceived or planned in order to provoke a state of terror among the general population, a group of persons or determined individuals and which are unjustifiable under all circumstances, whatever the political, philosophical, ideological, racial, ethnic, religious or any other type of considerations used in order to justify them*".<sup>a</sup>

19. One example of the statistical contradictions is the discrepancy between different sources. Thus the Presidential Program for Human Rights and International Humanitarian Law records 1 or 14 cases of attacks on the civilian population, according to the source of information. If the source is the Ministry of Defence, it reflects a 75 per cent decrease in attacks on civilian populations. If the information comes from bulletins issued by the DAS, it shows a 180 per cent increase.

20. Finally, the lack of disaggregated statistics hinders the understanding of the impact of violations and breaches on specific social sectors of society. For example, the Social Solidarity Network, because it lacks disaggregated statistics regarding forced displacement of indigenous persons and Afro-Colombians, as well as of women, is not able to accurately determine the situation of the most vulnerable communities and populations.

**Note**

<sup>a</sup> See the United Nations Declaration on measures to eliminate international terrorism, annexed to General Assembly Resolution 49/60, document A/RES/49/60 (17 February 1995), article 3.

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