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

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\* The present report is being circulated in all official languages. The annexes are circulated in the languages of submission only.

## Summary

This report on Colombia by the United Nations High Commissioner for Human Rights covers the year 2003, and responds to the request made by the Commission on Human Rights at its fifty-ninth session.

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

The evolution of the internal armed conflict and the problems of indebtedness, the fiscal deficit, as well as legislative policy, marked new challenges for the country. The first months of the year transpired under a state of internal disorder, in the context of which public order measures and restrictions of fundamental rights and liberties were adopted, particularly in the “rehabilitation and consolidation zones”. The Government increased operations aimed at maintaining or re-establishing public order, in the context of the policy of “democratic security”. Combat between the Security Forces and the illegal armed groups, particularly the guerrillas, intensified, with the guerrillas retreating to traditional rural areas and resorting to acts of terrorism when faced with the increasing pressure exerted by the Security Forces. The illegal armed groups continued to finance their activities by means of the practice of kidnapping and the illicit traffic of drugs. During the year, while the President’s popularity, as reflected in opinion polls, remained high, a higher degree of tension and polarization was observed in Colombian society. The Government promoted the adoption of a constitutional referendum, held on 25 October, to introduce changes of a political and economic nature in the Constitution. The preliminary results showed that practically none of the proposals has the minimum support needed from voters for their approval (25 per cent of eligible voters), although the final decision of authorities is still pending. The results of the departmental and municipal elections held on 26 October showed the political plurality of the country. In spite of the threats and attacks of the illegal armed groups it was possible to hold the referendum and the elections because of the measures adopted by the Government. After the elections, the President proceeded to substitute some of his most important ministers and to carry out changes in the upper echelons of the Security Forces. The Government and a significant part of the paramilitary groups increased the contacts and dialogues begun in 2002 and, after the declaration of a ceasefire they signed in July 2003 an agreement of gradual demobilization concluding at the end of 2005. As for the guerrilla groups, no advances in dialogues were registered. In the London declaration in July, 24 countries expressed their strong support for the Government, within the framework of certain qualifications. In particular, they urged the prompt implementation of the recommendations of the United Nations High Commissioner for Human Rights, and the adoption of measures against impunity and connivance with paramilitary groups.

### **State policy and follow-up of the international recommendations**

Interlocution was developed between the office in Colombia of the High Commissioner and the Government, in particular with the Vice-President, and other State entities in order to promote the implementation of the recommendations. There were some advances, but the implementation of the majority of the recommendations was still pending at the moment the present report was completed. In general, it could be observed that the recommendations were not integrated in a consistent manner in the Government’s policies. Actions taken in the context

of “democratic security” influenced particularly the legislative agenda and the actions of the Security Forces and of the judicial organs and those of control. The office in Colombia took note of the so-called Antiterrorist Statute approved on 10 December 2003, a decision contrary to the express recommendations of the High Commissioner and other competent international organs. The Government was able to extend the presence of the Security Forces to almost all of the country’s municipalities. However, some regions with a greater presence of the Security Forces continued to suffer from serious problems of governability and public order. The military reinforcement was not accompanied by the strengthening of civil institutions. There was a tendency to consider all violence as terrorist acts and in this way deny the existence of an internal armed conflict and the necessity of applying, in a consequent manner, international humanitarian law. Actions taken against paramilitarism and its links with public servants did not show sufficiently significant results.

Measures taken against impunity continued registering few concrete results. In its policy related to demobilization of members of illegal armed organizations, the Government adopted norms that grant juridical benefits, and proposed projects that raised questions as regards impunity and the rights to truth, justice and reparation. The Government’s legislative proposals were characterized, in general, by making prison sentences harsher and by the creation of new crimes, as well as the weakening of constitutional and legal guarantees. Also observed were the increased difficulties in exercising independent and impartial control. As regards prevention and protection measures, positive actions were registered. However, difficulties persist as regards risk evaluation and the effectiveness of measures adopted. Positive actions were observed with regard to the destruction of anti-personnel mines. Public expenditure on education and health increased but the inequality gap did not decrease nor did the most disadvantaged sectors of society benefit proportionately. The illegal armed groups did not comply in the slightest with the High Commissioner’s recommendations as regards armed conflict, the observance of international humanitarian law and respect for human rights.

#### **International humanitarian law: Breaches by the armed actors**

According to official figures, the number of homicides, massacres, attacks upon the civilian population, indiscriminate attacks, acts of hostage taking, terrorism and new forced displacements diminished. However, the levels of these infractions continued to be high. The civil population continued being the most affected in areas under the influence of the illegal armed groups. Infractions continued to be registered relating to the use of anti-personnel mines, particularly by FARC-EP and of ELN, and the recruitment of minors by all the illegal armed groups. The guerrillas, particularly FARC-EP, continued with their strategy of terrifying the civilian population, committing acts of terrorism and kidnappings. Not only did they not consent to unconditionally liberate their hostages, but rather, in some cases, FARC-EP and ELN killed them.

The main paramilitary groups did not honour, in most regions of the country, the commitment given to the Government to cease hostilities. Infractions, including massacres, homicides and displacements as well the recruitment of minors, continued to be registered. In the regions where the Armed Forces intensified their actions, infractions for disrespecting the

principle of distinction, including cases of indiscriminate machine-gunning and homicides were denounced and attributed to members of the military. Actions adopted to cut supplies to the guerrillas affected, in some cases, the civilian population.

### **Human rights situation**

The human rights situation in Colombia continued to be critical. During the year, the office in Colombia registered complaints of violations of the right to life, to physical integrity, to personal freedoms and security, to due process and judicial guarantees, to the independence and impartiality of the judicial system, to respect for privacy and intimacy, as well as the fundamental freedoms of circulation, residence, opinion and expression, and to the political rights. The office in Colombia continued receiving, in growing numbers, complaints of violations with direct responsibility of public servants, and in particular the Security Forces, on several occasions jointly with the Attorney-General's Office. Of concern was the increase in numbers of complaints regarding arbitrary or illegal detentions, forced disappearances, extrajudicial executions, violations of the right to due process and the right to intimacy.

There was an increase in the number of complaints of torture and mistreatment. Equally, various cases were denounced that involved State responsibility for omission or for connivance between public servants and paramilitary groups. The armed conflict and, in particular, the behaviour of the illegal armed actors impacted negatively on the human rights situation and aggravated the conditions and the resources that the State has to respond efficiently to existing problems. Economic, social and cultural rights continued being affected by the large gap in the distribution of the wealth, the extreme poverty, exclusion and social injustice.

### **Situation of particularly vulnerable groups**

Although there was a decrease in killings of union leaders, the situation of human rights defenders and union leaders continued to be critical. Ethnic groups continued suffering discrimination and violations to economic, social and cultural rights. The internal armed conflict aggravated the situation of indigenous communities and Afro-Colombians, with an increase in selective violence by the illegal armed groups being observed. In spite of some legislative efforts and the signing of the National Agreement for Gender Equality, sexist forms of discrimination, exclusion and violence persisted against women, particularly in the context of the internal armed conflict. The human rights of a great number of children continued to be affected by economic and social inequity, extreme poverty, domestic and sexual violence, labour exploitation, as well as the internal armed conflict.

The situation of journalists continued to be precarious and demonstrated limitations with regard to the exercise of the right to freedom of opinion, expression and information, particularly because of the actions of the illegal armed groups. The growing trend of forced displacement was reversed in 2003, but continued to register high levels. Setbacks were registered in policies with regard to positive discrimination measures. The municipal and departmental functionaries (mayors, councillors, and local ombudsmen), members of the Patriotic Union (UP), judicial functionaries, and the religious practitioners were also affected by the internal armed conflict.

### **Recommendations**

The High Commissioner presents a series of concrete, priority recommendations for the year 2004, convinced that their application would contribute notably to improving the situation in Colombia. The recommendations cover important matters relating to prevention and protection, the internal armed conflict, the rule of law and impunity, economic and social policies, the promotion of a culture of human rights and the advisory services and technical cooperation of his office in Colombia. The recipients of these recommendations are the State authorities, the illegal armed groups, representative sectors of the civil society, and the international community.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 4	8
I. NATIONAL CONTEXT AND DYNAMICS OF THE INTERNAL ARMED CONFLICT .....	5 - 15	9
II. STATE POLICIES AND FOLLOW-UP ON INTERNATIONAL RECOMMENDATIONS .....	16 - 40	11
III. INTERNATIONAL HUMANITARIAN LAW: BREACHES BY ARMED ACTORS .....	41 - 65	17
IV. HUMAN RIGHTS SITUATION .....	66 - 84	21
V. SITUATION OF PARTICULARLY VULNERABLE GROUPS .....	85 - 102	24
VI. RECOMMENDATIONS .....	103 - 131	28

### Annexes

I. Status of implementation of the recommendations formulated by the United Nations High Commissioner for Human Rights in his 2003 report on the human rights situation in Colombia in 2002 .....		36
II. Representative cases of human rights violations and breaches of international humanitarian law .....		44
III. Legislative policy .....		52
IV. Activities of the office in Colombia of the United Nations High Commissioner for Human Rights .....		59

### **Abbreviations**

AUC	Autodefensas Unidas de Colombia
ELN	Ejército de Liberación Nacional de Colombia
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo
UP	Unión Patriótica

## Introduction

1. The Commission on Human Rights has been following the human rights situation in Colombia, for several years, with concern. This concern has been reflected in successive statements of the Commission's Chairperson. In 1996, the Commission on Human Rights requested the Office of the High Commissioner for Human Rights to establish an office in Colombia, pursuant to the invitation of the Government of Colombia.
2. The office in Colombia of the United Nations High Commissioner for Human Rights (OACNUDH) was established on 26 November 1996 under an agreement between the Government of Colombia and the United Nations High Commissioner for Human Rights. Under the terms of the agreement, the office in Colombia of the High Commissioner is to observe the situation regarding human rights and international humanitarian law with a view to advising Colombian authorities on the formulation and implementation of policies, programmes and measures intended to promote and protect human rights, in the country's current context of violence and internal armed conflict. The High Commissioner should thus be able to submit analytical reports to the Commission on Human Rights. In September 2002, at the initiative of President Uribe, the agreement was extended for a four-year period until October 2006.
3. In its statement on the human rights situation in Colombia, the Chairperson of the Commission on Human Rights at its fifty-eighth session, in April 2003, reaffirmed that the office in Colombia "played a vital role in addressing the ongoing violations of human rights and international humanitarian law" and requested the High Commissioner to submit "a detailed report containing an analysis by his office of the human rights situation in Colombia".
4. The office in Colombia of the High Commissioner carried on with its duties of observation, advice, technical cooperation, as well as promotion and dissemination. More than 160 field missions were carried out and more than 900 complaints were admitted. The office in Colombia participated in numerous activities related to advising the Government, other State entities and civil society. Technical cooperation had as main focus the recommendations of the High Commissioner and tried to promote the active participation of national institutions in order to strengthen the respect, protection and guarantees for human rights. The office in Colombia participated in several promotion activities for the public in general and communication media. It continued to produce a series of publications related to human rights, and distribution throughout the territory of Colombia reached 100,000 publications.<sup>1</sup> The office in Colombia also continued to develop the dialogue with diplomatic representations of the interested countries. This report covers the period between January and December 2003 and is based on the information gathered by the office in Colombia of the United Nations High Commissioner for Human Rights, either directly or through its contacts. The information collected through contacts, among which State and Government authorities are of particular importance, has been subsequently analysed by the office in Colombia. Four documents are annexed to this report: one relates to the follow-up on international recommendations; another covers violations of human rights and breaches of international humanitarian law; a third concerns legislative policy; and the final one relates to the observation, advisory, promotion and technical cooperation activities carried out by the office in Colombia of the High Commissioner.



## I. NATIONAL CONTEXT AND DYNAMICS OF THE INTERNAL ARMED CONFLICT

5. During the year 2003, the evolution of the internal armed conflict and the serious issues of indebtedness, fiscal deficit, and legislative policy set new challenges for this country. While opinion polls showed that the President continued to enjoy a high degree of popularity, civil society showed a high level of polarization in various fields. During the year, there have been moments when tensions increased between senior Government and State officials and sectors of civil society organizations.

6. The aim of the Government has been to recover territorial control of the country and keep the roads free from illegal roadblocks and attacks with explosives, methods frequently used by the guerrillas. Therefore, military and police numbers have been considerably increased, including the so called “peasant soldiers” or “soldiers from my village”, and operations intended to maintain or restore public order have multiplied as part of the “democratic security policy”. By the end of 2003, the National Police was present in nearly all of the country’s municipalities. New military units and bases were also created in several strategic parts of the country.

7. During 2003, combats between security forces and illegal armed groups, particularly the guerrillas, intensified. Hostilities took place mainly in the Departments of Antioquia, Cundinamarca, Santander and Norte de Santander, the southern part of Bolívar, Guaviare and Caquetá. According to official figures from the Ministry of Defense, all of the illegal armed groups, especially the Revolutionary Armed Forces of Colombia - People’s Army (FARC-EP), suffered a higher number of casualties and captures. Such confrontation had a significant impact on the civil population. Facing increased pressure by the security forces, the guerrilla groups retired into their more traditional and inaccessible areas. FARC-EP and the National Liberation Army (ELN) extended their strategic and military alliance in several parts of the national territory. Illegal armed groups continued to fund their activities through kidnapping, charging levying “taxes” on illegal drug trafficking, managing narcotics processing laboratories, guarding and maintaining secret airstrips for loading and unloading psychoactive substances or raw materials for their manufacture, and, in some cases, the direct export of drugs.

8. The Government continued developing policies designed to restructure the State, achieve “democratic security” and economic recovery. To this end, numerous bills were submitted to the Congress, some of them aimed at reforming the Constitution and others at introducing modifications to current legislation. Many of these bills posed new challenges to the strengthening of the rule of law, the civil oversight of the security forces, and for effective respect for human rights and international humanitarian law. Several of these governmental proposals contributed to the polarization of Colombian society regarding subjects such as the fight against terrorism and measures to overcome the internal armed conflict.

9. During the first months of this year, the country continued to live under the “state of internal commotion” (*state of emergency*), enforced under Decree 1837 of 11 August 2002. This was used as the basis for the adoption of several measures to control public order and create special geographical areas called “rehabilitation and consolidation zones” in the Departments of

Arauca, Sucre and Bolívar. The application of these measures led to the constraint of fundamental rights and freedoms, mass arrests and raids. On 29 April the Constitutional Court put an end to the state of commotion by declaring its second extension incompatible with the Constitution.

10. Most political activities this year centred on the calling and holding of a referendum that took place on 25 October and involved submitting 15 proposals for constitutional reform to the voting public. These proposals covered a wide variety of issues: from the loss of political rights for those convicted of crimes against State property to limiting the level of pensions and salaries paid with government funds, the elimination of some offices of the municipal comptroller, and the application of measures aimed at rationalizing public expenditure. The counting of votes became complicated and in the month of December the final result was not yet known. However, preliminary data indicated that practically none of the proposals achieved the number of required votes (25 per cent of total eligible voters).

11. On 26 October elections were held to choose governors, mayors, deputies, town councillors and aldermen. Thanks to special efforts made by the State, the majority of the citizenry was able to exercise their political rights without great difficulties. Despite this, complaints were made regarding the perpetration of electoral offences. The election results reflected the country's political pluralism, considering the victory of several independent or centre-left candidates. Several independent or centre-left candidates did better than candidates who supported the Government. A significant example was the victory of centre-left candidates for the positions of mayor in the capital district of Bogotá and governor in the Department of Valle. During the weeks that followed the two-day elections, the President of the Republic replaced the Interior and Justice Ministers, the Minister of Defense and the Minister of the Environment as part of his strategy to improve relations between the Government and Congress and between civilians and military forces. Against the background of internal issues and some corruption scandals, the President also made broad changes at the level of the highest-ranking officers within the security forces.

12. The international community continued to provide Colombia with support and cooperation in various fields. In this respect, the participation of 24 countries, with the presence of several multilateral organizations that included the United Nations, at the international meeting in London in July 2003 was significant. The participating countries took favourable note of the commitment undertaken by the Government of Colombia to implement the recommendations of the United Nations High Commissioner for Human Rights and urged the Government of Colombia to promptly implement such recommendations and adopt effective actions against impunity and the collusion of public servants with illegal armed groups, especially paramilitary groups. Significant progress concerning follow-up to the Government's commitments assumed in London was not registered when the present report was finished.

13. During the year, contacts and talks intensified between the Government and a significant number of the paramilitary groups. Following the declaration of a ceasefire in December 2002 and the development of an exploratory phase aimed at bringing together the Government and the United Self-Defence Groups of Colombia (AUC), the Santa Fe de Ralito Agreement was signed on 15 July 2003. Under that agreement, the parties agreed to total demobilization of their paramilitary forces by 2005. Despite the ceasefire commitment, it must be noted that violent actions on the part of paramilitary group members continued to occur throughout the year against

the civilian population. At the end of November, the demobilization process began with the celebration of an act in Medellín where a group of 870 paramilitaries surrendered their weapons and were concentrated at a holiday resort in La Ceja (Antioquia) where for three weeks they would prepare for reintegration into society. Several questions were raised during this process. Some of these have to do with the legal treatment the Government is going to give to the demobilized paramilitaries and how the right to truth, justice and reparation for the victims can be guaranteed.

14. With respect to the guerrilla groups, the Government declared itself willing to have a dialogue with them eventually, provided that they declare a ceasefire and free all hostages. The Executive Branch also warned that, under no circumstances would it create “demilitarized zones” for the rebel forces. To facilitate a negotiated solution of the conflict, the Government reaffirmed its confidence in the good offices of the United Nations Secretary-General, through his Special Adviser for Colombia.

15. FARC-EP and ELN, in a joint communiqué issued in August, refused any “process for political rapprochement and a national dialogue” with the Government. Nevertheless, FARC-EP continued its attempts to sign an agreement providing for the liberation of persons in their custody in exchange for imprisoned guerrillas. Last May, in a failed attempt by the Army to free a group of hostages, FARC-EP killed 10 people, among whom were the Governor of Antioquia and a former Minister of Defence and adviser to the Governor. This dimmed the possibility of making progress towards special agreements, an option that had been fostered by several sectors of the society throughout the year.

## **II. STATE POLICIES AND FOLLOW-UP ON INTERNATIONAL RECOMMENDATIONS**

16. In order for State policies to properly and comprehensively include the High Commissioner’s recommendations, the office in Colombia of the High Commissioner encouraged follow-up with the Government, led by the Vice-President, and worked with the authorities in analysing and evaluating progress made in compliance with the recommendations. In general terms, it can be said that the Government has considered the recommendations and has opened channels for discussion and planning with respect to them among its institutions and with the office in Colombia. Nevertheless, the recommendations seem not to have received priority and remain unintegrated in the Government’s public policies, and this may explain the fact that there is a contradiction between the actions recommended and some of the measures adopted by the Government. This might also suggest that the Government has not yet captured, in its full dimension, the usefulness of a tool that aims at positively contributing to and supporting the country’s progress in improving the humanitarian and human rights situation in this country.<sup>2</sup>

17. During 2003, human rights and international humanitarian law policies were strongly influenced by the government policy called “democratic security”. This particularly affected the legislative agenda and the actions of the security forces and of the judicial and oversight bodies. Equally, the evolution of the armed conflict and the conduct of the illegal armed groups had a negative effect on the enjoyment of fundamental rights and freedoms and on the validity of the rule of law.

18. The purpose stated in the “democratic security” policy is that of “intensifying and guaranteeing the rule of law throughout the entire country through the strengthening of democratic authority”, and guaranteeing the security of all citizens alike. The policy also aspires to attain full recovery of State control over the national territory and to defeat terrorism. It also aims to involve civilian populations in maintaining security, particularly by supporting and collaborating with the authorities and the armed forces.<sup>3</sup> In the development of its policy, the Government was able to extend the presence of security forces to nearly all municipalities in the country. In order for the State to perform its duties in terms of security, prevention and protection, such presence is of significant importance. This process probably explains, in part, the positive overall decrease in the rate of violent acts and in several breaches of international humanitarian law on the part of the illegal armed groups. Additionally, it could be a positive element in the search for conditions that improve the ability to govern and make local democracy feasible, goals that are also included in the Government’s policy.

19. Nevertheless, the legitimate goals of such a policy have not been achieved to the extent hoped for. The regions with greater presence of the security forces, such as the Department of Arauca and the municipalities that formed the geographic areas known as rehabilitation and consolidation zones, continued to have serious problems in terms of their ability to be governed and with respect to public order, including an increase in crime in some municipalities. Likewise, apart from irregularities reported in the conduct of the security forces and weaknesses in terms of judicial control, the paramilitary presence continued, investment in social services was left unrealized, and there was a limited presence on the part of the State, apart from the security forces. At times, the Ombudsman’s Office was the only civil institution to be found. This was pointed out by the relevant reports of the Ombudsman’s Office and Procurator General’s Office.<sup>4</sup>

20. The great majority of the adopted measures were aimed at strengthening the presence of the security forces across the national territory and granting additional resources to the State in terms of security and protection. The same determination has not been noted as regards strengthening the State’s civil institutions. In some cases, the strengthening of security forces and the related policies have been applied to the detriment of civil institutions, constitutional guarantees for citizens and the powers of judicial and control bodies. According to the Government, the participation of the citizenry in security activities jointly carried out with military and police forces, which goes against the principle of distinction, played an essential role in the “democratic security” policy, by consolidating the network of informers and collaborators cooperating with the security forces as well as the recruitment of peasant soldiers.

21. There is no doubt that the enormous challenges the Government faces, in terms of security and protection of fundamental rights and freedoms, could be undertaken with greater effectiveness and legitimacy if the State’s control institutions enjoyed the necessary range of action and resources. During this year, the reduced field of action that tends to exist for independent and impartial work on the part of officials of the Ministry of Justice and the Procurator General’s Office has been a problem. On repeated occasions, those institutions that have shown greater independence and vigour in fulfilling their auditing and control duties have been threatened with limitations on their powers by means of legislative proposals presented by the Government. This situation has mainly affected the Constitutional Court and the Procurator General’s Office.<sup>5</sup>

22. Similarly, it is worth pointing out that the office in Colombia has not noticed specific actions by the Government and the Congress aimed at strengthening the Ombudsman's Office, in accordance with the recommendations of the High Commissioner. Nevertheless, positive mention has to be made of the creation of the Community Ombudsmen, a position that has been implemented with the support of the international community in several regions where there is a concentration of communities at risk. This partly complies with the recommendation of the High Commissioner to guarantee the presence of the Ombudsman's Office in regions with a high rate of indigenous, Afro-Colombian and displaced populations. The above-mentioned indicates that the application of the Government's policies did not achieve the strengthening of the rule of law.

23. The policy aimed at fighting the paramilitary phenomenon and the existing ties between public servants and those groups has not shown sufficiently significant results as to effectively match the statements made by the Government. The revival, towards the end of 2003, of the Center for Fighting the illegal self-defence groups and other unlawful armed groups, as well as the directives and circulars issued in September and October by the Ministry of Defense relating to "the unrestricted fight against the illegal self-defense groups" show the extent to which this continues to be a problem and explains why the Government indicates that one of its leading activities is "internal control and surveillance in order to prevent members of the military institutions from collaborating with such groups".<sup>6</sup>

24. The office in Colombia continued to receive complaints regarding the persistence or strengthening of the above-mentioned ties. The following has been reported: paramilitary operations with inexcusable knowledge of the security forces, undue contacts between civil authorities and paramilitary commanders, statements made by members of the military forces concerning the imminent arrival of paramilitary groups, inaction on the part of the security forces in spite of the existence of fixed paramilitary bases close to military installations, and even the alleged provision of information to paramilitary groups by members of the police regarding possible targets.<sup>7</sup> The office in Colombia was able to observe and continued to receive complaints concerning the positioning and consolidation of paramilitary groups in areas where the security forces had previously carried out counter-rebel operations, such as, for example, the area of Comuna 13 in Medellín or municipalities in eastern Antioquia.

25. From the results of field observations, it is possible to state that the measures adopted under the "democratic security" policy have been aimed, with greater emphasis, at fighting rebel groups rather than paramilitary groups. The increase in the number of operations and captures of members of paramilitary groups has not been large or meaningful enough in order to constitute blows to the paramilitary structure or to slow down its expansion and consolidation or prevent crimes against the population.

26. The impunity with which paramilitary groups continue to act is a demonstration that more suitable and consistent conduct by the authorities in the face of this kind of violence is needed. Following the recommendation of the High Commissioner, the adoption of more effective measures by the Government and the Ministry of Defense is necessary in order to sanction actions and omissions on the part of public servants who support or tolerate paramilitary groups. The negotiations between the Government and AUC have not duly taken into account the possible legal consequences and have led to serious concerns over the impunity of those

responsible for acts that amount to war crimes and crimes against humanity, and of public servants who may have been involved in them, as well as with respect to follow-up on the recommendation of the High Commissioner in terms of the right to truth, justice and reparation.<sup>8</sup>

27. Additionally, to date, a sufficiently effective commitment to the fight against impunity, in the institutional policy of the Attorney-General's Office, has not been perceived with respect to progress in investigations related to serious human rights violations or actions linked to paramilitary groups and involving public servants. What is striking is the absence of investigations into several complaints relating to situations such as these.<sup>9</sup> In November 2003, the Attorney-General, by way of a letter of understanding with the office in Colombia of the High Commissioner, committed himself to assigning a specialized group, within the human rights and international humanitarian law unit, for the investigation of such possible ties, in accordance with the recommendation of the High Commissioner. Compliance with this commitment is to be evaluated in next year's report.<sup>10</sup>

28. State policy in terms of the fight against impunity has continued to show few concrete results. The Government created the Fight against Impunity Unit inside the human rights and international humanitarian law Presidential Programme within the Office of the Vice-President of the Republic. Under a cooperation agreement with the Netherlands, the Government committed itself to stimulate and follow up on the investigations into serious human rights violations and breaches of international humanitarian law, through the work of a special committee and the design and implementation of a public policy on fighting impunity. Despite the High Commissioner's recommendation on this matter, the office in Colombia observed that the special committee, an inter-institutional mechanism coordinated by the Vice-President and responsible for driving the investigations on human rights violations, has not achieved the expected results. The committee was able to agree upon the selection of cases requiring priority attention along with their respective work plan but, until now, it has not produced significant results regarding the fight against impunity and effective progress in the investigations.

29. Together with its military strategy and its strategy against violence and terrorism, the Government encouraged a demobilization policy for members of the illegal armed groups. In this context, on 22 January 2003, Decree 128 was adopted establishing a series of legal benefits, including the granting of pardons and administrative and welfare benefits, for the members of armed groups responsible for political or related crimes who decide to voluntarily demobilize. From 1 January to 19 November 2003, the Government recorded the demobilization of 2,136 members of illegal groups, 1,139 of whom belonged to FARC-EP, 350 to ELN and 647 to paramilitary groups; 329 of them are minors and 300 are women. The office in Colombia was informed of several difficulties during implementation of the reintegration process that caused some people to decide to again take up arms by joining groups that oppose the groups that they had originally belonged to, particularly cases of FARC-EP members deciding to join paramilitary groups.

30. In addition to the above decree, in August 2003 the Government presented a bill aimed at granting legal benefits to those members of illegal armed groups who were not eligible to benefit from the provisions of the above decree because of their involvement in serious crimes, not even excluding war crimes and crimes against humanity. This bill establishes the suspension of the custodial sentence and proposes a series of measures that the bill calls "alternative

sentences". Setting aside the concern that provisions of this kind can generate in terms of impunity, several doubts arise in relation to the advisability and the modality of such a proposal, which refers not only to members of armed groups that have signed peace agreements but also includes among the beneficiaries members "who lay down their arms individually and voluntarily". The bill, to date, is not in accordance with international norms and principles, nor with the High Commissioner's recommendation to take into account the rights to truth, justice and reparation when talking and negotiating with the illegal armed groups.

31. The State's policy in terms of international humanitarian law has been linked to the previously mentioned elements, related to negotiations and the struggle against violence and terrorism. Despite the Government's clearly expressed commitment in its Democratic Security and Defence Policy document - in which it declares that "there will be rigorous observance of human rights, and strict adherence to international humanitarian law"<sup>11</sup> often the Government's language and strategies in practice were inconsistent. The Government tended to not recognize the existence of an internal armed conflict and the specific legal issues linked to it, comprising everything in the fight against terrorism. The office in Colombia of the High Commissioner reiterated the importance of recognizing the humanitarian obligations and rules relating to the armed conflict and, particularly, the principles of distinction, limitation and proportionality, as pointed out by the High Commissioner in his recommendations.

32. In following up on the recommendation of the High Commissioner with respect to compliance with international obligations regarding anti-personnel mines, positive actions have been taken through governmental policies, particularly in the framework of the Anti-personnel Mines Observatory and specifically in the drafting of a detailed Comprehensive National Plan of Action against anti-personnel mines. Another positive area has been the strengthening of the Information System on Action against Anti-personnel Mines (MISMA). The office in Colombia has noted with interest that, on 26 June 2003, the Colombian State began the destruction of stored mines, in accordance with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction signed in Ottawa in 1997. Despite the progress of the Observatory, difficulties remain in placing signposts in minefields and in danger areas, in preventing and limiting risks to the population, especially for displaced and returned persons, as well as strengthening of mechanisms for assisting victims of anti-personnel mines.

33. Legislative policy has been a central tool of the Government's policy with the expectation that, through changes in the rules, the Government's policy can achieve greater impact and results.<sup>12</sup> One of the first laws approved was the National Development Plan, containing economic, social and environmental provisions. It is worth stressing the adoption of several laws whereby international treaties were internally approved. It is worth stressing also that, with the exception of the Optional Protocol to the Convention on the Rights of the Child relative to the sale of children, child prostitution and child pornography, during the current administration no other instruments have been ratified that obligate the State internationally.

34. Several bills proposed to modify the Constitution; among them, three bills for legislative acts, one known as the "Anti-Terrorist Statute", another that modifies the competence of the Procurator General's Office in examining disciplinary offences by members of the Armed Forces, and a third aimed at making structural changes to the organization of the State. Bills have also been promoted to modify the Criminal Code and the Code of Criminal Procedure, the

Penitentiary and Prison Code, the Organizational By-laws of the Attorney-General's Office, the Statutory Law for Administration of Justice and some norms regarding compulsory military service. Also proposed were the National Statute to face terrorism and the bill on national security and defence. The legislative proposals have generally been characterized by harsher sentences and the creation of new types of crimes, as well as by the weakening of constitutional and legal guarantees. At the same time, and paradoxically, bills showing great leniency were submitted in order to judicially respond to conduct that constitutes war crimes and crimes against humanity, such as the statutory bill regarding the reintegration of members of illegal armed groups.

35. It is worth mentioning the bill presented in April and approved in December 2003, known as the "Anti-Terrorist Statute", which proposes constitutional modifications. According to its articles, it provides the Armed Forces with judicial police powers, in direct contradiction to the recommendation expressed by the High Commissioner and by the Chairperson of the Commission on Human Rights in its fifty-ninth session in 2003. The changes also provide for administrative detentions and searches of homes, as well as interceptions of private communications, to be carried out without a previously issued warrant, and with excessively prolonged terms for submitting administrative detentions to judicial control in cases of terrorism, thus putting at risk the effective application of habeas corpus.

36. Beyond the incompatibility with international obligations, analysis of the legislative policy raises questions about the relevance and usefulness of the changes sought in the regulations. It would seem as though, in the Government's view, the achievement of the goals of its policies depended more on the laws than on the adoption and impact of concrete actions. Given the solidity of the Colombian juridical structure and tradition, it is worth asking whether full compliance with existing laws and the strengthening of public institutions may not be a more appropriate manner in which to attain the goals of the security policy.

37. In terms of prevention, the policy has been mainly focused on strengthening the Early Warning System (Sistema de Alerta Temprana, or SAT), particularly through creation of the Inter-Institutional Early Warning Committee (Comité Interinstitucional de Alerta Temprana, or CIAT), aimed at improving the State's coordination and response. This positive initiative, following the High Commissioner's recommendation, has demonstrated deficiencies, however, in terms of the effectiveness of risk assessment and response. On several occasions, the responses were unable to avoid the occurrence of violations or breaches, due to diverse factors detailed in annex II of this report.

38. As far as the policy regarding protection for certain vulnerable groups, such as human rights defenders, trade union representatives, journalists, Unión Patriótica (UP) and Communist Party members, and local officials, the Government began implementing several of the recommendations included in the external evaluation of the Ministry of the Interior, an evaluation implemented by the Government with the support of the International Labour Organization and the office in Colombia last year. Nevertheless, operational issues, particularly in terms of risk assessment, remained. The absence of more effective processes capable of acting in a preventive way over risk factors and the lack of a consistent policy on the part of the State and all of its public servants have so far not permitted the necessary degree of compliance with the High Commissioner's recommendations on this matter.



39. A main feature of the economic and social policies was the increase in public spending related to certain basic rights, although in detriment to quality with respect to several vulnerable sectors and without being proportionately reflected in coverage. Economic policy set its priority on reducing the fiscal deficit and increasing resources available for security. Social policy was affected by such priorities. The inequity gap was not reduced and the most disadvantaged sectors of the population were not benefited, thus leaving unresolved the recommendation of the High Commissioner on the subject.

40. It is worth emphasizing that the illegal armed groups have not observed in the slightest the recommendations made to them by the High Commissioner in terms of armed conflict and respect for international humanitarian law.

### **III. INTERNATIONAL HUMANITARIAN LAW: BREACHES BY ARMED ACTORS**

41. In the context of the Colombian armed conflict, breaches of international humanitarian law (IHL) are actions or omissions contrary to common article 3 to the Geneva Convention of 12 August 1949, its Additional Protocol II, international criminal law, and customary law. All parties involved in the hostilities, be it the State, the guerrilla or the paramilitary groups, must comply with the obligations imposed by international humanitarian law. Many of the breaches pointed out in this report, when carried out as part of a plan or a policy, or as part of a large-scale occurrence, constitute war crimes. Several of these breaches may also constitute crimes against humanity. These two types of crimes may be subject to trial by the International Criminal Court, if they occurred after 1 November 2002, date of the entry into force for Colombia.

42. According to figures provided by the Office of the Vice-President, during the first eight months of 2003 there has been a decrease, as compared to 2002, in the number of massacres, attacks on the civilian population, indiscriminate attacks, hostage-taking, forced displacements and acts of terrorism. Despite this decrease, it is worth stressing that such breaches continue to occur at very worrisome levels, as the 312 victims of the 54 massacres recorded by the Government show.<sup>13</sup> With respect to acts of terrorism, it is worth pointing out that they were the cause of a greater percentage of breaches of international humanitarian law since it was mainly the guerrilla groups who resorted to this kind of attacks rather than to other types of assaults.

43. In areas with a large presence of the illegal armed groups, victimization of the civilian population was even greater. Inhabitants have been subjected to growing pressure and subjugation through acts of terrorism, homicides and tortures, restrictions on freedom of movement and transport of basic necessities, destruction of personal effects and property and pillage.

44. The country's homicide rate, according to figures for 2003 up until October, showed a reduction at the national level in comparison with the previous year. However, the rate increased or remained at the same high levels of 2002 in cities such as Sincelejo (Sucre), Santa Marta (Magdalena), Bucaramanga (Santander) and Cúcuta (Norte de Santander). Massacres continued to occur mainly in the Departments of Antioquia, Chocó, Norte de Santander and Valle. It is striking that the figures of the Government assign 55 per cent of the massacres to unknown authors. The question arises as to whether the majority of these acts are to be attributed to the

paramilitary groups, as the Government pointed out last year.<sup>14</sup> The protection to be provided for civilians, as required under international humanitarian law, was equally disregarded due to terrorist actions, particularly by FARC-EP, and due to the strategy used by paramilitary groups who disappear their victims by killing them after having tortured them, mutilating their bodies and burying them in mass graves.

45. In some cases, the deaths of civilians were blamed on members of the security forces, in violation of the principles of distinction, limitation and proportionality. Likewise, cases of wounded civilians and the destruction of the personal property of civilians was the result of activities on the part of the security forces.<sup>15</sup>

46. Numerous cases of breaches of international humanitarian law were registered, resulting from indiscriminate attacks, death threats, hostage-taking and forced displacements. Guerrilla and paramilitary groups were responsible for these breaches. In some cases, the security forces were responsible for indiscriminate attacks, threats and forced displacements.<sup>16</sup>

47. The use of anti-personnel mines and other explosive devices by guerrilla groups, in violation of international humanitarian law, increased, causing the death of more than 90 civilians (up until October 2003) and nearly 200 members of the security forces. The reduction of attacks against electrical and communications infrastructure was accompanied by an increase in attacks against pipelines, carried out mainly by the guerrillas. Additionally, the illegal armed groups continued to practise recruitment of minors. Children, ethnic minorities and women continued to be the victims of the main breaches of international humanitarian law, including cases of sexual abuse and enslavement of women.<sup>17</sup>

48. Illegal armed groups, particularly FARC-EP, continued carrying out serious attacks or threats against public officials, such as mayors, town councillors and municipal representatives, or against candidates during the municipal and departmental elections of 26 October 2003.

### **Guerrilla groups**

49. Guerrilla groups continued attacking civilian populations and to disregard their immunity. Even though a reduction in the number of raids into urban areas of municipalities was observed, the Departments of Cauca and Nariño particularly suffered from these attacks. Guerrilla groups, and particularly FARC-EP, have continued with their strategy of terrorizing civilian populations, by recurrently perpetrating acts of terrorism. The terrorist attacks in Neiva (Huila), Cúcuta (Norte de Santander), Puerto Rico (Meta), Florencia (Caquetá) and Chita (Boyacá), where many civilians lost their lives or were wounded, have been attributed by the Attorney-General's Office to FARC-EP, with the exception of the second attack attributed to ELN (although ELN denied responsibility for it). FARC-EP were also considered responsible for the explosion of a car bomb in the building of El Nogal Club, in the city of Bogotá, on 7 February 2003, causing the death of 36 people and wounding over 100 people.<sup>18</sup>

50. Likewise, FARC-EP, and in some cases also ELN, have been responsible for frequent indiscriminate attacks with explosive devices, in total disrespect of civilians' lives and personal safety. Such practices have victimized hundreds of civilians, including children, young people

and women, and have occurred with greater intensity in the Departments of Caquetá, Meta, Antioquia and Arauca. On several occasions, civilians utilized by FARC-EP to transport explosive devices lost their lives as a result of their detonation, as was the case on 17 April in Fortul (Arauca) where an 8-year-old boy was killed when the bicycle he was riding on exploded near a military control post.

51. Additionally, the inhabitants of rural areas, characterized by a strong presence on the part of the guerrilla groups, have been subject to increasing pressure by the rebels, frequently through restrictions on freedom of movement as well as on the transportation of basic necessities. In these same areas, FARC-EP and ELN have resorted to the practice of selective homicides against local officials, social leaders, teachers and candidates, as well as against people whom they accuse of belonging to the State's network of informers or of collaborating with paramilitary groups.

52. FARC-EP and ELN continued to use anti-personnel mines. The guerrilla groups also continued recruiting minors, in some cases forcibly. Several thousand minors are estimated to be in the ranks of the guerrilla groups.

53. Both guerrilla groups have repeatedly resorted to hostage-taking for reasons of financial extortion or political pressure and have not agreed to free hostages unconditionally; on the contrary, in some cases, FARC-EP have killed hostages in their power. Such was the case of the Governor of Antioquia, his peace adviser and eight captive members of the military, of the Colombian Bickenbach couple, and of the Japanese citizen Chikao Muramatsu. ELN finally released the eight foreigners taken as hostages in the Sierra Nevada de Santa Marta.<sup>19</sup>

### **Paramilitary groups**

54. The commitment to a ceasefire was the basic assumption for any process for dialogue between the Government and the largest paramilitary group, the Autodefensas Unidas de Colombia, or AUC. The lack of adherence to this commitment in the majority of regions must be emphasized. The large number of breaches of international humanitarian law attributable to paramilitary groups in 2003, regardless of the fact that these breaches are fewer than those recorded during the previous year, are in contradiction to the above commitment and to the existence of a unilateral truce declared by them at the end of 2002.

55. Several massacres were perpetrated by these groups, although in lesser number than in 2002, as occurred in Antioquia, Santander, Sucre and Tolima. It is also probable that the number of these massacres has been underestimated. The practice of selective homicides has continued, attributed to paramilitary groups who repeatedly have chosen to kill their victims after having detained them, tortured them and made them disappear in a strategy of terror directed against civilian populations. At the same time, such a strategy, which makes it difficult to identify those responsible, is noteworthy at a time when they have made a political commitment to demobilization and ceasefire. In the city of Barrancabermeja alone, between January and August 2003, the Ombudsman's Office received 45 complaints with respect to disappeared persons. The number of complaints submitted to the office in Colombia of the High Commissioner regarding discoveries of mass graves, mainly in Tolima and Antioquia, and of bodies with obvious signs of torture and mutilation increased during this year.<sup>20</sup>

56. The victims of paramilitary groups are usually people whom they accuse of having ties to rebel forces; social leaders and public officials who are opposed to the paramilitary groups' process of expansion and social, economic and political consolidation; rivals for control of illegal businesses (drug trafficking, theft of fuel, etc.); and victims of social cleansing.

57. During the year 2003, it was also striking to observe the internal disputes within the paramilitary groups that caused a large number of deaths. The office in Colombia observed a significant increase in confrontations between paramilitary groups and especially between the Cacique Nutibara Block and the Metro Block, and between AUC and the Autodefensas Campesinas of Casanare.

58. The presence of minors in the paramilitary groups was evidenced by the surrender of 40 minors from the Central Bolivar Block and the surrender of minors by the Autodefensas Campesinas of Meta and Vichada, as well as more than 40 minors from the demobilized group of the Nutibara Block. Forced displacement of the population by paramilitary threats or activities has been a recurring strategy.

59. Based on the information received by the office in Colombia and its field observations, in several cases of breaches of international humanitarian law, the paramilitary groups received support, collusion or complicity on the part of public servants.<sup>21</sup>

### **Security forces**

60. In regions where the Army carried out its renewed offensive, it was reported that, on some occasions, members of the security forces were responsible for breaches of international humanitarian law due to disregard for the principle of distinction.<sup>22</sup>

61. The office in Colombia of the High Commissioner received complaints of several cases of indiscriminate air bombardments or machine-gunning that caused damages to personal effects and properties, especially in Cauca, as well as civilian dead or wounded, such as in the area of Culebritas, in the municipality of El Carmen (Norte de Santander). On other occasions, military airplane or helicopter operations caused the displacement of the civilian population in rural areas, as in the municipality of San Francisco, in eastern Antioquia, as a result of "Operación Marcial", in March 2003. In the context of that same operation, the office in Colombia received complaints related to the killing of two civilians. Similarly, in the context of "Operation Emperador", in January 2003, in Santa Ana, in the jurisdiction of Granada, in eastern Antioquia, four civilians, including a minor, were reportedly executed. In both cases, the office in Colombia also received complaints of civilians being abused by members of the Army breaking into homes, destroying personal effects and property and engaging in pillage.<sup>23</sup>

62. The Army's strategy to try to cut the flow of supplies to the guerrillas has in some cases affected the civilian population, due to their being stigmatized and targets of abuse, pillage and threats on the part of the Army. The use of civilians as human shields during a counter-rebel operation has also been reported. This exposed civilians to serious risks and also caused the death of one person (during the "Independencia" operation of July 2003 in Arauca).

63. It is worth pointing out that cases were reported of restrictions by members of the security forces on the transportation of food products, gasoline and other basic necessities, particularly in the areas of Medio Atrato, Sierra Nevada of Santa Marta and eastern Antioquia. There were also cases reported of Army or Marine Corps troops occupying housing or such public places as schools and health-care centres, as occurred in the municipality of Colosó (Sucre), exposing the civilian population to risk and violating the principle of distinction.

64. Additionally, governors and authorities of the indigenous councils of Nariño reported that, in March 2003, military forces indiscriminately recruited young indigenous people, in violation of current regulations exempting ethnic minorities from compulsory military service. The office in Colombia also received complaints regarding the use of minors by members of the security forces, especially in intelligence operations.

65. Similarly, complaints of breaches of international humanitarian law were received where responsibility was attributed to members of the security forces due to omission, tolerance or complicity with paramilitary groups.<sup>24</sup>

#### **IV. HUMAN RIGHTS SITUATION**

66. Actions or omissions affecting rights established in international human rights and criminal law instruments or in general international law norms, constitute violations of those rights and norms when perpetrated by public servants or with the acquiescence of the authorities. Responsibility for these violations shall be for omission when the obligation to guarantee is not fulfilled, provided that this lack of fulfilment is not deliberate and there is no participation of State agents in the preparation, commission or concealment of the acts. Responsibility shall be for commission when State agents are either involved in the preparation or perpetration of the act, or in covering it up or protecting the culprits.

67. The human rights situation in Colombia continues to be critical. During the year, complaints of violations of the following rights were recorded: the right to life, to physical integrity, to personal freedom and safety, to due process and legal guarantees, to independence and impartiality in the administration of justice, to the respect for privacy and the home, as well as the rights to fundamental freedoms of movement, residence, opinion and expression, and political rights. Increasingly, the office in Colombia continued to receive complaints about human rights violations implying the direct responsibility on the part of public servants, and in particular members of the security forces, on several occasions jointly with members of the Attorney-General's Office. From the information provided by the Procurator General's Office, one may note an increase in disciplinary investigations undertaken in 2003, particularly as regards torture, forced disappearances, illegal detentions and irregular searches. Many of the violations, due to their serious, massive or systematic nature, constitute crimes against humanity and are susceptible to trial by the International Criminal Court.

68. Economic, social and cultural rights continued to be affected by the increase of poverty, exclusion, social injustice and the gap in terms of wealth distribution. This situation has worsened because of the armed conflict, particularly due to displacement, and has had an even greater effect on the rights of vulnerable groups. Similarly, the lack of official updated statistics, that would make it possible to appropriately evaluate the impact of policies on the above-mentioned groups, is a source of concern.

69. During the year 2003, the policy of restructuring of the State has affected institutions in charge of providing social assistance. Despite the fact that public spending has increased in relation to education and health, the poorest sectors continue to be highly neglected. An inequitable educational system continues to exist, without free basic primary education being guaranteed. A small decrease in unemployment has been observed but the rate continues to be high. Indirect taxes have been raised, affecting to a greater degree the most disadvantaged segment of the population. With respect to the right to housing, subsidies have been insufficient, taking into account the impoverishment of the population and the high interest rates.

70. The armed conflict and, particularly, the conduct of the illegal armed groups, has had a negative effect on the human rights situation and worsened the conditions and resources the State relies upon in order to effectively respond to the problems. In this respect, it is of particular importance that authorities identify priorities in order to guarantee an appropriate response and fulfilment of their obligations.

71. Complaints of summary, extrajudicial or arbitrary executions continued to be reported. An increasing trend was registered of complaints regarding serious violations such as forced disappearances, arbitrary arrests, arbitrary interference with private life and homes, torture and ill-treatment, and disregard of judicial guarantees. Several such violations were perpetrated, by the security forces in the context of government security policies, and due to poor judicial control by officials of the Attorney-General's Office, and, on occasions, to poor control by officials of the State Procurator's institutions (*Ministerio Público*). In other cases, violations occurred due to powers, granted by certain regulations to the security forces, including military forces, to act without a warrant in the restriction of human rights and fundamental freedoms.<sup>25</sup>

72. Several extrajudicial executions directly attributed to security forces were reported.<sup>26</sup> Additionally, collective executions or massacres perpetrated by paramilitary groups were reported where responsibility was attributed to the State due to omission or collusion on the part of public servants, such as, in Tolima and Arauca, respectively. The responsibility of the State due to omission or collusion with paramilitary groups in summary executions in departments such as Antioquia, Arauca, Cauca, Cesar, and Cundinamarca was also reported.<sup>27</sup>

73. As compared to 2002, it is a source of concern to note the increase in complaints received by the office in Colombia in relation to forced disappearances, mainly perpetrated by paramilitary groups, in which responsibility is also attributed to the security forces. These complaints involve geographical areas where the security forces were widely present and in control and where tolerance and complicity of public servants with respect to paramilitary activities was reported. Additionally, the investigations aimed at finding the authors and determining their responsibility did not produce results. A number of forced disappearances directly attributed to the security forces were also reported.<sup>28</sup>

74. The office in Colombia equally recorded an increase in complaints of violations of the right to individual freedom due to arbitrary arrests perpetrated by State authorities. Several of these violations occurred under the security policy through the practice of mass arrests, detentions without a warrant by police and military forces, or with irregular warrants, as some people deprived of their liberty were not previously identified, or for being based on descriptions provided by hooded informers or intelligence reports.<sup>29</sup>

75. The office in Colombia has received numerous complaints regarding the conduct of officials from the Attorney-General's Office in several of the above-mentioned cases. It was also reported that the Attorney-General's Office has subsequently endorsed initiatives on the part of the security forces in carrying out so-called "voluntary" searches and raids, arrests that did not satisfy the necessary requirements in order to be justified or legitimate, or the application of the notion of "permanent flagrancy", a concept incompatible with international rules. Additionally, the office in Colombia received complaints of cases where warrants for arrest were issued after the detainee had been singled out by former guerrillas reintegrated into civilian life. These irregular practices allegedly occurred inside military installations with the collaboration of the Attorney-General's Office.<sup>30</sup>

76. Compared to last year, an increase of complaints about violations of the right to personal integrity was reported, due to cruel, inhuman and degrading treatment and torture by members of the security forces.<sup>31</sup> Complaints of such violations also increased, including the disproportionate use of force, by security officials carried out against arrested individuals or penitentiary inmates. The latter cases were mainly registered in prison facilities built under the so-called new penitentiary culture,<sup>32</sup> prisons located in Acacias (Villavicencio), Cóbmita (Boyacá), La Dorada (Caldas), Palo Gordo (Bucaramanga), Valledupar (Cesar) and, in particular, San Isidro (Popayán).<sup>33</sup> Additionally, the high level of overcrowding in the country's prisons is a source of concern.<sup>34</sup>

77. The administration of justice continued to experience problems related to access to justice, judicial independence and impartiality, judicial guarantees and presumption of innocence, as well as impunity. Issues of access to justice were observed not only due to the absence of prosecutors and judges in several municipalities of the country, but also as a result of the impact of the armed conflict.

78. Judicial independence and impartiality have been affected by several factors. In some cases, the legislative provisions have precluded respect for this principle, as in the case of the rules that, under the "state of internal commotion" (*state of emergency*), empowered security forces, including military forces, to perform arrests, raids, searches and other operations with judicial police functions, but without a warrant having been previously issued by the competent authority. Similarly, prosecutors' independence has been cast in doubt by the presence of branches of the Attorney-General's Office inside military installations, as for example in Arauca. On other occasions, the decisions of prosecutors or the course of their investigations have led to their dismissal or to the reassigning of their investigations to other prosecutors, by decision of the Attorney-General, in contradiction to the principle of judicial independence and the autonomy of the prosecutors.<sup>35</sup>

79. Special mention has to be made of the efforts of the Procurator General's Office in following up and controlling the elaboration or application of certain provisions such as the evaluation of reports on the conduct of public servants in the so-called rehabilitation and consolidation zones, the follow-up on the situation in Bojayá (Chocó), or its formal opinion of the Government's proposed referendum.<sup>36</sup> On the other hand, the office in Colombia has been able to observe situations where the conduct of representatives of the State Procurator's institutions (*Ministerio Público*) has been inconsistent. In some cases, the State Procurator's institutions (*Ministerio Público*) has had a critical and rigorous attitude in the performance of its

duties as an institution for both preventive and disciplinary control, as for example in Medellín. In others, the Procurator General's Office has accompanied and endorsed, with the same tolerance and lack of rigour of the Attorney-General's Office, the actions of the security forces and prosecutors, as for example in Arauca.

80. An additional element for concern has been the reiterated practice on the part of State authorities to parade arrested or captured individuals before the media presenting them as members of guerrilla groups, thus disregarding the principles of presumption of innocence and respect of human dignity.

81. Another element that has affected judicial independence and impartiality is related to cases of violations of human rights or breaches of international humanitarian law that have been assigned to the military criminal justice system or continue under that jurisdiction.<sup>37</sup>

82. The general Colombian population, journalists and media representatives as well as the country's academics and intellectuals, continue to experience difficulties in fully exercising their right to freedom of opinion and expression. Due to implementation of the security policy and the impact of certain legislative measures, several complaints of violations of these fundamental freedoms were reported in some parts of the country, mainly in the Department of Arauca. The office in Colombia observed and received information of violations by the security forces that imposed arbitrary or illegal restrictions on the exercise of freedom of the press, as well as violations of their obligation to guarantee and protect.<sup>38</sup>

83. With respect to freedom of movement and residence, it is worth underlining the decrease in new forced internal displacements, as compared to last year, although worrisome levels are still being reported, particularly in Antioquia, Bolivar, Norte de Santander, Cesar and Cundinamarca. The Social Solidarity Network reported more than 130,000 newly displaced people, in the period up until September 2003. The State has been responsible for some of these incidents because of the absence or inefficiency of measures that could have prevented them or protected the victims.

84. Despite Government measures adopted to guarantee the safety of the population and the holding of municipal and departmental elections during the month of October, several candidates and electors could not exercise their political right to vote and be elected. In some cases, the inhabitants of rural areas could not register their personal identification documents in order to vote and, similarly, a significant number of candidates had to conduct their campaigns under conditions of inequality and insecurity.

## **V. SITUATION OF PARTICULARLY VULNERABLE GROUPS**

### **Human rights defenders**

85. The situation of human rights defenders, including trade unionists (particularly school and health personnel) continued to be critical. Although a decrease in homicides, attacks, forced disappearances and hostage-taking against them has been noted, these violent actions continued to affect them. These crimes were mainly attributed to paramilitary groups and, in some cases, to FARC-EP and, to a lesser degree, ELN.



86. The dynamics of the armed conflict evidenced a change in the modus operandi of the armed groups, particularly the paramilitaries, that makes use of more subtle strategies, which have less public impact than direct attacks on the defenders' right to life. A change in the risk factors for this group should also be mentioned. In fact, the policies of mass arrests and large-scale raids that included the offices of civil society organizations and trade unions, as well as the conduct of certain governmental authorities, caused the defenders to be more restrained in their work, to be more reserved when expressing opinions, and led them to limit their activities.

87. Under the leadership of the Office of the Vice-President, the Government made arrangements for exchanges with human rights and peace organizations, and trade unions. It is worth mentioning the adoption of Directive 09, issued by the Ministry of Defense, on July 2003, and which ratified Presidential Directive 07 of the previous administration, dated September 1999, whereby public servants are instructed to respect human rights defenders and the work of their organizations.

88. The positive impact of the start of this partnership and of the directives was, nevertheless, offset by certain public declarations made by governmental authorities. Top government officials<sup>39</sup> questioned the nature of the work of human rights organizations and accused them of being at the service of terrorism. This weakens the legitimacy and the possibilities that the above-mentioned directives be respected and can encourage actions against the freedom and privacy of people involved in the defence of human rights or in trade union movements.

89. Under the policy of democratic security, members of NGOs and social and trade union leaders were subject to arbitrary arrest and accused of rebellion. At the moment of their arrest, several of them were under the protection of precautionary measures requested by the Inter-American Commission on Human Rights (CIDH) and were benefiting from the protection programme of the Ministry of Justice and Interior.

### **Ethnic groups**

90. The human rights situation for ethnic groups continued to be critical, especially for indigenous people and Afro-Colombian communities. In addition, these groups, including the *Raizales* (the Creole-English-speaking inhabitants of San Andrés, Providencia and Santa Catalina) and the Roma, continued to suffer from violations of their economic, social and cultural rights and to be affected by racial discrimination, poverty, exclusion and the repudiation of their specific rights. The above is reflected in the absence of social and economic data on the ethnic groups and the resulting absence of differentiating policies capable of addressing their specific needs.

91. The armed conflict contributed to worsen the situation of indigenous and Afro-Colombian communities. An increase in selective violence against traditional authorities and leaders has been reported, with homicides, death threats and forced displacements, as well as greater confinement of the communities on the part of the illegal armed groups. This affected the communities' right to autonomy, thus weakening their internal organization and the level of

representation of their authorities. More than 100 indigenous individuals and authorities were the victims of homicide, 50 of which were perpetrated against the political and spiritual authorities of the Kankuamo people (Sierra Nevada de Santa Marta) and mainly attributed to AUC. The lack of effective actions on the part of the security forces in order to protect these communities has occasionally been questioned, as well as their stigmatization.

92. Certain progress made by the State should be stressed in terms of protection and prevention, particularly in relation to indigenous people, as well as a stronger presence on the part of the Ombudsman's Office through community defenders in regions that have been characterized by a minimal State presence and a high concentration of indigenous and Afro-Colombian populations. Nevertheless, State responses aimed at satisfying education, health care, employment, housing and basic sanitation requirements continue to be insufficient. Despite the important decision of the Constitutional Court recognizing the right of the indigenous communities to prior consultation where fumigation of illegal crops is to take place in their reservations, this right continues to be violated by the State in cases of projects for exploiting resources.

### **Women**

93. It is worth mentioning the signing of the national agreement on gender equality in October 2003 by all of the branches of the Government, and the adoption of the National Policy on Sexual and Reproductive Health. In spite of this, and of some legislative progress, the persistence of sexual discrimination, exclusion and violence continue to affect real equality between men and women. Greater advances are required in the execution and effectiveness of this policy for women. The commitment of the Government on this matter is weakened by the lack of institutional strengthening and the resulting absence of administrative, budgetary and technical autonomy.

94. The diverse forms of violence perpetrated against women, in the context of the armed conflict, continue to affect their rights. The office in Colombia received complaints of rapes by paramilitary groups and members of the security forces, as well as complaints of sexual enslavement on the part of the guerrilla groups. The illegal armed groups continue exercising social pressure on women aimed at weakening their organizational process and their participation in public activities. In the face of this situation, effective responses provided by the State are insufficient in terms of the protection, prevention, investigation and punishment of these acts. Of special concern are the rape cases currently under the jurisdiction of the military criminal justice system.<sup>40</sup>

95. The rights of women participating in the hostilities, especially sexual and reproductive rights, are particularly affected by abuse of power inside the illegal armed groups. Similarly, FARC-EP continues compulsory use of contraceptives and forced abortion.

### **Children**

96. Large numbers of children continued to be the victims of violations of the right to life and are also affected by abandonment, child labour, sexual exploitation and abuse, physical ill-treatment and familial violence.<sup>41</sup> In terms of economic, social and cultural rights, children and adolescents are the principal victims of neglect in this area. Similarly, the armed conflict has

a strong negative impact on children, particularly because of hostage-taking,<sup>42</sup> recruitment, displacement, and the consequences of breaches of humanitarian law perpetrated against their communities and families.<sup>43</sup>

### **Journalists**

97. The situation of journalists continued to be precarious, with limited space for free and independent exercise of their profession and the freedom of opinion, expression and information. During 2003, at least four homicides and executions of journalists were registered. Two of them were covered by the Protection Programme of the Ministry of Justice and the Interior and their risk level had been assessed as medium-low. Illegal armed groups continued to threaten and intimidate journalists as well as resorting to hostage-taking. Increased pressure by paramilitary groups on journalists covering their crimes, especially in Bogotá, coincided with the negotiation process between the Government and the paramilitary groups. Threats in the regions have also been attributed to the guerrilla groups. Other threats, of unknown origin, were made in order to prevent the reporting of cases of corruption involving public servants.

98. It was reported that, on some occasions, State authorities in the Departments of Arauca and César hindered the work of journalists by detaining them and confiscating their press material. The application of the democratic security policy in the Department of Arauca did not avoid the forced displacement of 15 journalists during the months of March and April because of threats by the illegal armed groups or the homicide of one threatened journalist who was a beneficiary of the Protection Programme of the Ministry of Justice and the Interior. It can be concluded then that the measures adopted in Arauca have not created favourable conditions for the full exercise of freedom of the press and the right of the population to be informed in a true and impartial way. For this reason many journalists have shown an increase in self-censorship, which they define as “self-regulation in order to survive”.

### **Communities at risk**

99. The growing tendency in forced displacement has been reversed in 2003, with a reported decrease in the number of new events. This change may be explained by factors such as the impact of the security policy and of returns arranged by the Government, the confinement of communities by the illegal armed groups, for example in Gabarra (Norte de Santander), the magnitude of displacement in previous years, which had left several rural areas practically abandoned, as in eastern Antioquia or in Putumayo, and also the impact of negotiations between the Government and AUC. The increased presence on the part of the security forces did not lead to avoidance of new forced displacements in some municipalities that were part of the rehabilitation and consolidation zones.

100. According to the Social Solidarity Network, between 1 January and 30 September, around 76 per cent of forced displacement occurred in 12 departments, the most affected being Antioquia, César, Bolivar, and Putumayo, with 4 per cent of the displaced population being minors, 50 per cent women (19 per cent heads of household), 4 per cent indigenous and 5 per cent Afro-Colombians. The Social Solidarity Network points to the overall insecurity, armed confrontations, selective threats, massacres and the occupation of municipalities by illegal

armed groups as being the causes of displacement. According to the same source, the *autodefensas* were responsible for nearly 33 per cent of the displacements, the guerrilla groups for 24 per cent and the security forces for 0.8 per cent; 35 per cent of the displacements were caused by more than one armed group.<sup>44</sup>

101. The policy of attention to displaced populations suffered setbacks. The differentiated attention regarding health, housing, access to land and production projects, has been affected by the process of restructuring of public entities, the lack of definition of policies, the limited budgets and the weakening of positive discrimination measures. The Constitutional Court, in a ruling made on March 2003, protected the right of intra-urban displaced people to receive benefits and assistance provided for by national regulations. Despite achievements in emergency assistance, especially in the case of mass displacements, there is a high degree of neglect of the economic, social and cultural rights of the displaced population, particularly of women, children and ethnic groups. Additionally, there is a particular interest in Government policy in favour of the return of the displaced to their places of origin. Nevertheless, in the returns promoted by the network, the willingness of the displaced continues to be questionable due to the lack of social and economic options, of information, of a process implying participation and guarantees of security, due to the still existing time limit on the duration of aid, the continuation of the conflict and the few options for re-establishing and relocating.

### **Other vulnerable groups**

102. Municipal and departmental officials (mayors, councillors and representatives), the members of the *Unión Patriótica* (UP), prosecutors, members of religious orders and homosexuals can be included among groups particularly affected by the armed conflict and by the human rights situation in this country. The Colombian Federation of Municipalities and the National Federation of Councils recorded 8 homicides of mayors and 56 of town or city councillors, until October 2003. Up until May of the same year, 107 mayors had to carry out their functions from outside of their municipalities, mostly in departmental capitals. Additionally, the vulnerability of UP members continued. According to *Reiniciar*, they suffered 16 homicides (among them two town or city councillors, one candidate for mayor and one for governor) and six forced disappearances (including one candidate for mayor). Similarly *ASONAL Judicial* (National Judicial Association) reported 17 homicides, 5 attacks and 56 death threats against judicial officials, until October. Homicides, threats and the taking of their members as hostages have also affected Catholic and Protestant religious communities. Finally, other groups, such as homosexuals, apart from being the victims of acts of violence inspired by intolerance, were not able to achieve legislative progress in the protection of their rights.

## **VI. RECOMMENDATIONS**

103. **On the basis of his detailed analysis, the High Commissioner puts forward a series of concrete priority recommendations for 2004. These recommendations, which are not exhaustive, are grouped under six headings: prevention and protection; internal armed conflict; the rule of law and impunity; economic and social policies; promotion of a human rights culture; and technical cooperation and advice on the part of his office in Colombia.**

104. The recommendations are addressed to the national authorities in the three branches of government as well as to the supervisory bodies responsible for protecting and promoting human rights, to all of the parties to the internal armed conflict, and to civil society. The High Commissioner is firmly convinced that the situation regarding human rights and international humanitarian law would improve notably if the following recommendations were to be applied during the year 2004 by those to whom they are addressed.

(a) Prevention and protection

105. The High Commissioner encourages the Government to strengthen coordination between the Early Warning System (SAT), established in the Office of the Ombudsman, and the Inter-Institutional Early Warning Committee (CIAT), following up on the actions taken by authorities in areas identified by risk reports. The Committee ought also to include the Office of the Ombudsman, the Social Solidarity Network and the Ministry of Justice and the Interior's Programme for protection of human rights defenders.

106. The High Commissioner encourages the Government to ensure that the programmes for the protection of human rights defenders and other groups, for which the Ministry of the Interior's Human Rights Department is responsible, operate with the necessary coverage and effectiveness. The Ministry, together with other State institutions, ought to search for new mechanisms aimed at reducing risk factors and at acting preventively against them.

107. The High Commissioner encourages the Social Solidarity Network, together with other government and State institutions, to put into practice, as soon as possible, preventive and protective actions and programmes that have been agreed upon with the communities at risk. With respect to displacement, the United Nations Guiding Principles should be strictly applied.

108. The High Commissioner exhorts the Government and Congress to ensure inclusion in the national budget of funds required to provide the Procurator General's Office and the Office of the Ombudsman with the necessary means to establish themselves in localities in which they are currently absent, especially in areas with a high proportion of indigenous, Afro-Colombian and displaced persons. The High Commissioner also recommends that the Procurator General's Office and the Office of the Ombudsman comprehensively include Municipal Ombudsmen in their activities and programmes related to human rights protection and promotion.

109. The High Commissioner encourages the Procurator General to carry out, during the first semester of 2004, the pending review of military intelligence records concerning human rights defenders and organizations. This review ought to be carried out at least once a year.

110. The High Commissioner recommends the State Procurator's institutions (*Ministerio Público*) and senior public service officials to comply with their duty to take disciplinary action against any State employees who through their declarations, actions or omissions in any way discredit or jeopardize the work of human rights defenders.

111. **The High Commissioner encourages the Minister of Defense to develop, on the basis of the results of an independent study, in a comprehensive, systematic and operational way, the training in human rights and international humanitarian law of all members of the security forces.**

**(b) Internal armed conflict**

112. **The High Commissioner urges FARC-EP, ELN, AUC and other guerrilla and paramilitary groups to respect the right to life of all civilians. The High Commissioner urges them in particular to refrain at all times from attacks on the civilian population, indiscriminate attacks, the unacceptable practice of kidnapping, recruitment of minors, and acts of terrorism.**

113. **The High Commissioner urges FARC-EP, ELN, AUC and all other illegal armed groups to immediately and unconditionally release everyone they have taken hostage and anyone who has laid down their arms or has ceased to take part in hostilities.**

114. **The High Commissioner urges FARC-EP, ELN, AUC and all other illegal armed groups to refrain from any action that may affect the civilian population's enjoyment of human rights and diminish the ability of the Colombian State to fulfil its obligation to protect and safeguard those rights.**

115. **The High Commissioner urges the illegal armed groups, in particular FARC-EP and ELN, to comply with the obligations imposed on them by international rules that prohibit the employment, storage, production and transfer of anti-personnel mines.**

116. **The High Commissioner urges all those directly involved in the hostilities in the context of the internal armed conflict to observe, without restriction, the humanitarian principles of limitation, distinction, and proportionality and the general obligation to protect the civilian population, as well as to guarantee humanitarian access to vulnerable populations.**

117. **The High Commissioner recommends that the Government, the illegal armed groups and representative sectors of civil society spare no effort to establish contacts for dialogue and negotiation in order to resolve the internal armed conflict and achieve a lasting peace. The dialogues and negotiations should from the outset take human rights and international humanitarian law into account. The High Commissioner exhorts the Government and Congress to fully honour the fundamental principles of truth, justice and reparation for victims, in all dialogues and negotiations with illegal armed groups.**

**(c) The rule of law and impunity**

118. **The High Commissioner exhorts the Government and Congress to pay due attention to the obligations assumed by Colombia as a State party to international human rights, international humanitarian law and international labour law instruments. The**

**High Commissioner recommends the Government to carry out the ratification of international treaties relating to such matters and to deposit the ratification instruments of treaties that have been internally approved. The High Commissioner urges that no rule incompatible with such instruments should be introduced or maintained in Colombian legislation. He further recommends that greater use be made of the advisory services of the office in Colombia of the High Commissioner.**

**119. The High Commissioner calls upon the Special Committee on the conduct of investigations into human rights violations and breaches of international humanitarian law to present concrete results concerning the selected cases and to present quarterly reports to the President of the Republic on the progress achieved in the investigation of these cases.**

**120. The High Commissioner exhorts the Attorney-General to guarantee, pursuant to the letter of understanding signed in November 2003 with his office in Colombia, compliance with the recommendations of 2002 during the first half of 2004. These recommendations relate to the programme for the protection of witnesses and victims, the bill on a career structure for officials and employees of his office, the strengthening of the Unit of Human Rights and International Humanitarian Law, and the creation of a group specializing in the investigation of possible links between members of the security forces and paramilitary groups.**

**121. The High Commissioner exhorts the Attorney-General to safeguard and respect the independence of prosecutors in the performance of all of their duties and to guarantee that procedures involving detentions and searches are supported by sufficient evidence and carried out with respect for due process.**

**122. The High Commissioner calls on the Procurator General and the Ombudsman to promote and instil respect for procedural guarantees for those deprived of liberty whose legal situation has not yet been defined. The High Commissioner invites the Procurator General and the Ombudsman to present public reports on this matter. The High Commissioner exhorts the National Prison and Penitentiary Institute (INPEC) to guarantee and respect the rights of all inmates.**

**123. The High Commissioner recommends the Minister of Defense to ensure the effectiveness of all disciplinary investigations into serious human rights violations or war crimes attributed to members of the security forces, and to suspend them from duty as a preventive measure. The High Commissioner also exhorts that the military criminal jurisdiction be limited to crimes related to service.**

**124. The High Commissioner recommends the President of the Republic, in his capacity as Head of State and Commander-in-Chief of the security forces, to take all necessary steps to ensure that, independently of any dialogue conducted between the Government and the paramilitary groups, all links between public officials and members of such groups be severed. The High Commissioner also recommends the President to present a report to the State Prosecutor's institutions (*Ministerio Público*) every six months on the measures adopted and the results of their application.**

**(d) Economic and social policies**

125. The High Commissioner exhorts the Government to develop a consistent policy, based on updated statistics, to reduce inequality, confront the extreme poverty that exists in the country and ensure that all necessary steps are taken to decrease illiteracy and unemployment rates and improve access to health care, education and housing. Primary education should be free and health services and housing subsidies ought to be guaranteed for the most disadvantaged sectors of the population.

**(e) Promotion of a human rights culture**

126. The High Commissioner recommends that the Government and the organizations of human rights defenders develop and institutionalize stable communication channels, both at the national as well as the regional levels, in order to achieve a greater degree of understanding and improve the promotion and protection of human rights throughout the country.

127. The High Commissioner recommends that the Government, through the Standing Intersectorial Commission on Human Rights and International Humanitarian Law, prepare a concerted plan of action on human rights and international humanitarian law, to be created in collaboration with broad sectors of society and which includes an integral gender approach. Within the first semester of 2004, a timetable ought to be agreed upon in order to enable that the action plan be concluded by the end of the year.

128. The High Commissioner recommends that the Minister of Education adopt, in 2004, a working plan that effectively makes comprehensive teaching of human rights part of the primary and secondary school education.

129. The High Commissioner encourages Congress, the High Council of the Judiciary, the Attorney-General, the Higher School of Public Administration and the associations of Governors and Mayors to make arrangements with the Procurator General's Office and the Office of the Ombudsman for continuous training in human rights and international humanitarian law. The High Commissioner also recommends that the Office of the Ombudsman and other institutions make use of the network of human rights educators trained by his office in Colombia.

**(f) Advisory services and technical assistance by the office**

130. The High Commissioner urges the State to implement in a coherent and efficient manner the international recommendations, including those made in this report, and exhorts the Vice-President of the Republic, the relevant Ministers, the High Commissioner for Peace and all other State institutions to adequately coordinate among themselves. The aforementioned institutions ought to prepare, within the first semester of 2004, a timetable for the implementation of these recommendations. In this respect, the High Commissioner invites them to make use of the advisory capacity of his office in Colombia.



**131. The High Commissioner invites the Government, the Congress, the Attorney-General's Office, the Procurator General's Office, the Office of the Ombudsman and the organizations of civil society to enhance their interlocution with his office in Colombia, taking full advantage of its mandate regarding advisory services and technical cooperation. The High Commissioner also invites the international community to provide financial and technical support to the different State institutions, to the organizations of civil society and to his office in Colombia in order to contribute towards the effective implementation of the recommendations.**

#### Notes

<sup>1</sup> For more information, see annex IV.

<sup>2</sup> See annex I.

<sup>3</sup> See document "Política de Defensa y Seguridad Democrática" (Defense and Democratic Security Policy) Ministry of Defense, Presidency of the Republic, 2003.

<sup>4</sup> See note A, annex II.

<sup>5</sup> The first case was part of the proposed reform of justice, a bill that eventually was not formally presented to the Congress and was left for the next legislature. In the second case, the Congress withdrew the bill, taking into account the short terms left in the current legislature. See annex III of this report.

<sup>6</sup> According to information provided by the Government in reply to the Office's request.

<sup>7</sup> See annex II, para. 3.

<sup>8</sup> See annex III, paras. 9, 10 and 11.

<sup>9</sup> An example, the responsibilities of the institutions in the indiscriminate attack of Bojayá, in May 2002 (see Follow-up Report of the Office of the High Commissioner in Colombia, of June 2003); and in homicides and disappearances in the Comuna 13 of Medellín, as a consequence of Operation Orion, developed on 16 October 2002.

<sup>10</sup> See annexes I and IV.

<sup>11</sup> See previously mentioned document "Política de Defensa y Seguridad Democrática", p. 19, para. 24.

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

<sup>13</sup> See statistics from the "Observatorio de Derechos Humanos de la Vicepresidencia".

<sup>14</sup> See the report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2003/13, p. 54, para. 27 and note O.

<sup>15</sup> See annex II, para. 20.

<sup>16</sup> See annex II, paras. 10, 13, 14, 15, 16, 17, 18, 19, 24 and 26.

<sup>17</sup> See annex II, paras. 27-30.

<sup>18</sup> However, one month later, through a public communiqué, FARC-EP denied being responsible for this act.

<sup>19</sup> See annex II, para. 24.

<sup>20</sup> See annex II, para. 23.

<sup>21</sup> See annex II.

<sup>22</sup> See annex II, para. 20.

<sup>23</sup> See annex II, para. 34.

<sup>24</sup> See annex II. See also paras. 23 and 24 of this report.

<sup>25</sup> See annex III.

<sup>26</sup> See annex II, paras. 2 and 3.

<sup>27</sup> *Ibid.*, para. 3.

<sup>28</sup> *Ibid.*, para. 6.

<sup>29</sup> *Ibid.*, para. 12.

<sup>30</sup> *Ibid.*, para. 8.

<sup>31</sup> The Committee Against Torture reiterated “its concern for the great number of acts of torture and ill-treatments allegedly perpetrated in a generalized and usual way by the forces or corps of the State ...”. See document CAT/C/CR/31/1, para. 8, of 18 November 2003.

<sup>32</sup> The conditions and the internal regulations, under which these establishments function, may constitute cruel, inhuman or degrading treatments in giving excessive priority to the criteria of security and discipline.

<sup>33</sup> See annex II, para. 5.

<sup>34</sup> The Committee Against Torture has indicated that this situation could be equivalent to cruel, inhuman or degrading treatments (see documents CAT/CR/31/1, page 5, para. 10, point D.e).

<sup>35</sup> See annex II, paras. 9 and 10.

<sup>36</sup> Ibid., para. 10.

<sup>37</sup> Ibid., para. 3.

<sup>38</sup> See chap. III of this report.

<sup>39</sup> Among them, the President of the Republic, a few ministers and military commanders.

<sup>40</sup> See annex II, para. 10.

<sup>41</sup> According to UNICEF, 35,000 children are sexually exploited and 653,000 are child workers, aged between 5 and 11 years old. It is estimated that around 2 million children are maltreated in their homes, 850,000 of them in a severe manner.

<sup>42</sup> According to *Fundación País Libre* (Free Country Foundation), 243 minors have been taken as hostages between January and September 2003.

<sup>43</sup> See annex II, paras. 27 and 28.

<sup>44</sup> According to information provided by the Government in reply to the Office's request.

## Annex I

### **STATUS OF IMPLEMENTATION OF THE RECOMMENDATIONS FORMULATED BY THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS IN HIS 2003 REPORT ON THE HUMAN RIGHTS SITUATION IN COLOMBIA IN 2002**

1. Since 1997, the United Nations High Commissioner for Human Rights has presented an annual analytical report on the human rights situation in Colombia to the Commission on Human Rights. This report, as provided for in the Agreement reached between the Government of Colombia and the United Nations in November of 1996 - and currently renewed until 30 October 2006 - includes the recommendations considered pertinent by the High Commissioner.
2. The 27 recommendations contained in the report for the year 2002 and submitted in April 2003 are addressed to the executive, legislative and judicial authorities of the Colombian State, to the organisms for control charged with protection and promotion of human rights and to the civil society, aimed at supporting the efforts made in the country directed at improving the overall situation of human rights and international humanitarian law. They are also addressed to the armed illegal groups.
3. In his report for the year 2002, the High Commissioner expressed “the firm conviction that the situation regarding human rights and international humanitarian law could be noticeably improved if the (...) recommendations were to be taken into account and applied in 2003” (E/CN.4/2003/13, para. 154).
4. The statement on Colombia formulated by the Chairperson of the Commission on Human Rights in April 2003 expresses the consensus reached between the international community and the Government of Colombia. The latter was urged to fully comply with the recommendations made in the High Commissioner’s report (E/CN.4/2002/200, para. 45).
5. The commitment to implement the recommendations was later reiterated by the Republic of Colombia when, in July 2003, government representatives met in London with senior level representatives of the Governments of Argentina, Brazil, Canada, Chile, Japan, Mexico, Norway, Switzerland and the United States of America, the member States of the European Union, of the United Nations, of the Andean Development Corporation, the Inter-American Development Bank, the International Monetary Fund and the World Bank. In the Declaration of London, the countries “noted with satisfaction the commitment on the part of the Government of Colombia to implement the recommendations of the United Nations High Commissioner for Human Rights and urged the Government of Colombia to implement these recommendations promptly as well as to adopt effective measures against impunity and complicity, especially with the paramilitary groups”.
6. The efforts on the part of the State to initiate actions aimed at achieving effective implementation of the recommendations must be recognized, although they are just beginning. There are promising initiatives which, if strengthened, could have a positive impact on the fulfilment of Colombian commitments in this field.

7. The office in Colombia of the High Commissioner has achieved a fluid dialogue with the diverse entities of the Colombian State in the course of following up on the recommendations. However, the international commitment made by the Government to put these recommendations into effect was rejected by some of its highest officials, which limited satisfactory implementation of the majority of them on the part of institutions charged with their fulfilment. Other factors having an influence on unsatisfactory compliance with the recommendations, at the moment the report was completed, included the insufficient priority placed on human rights and international humanitarian law by senior government officials, the limited importance given to these topics in some public policies, failings in inter-institutional coordination, the presentation of projects for constitutional change and for new laws that are incompatible with international norms, the limited dialogue and failure to create established forums for discussion between the executive branch and non-governmental organizations and the infrequent use made of the office in Colombia's advisory services on the part of the State.

8. With regard to the recommendations made to the illegal armed groups, which include FARC-EP, ELN and AUC, they were not taken into account by these groups who throughout 2003 continued to contribute to the ongoing degradation of the internal armed conflict through acts of extreme violence and terrorism, characterized by an intense victimization of civilians.

9. In the following section, we will analyse actions by the State aimed at implementing the recommendations made to it. These recommendations are grouped under six headings: prevention and protection; internal armed conflict; democracy and impunity; economic and social policies; promotion of a human rights culture; and advisory services and technical cooperation on the part of the office in Colombia of the High Commissioner.

### **Prevention and protection**

10. The eight recommendations grouped together under this heading were formulated in order to empower and strengthen the work of institutions charged with the prevention of human rights violations and breaches of international humanitarian law, protection for human rights defenders, witnesses and victims, preventive action with respect to risk factors for communities affected by the armed conflict and the application of disciplinary sanctions against agents of the State who, by action or omission, endanger the work of defending human rights.

11. In this respect, the Government's decision at the end of 2002 to establish the Inter-Institutional Early Warning Committee (or CIAT, from its initials in Spanish), inside the Ministry of Justice and Law, must be greeted with satisfaction. This committee is made up of public servants from that ministry as well as from the Ministry of Defense, the Security Forces and the Presidential Programme for Human Rights. This initiative from its very beginnings had to overcome great challenges, such as establishing its way of operating, the criteria for determining risk and the measures to be adopted for preventing an alert. It must be noted, however, that the establishment of the SAT represents a positive element to counter the difficult human rights and international humanitarian law situation.

12. It should be mentioned that analysis of the reports on risks and, as a result, timely actions identified by the CIAT, have for the most part adhered to a military approach. At the same time, measures that are the responsibility of the civil authorities have been delegated to the departmental level, without effective follow-up mechanisms being drawn up in order to ensure their implementation.

13. In the course of carrying out the committee's activities, certain failures also became evident, including the weak hierarchical representation of the participating officials, the utilization of the Ombudsman's Office reports on risks as the only source, excessive decentralization and the lack of adequate follow-up procedure on the alerts after they have been issued.

14. At the same time, it became evident that the warning system, initially created for the prevention of grave and massive human rights violations and breaches of international humanitarian law, lacked the necessary capacity and flexibility to coordinate with other governmental bodies the task of preventing certain types of conduct that constitute violations and that occurred throughout the year, such as selective homicides, forced disappearances and acts of terrorism.

15. In some cases in which the Ombudsman's Office did not issue reports on risk, the CIAT abstained from producing alerts. In other cases, in spite of the existence of reports on risk from the Ombudsman's Office, the Committee did not act upon them. There were also situations in which, despite reports on risk provided by the Ombudsman's Office and the issuing of alerts on the part of the CIAT, the violation or infraction that the reports aimed to prevent unfortunately occurred nonetheless.

16. On the other hand, the Ministry of the Interior's Programme for Protection was able to initiate, although with delays, application of the recommendations for external evaluation made in 2001. This led to progress in providing pending plans for security. The office in Colombia was informed that a proposal exists on the part of the Office of the Vice-President to resolve the problem of the so-called "trusted bodyguards" but this has not yet been formalized.

17. It must also be noted that there has been no progress in the work of preventing the risk factors generated by public servants whose public declarations have sometimes contributed towards making evident the vulnerabilities of the system for prevention and protection, thus intensifying the danger to its beneficiaries while increasing the budgetary needs of the programmes that cover them.

18. With respect to the recommendation directed at the Attorney-General's Office regarding the programme for the protection of witnesses and victims, that institution has not implemented it. However, it must be noted that in November 2003, the office in Colombia of the High Commissioner and the Attorney-General's Office signed an agreement for cooperation that, if executed according to its timetable, will make it possible during the first half of 2004 to incorporate the recommendations formulated by the office in its 2001 study.

19. With respect to the identification of communities at risk due to the internal armed conflict and the implementation of programmes for preventive attention and protection for these communities, it must be stated that the hoped-for progress has not been observed. The working

group made up of the Social Solidarity Network, representing the Government, the Ombudsman's Office, the NGO Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) and agencies of the United Nations system, has met, although not as frequently as desired, and has made progress in formulating the theoretical framework as well as the instrument for carrying out this work. However, it has only carried out a mission to Catatumbo, in which the difficulties for defining the institutional offer of programmes aimed at communities at risk, and particularly those not included in the target population of the regulations on internal displacement, were evident.

20. At the same time, the Procurator General's Office, the Ombudsman's Office and the Government have not been able to determine the budgetary needs that would make it possible for them to establish a presence in those municipalities in which they do not yet have one. This limits the operations of the institutions for control and defence of human rights precisely in the areas where they are most needed. Although the Ombudsman's Office was able to designate community ombudsmen in some of the country's most remote zones, this was achieved thanks to international contributions.

21. There has not been full compliance with the recommendation formulated and submitted to the State Procurator's offices and the higher members of the hierarchy so that they will apply disciplinary sanctions to public servants responsible by action or omission for endangering human rights defenders. The prohibition on making declarations that could affect the safety of these defenders, which was reinforced by Presidential Directive No. 07 of 1999 and Ministry of Defense Directive No. 09 of 2003, has been disobeyed by a number of public servants without any known disciplinary action being taken.

22. With respect to the recommendation made to the Procurator General that the accuracy and objectivity of information contained in the military intelligence files on human rights defenders be verified, we have yet to see a report on this topic.

23. With respect to the recommendation for incorporating systematic study of international human rights law and international humanitarian law into the training given to members of the Security Forces, and for signing an agreement with the Ministry of Defense and the Ombudsman's Office for continuous training, some working sessions have been held between the Ministry and the office in Colombia of the High Commissioner. However, at the time of finishing the report, there have not been concrete actions or results to report.

### **Internal armed conflict**

24. Of the six recommendations grouped together under this topic, three were aimed at the illegal armed groups, such as FARC-EP, ELN and AUC along with the other guerrilla and paramilitary groups, one at the military and police forces and two at all of the parties involved in the internal armed conflict and at the civil society. They were formulated by the High Commissioner to encourage observance of international humanitarian law, respect for the civilian population and the search for ways to resolve the internal armed conflict by means of dialogue and negotiation, respecting certain important rights.

25. These recommendations were neither adopted nor respected by the outlawed armed groups, who continued to commit grave crimes against the civilian population.

26. Regarding the recommendations made to the Security Forces in terms of observance of the humanitarian principles of limitation, distinction, proportionality and general protection of the civilian population, the office in Colombia has corroborated that they are not always put into practice by the members of the government armed forces. This has given rise to a number of breaches of international humanitarian law. In addition, some of the actions undertaken by the Government in implementing its “democratic security” policy were contrary to the international principle of distinction.

27. In this sense, dispositions contrary to the principle of distinction established in international norms have been detected in the proposed legislation on the organization of national security and defence presented to Congress at the initiative of the Government.

28. With respect to the recommendation, addressed to all of the parties to the conflict, to comply with obligations arising from international norms regarding anti-personnel mines, it must be emphasized that the illegal armed groups, and especially FARC-EP, have continued illegal, massive and indiscriminate use of anti-personnel mines and other explosive devices. On the other hand, the Colombian State has made progress with respect to international norms, has commenced execution of a plan to destroy mines in storage, has strengthened the Anti-personnel Mines Observatory, has prepared a detailed National Plan of Action for Comprehensive Action against Anti-personnel Mines and has concluded agreements for technical assistance with international organisms. However, there is a need to strengthen mechanisms for protecting the civilian population and preventing accidents due to anti-personnel mines through locating and placing signposts and demarcations on the minefields as well as for guaranteeing better attention for the victims.

29. Regarding the recommendation to take human rights and international humanitarian law into account during the dialogues and negotiations for resolving the internal armed conflict, this has not been fully carried out. The Government has initiated dialogue and negotiations with the paramilitary groups aimed at their demobilization. However, to date, the process has given rise to serious questions with respect to guarantees for victims’ rights to truth, justice and reparation in the course of these dialogues. Nor is there clarity with regard to the legal treatment to be given by the State to paramilitaries responsible for grave human rights violations, war crimes and crimes against humanity.

### **Rule of law and impunity**

30. The seven recommendations grouped together under this heading were formulated by the High Commissioner to obtain compatibility between internal policies and norms and the international obligations of the State, strengthen the independence and impartiality of the Attorney-General’s Office, increase the effectiveness of the fight against the paramilitary groups, begin to lower the rate of impunity and to cut every link between agents of the State and the illegal armed groups, particularly the self-defence forces and paramilitaries.



31. With respect to the recommendation against introducing regulations into domestic law that are incompatible with international precepts, it must be noted that the Government submitted legislation to Congress, aimed at constitutional amendment and change of current laws, whose content is not compatible with that stipulated in various international instruments that have been ratified (see annex III).

32. In relation to the three recommendations addressed to the Attorney-General's Office, that institution was unable to fulfil any of them. It should be noted that the Attorney-General's Office, along with the office in Colombia of the High Commissioner, signed a letter of understanding for implementation of the recommendations. Such cooperation could help to reaffirm the independence of the prosecutors, strengthen the Human Rights Unit, intensify the struggle against the paramilitary groups and investigate links between the military and police forces and the paramilitary groups in the first half of 2004. However, follow-up will have to be made on the Attorney-General's Office's fulfilment of the timetable and of the recommendations arising from the study.

33. Regarding the Special Committee to promote investigations of human rights violations and breaches of international humanitarian law, it must be noted that the work of revising these cases could only begin in the second half of the year. However, the results of the Committee's work are not known. It is to be hoped that the quarterly report that the Committee must make to the President will show progress in this area. If the Committee is able to produce concrete results in the investigations it is charged with carrying out, it could become a valuable instrument in the fight against impunity. To this end, greater action on the part of the institutions making up the committee is required, as well as concrete support by the highest levels of the Executive.

34. Regarding preventive disciplinary suspension of members of the Security Forces involved in grave human rights violations and war crimes, the office in Colombia is not aware of a single case in which such a suspension has been applied in disciplinary proceedings carried out by officials of the Ministry of Defense. It may therefore be concluded that this legal power, established in the recommendation formulated with regard to this area, has until this moment not been used.

35. With respect to the measures taken in order to cut ties between public servants and paramilitary groups, the office in Colombia has not received notice of the President informing the Procurator General and the Ombudsman's Office on a quarterly basis regarding his actions in this field. Nor did the office in Colombia observe significant progress in investigating and punishing such ties. However, it appears that the recommendation for the dismissal of certain public servants has been taken into account.

### **Economic and social policies**

36. With regard to the recommendation to reduce the inequality gap, decrease the rates of illiteracy and unemployment as well as regarding the right to health care, education and housing, the results are far from satisfactory.

37. The State doubled public expenditure on education during the period from 1997 to 2002. It has also expanded coverage of secondary education, with the exception of middle school. However, departments with fewer resources and less educational infrastructure were affected to a greater degree because they could not benefit from a preferential regimen. The application of legislative act 012 and Law 715 have decreased these municipalities' possibilities of receiving greater resources. At the same time, the dual educational system, public and private, that is in effect in Colombia and the lack of adequate resources for the public system have increased the gap between these two sectors, of which the private sector benefits to a greater extent.

38. In health care, the national expenditure by the State in the period between 1994 and 2002 also doubled. However, this has not been matched in public utilities, nor has it benefited the less favoured sectors and regions. In fact, the most progress in terms of coverage has been made in Bogotá and Medellín, and the least progress in the most backward and conflictive regions.

39. Unemployment, according to sources at the National Administrative Department for Statistics (DANE), has continued in the range of 13-14 per cent, which is not far from the average since 2001. In October 2003, the employed population numbered 18.2 million, while those economically active were 49 per cent of the total.

40. According to DANE, the proportion of the population that possesses their own homes is much less than it was 10 years ago. The financial sector crisis and the impoverishment of the population have proven an obstacle for access to housing. It is significant that over the last few years, housing for the poorer segments of the population has fallen by 50 per cent.

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

41. The three recommendations grouped together under this topic were formulated by the High Commissioner to encourage the drawing up of an action plan for human rights, with an integrated gender approach, to achieve the incorporation of these rights into primary and secondary education and promote constant training of officials and employees of the judiciary branch in human rights and international humanitarian law.

42. With respect to the national action plan on human rights that was agreed to at the 1993 World Conference on Human Rights, the Government of Colombia was unable to draw it up in 2003 or to begin a sustainable process for negotiating with important sectors of civil society. The Government has indicated that it will have drawn this plan up by August 2004.

43. Regarding incorporation of human rights teaching in primary and secondary school programmes, the office in Colombia of the High Commissioner has taken note of the signing of an agreement between the Ombudsman's Office and the Ministry of Defense aimed at training teachers on this subject.

44. The office in Colombia is unaware of the establishment of agreements between the Ombudsman's Office and the judicial authorities to ensure constant training of the employees of this branch in human rights and international humanitarian law.

**Technical cooperation and advice on the part of the office in Colombia of the High Commissioner**

45. The two recommendations grouped together under this heading were formulated by the High Commissioner so that the Colombian authorities would follow-up on international recommendations and so that the different institutions of the Government and the State would intensify their dialogue with the office in Colombia and fully benefit from its mandate to provide technical assistance and advice.

46. In this sense, some authorities have not understood the value of the advice and technical cooperation of the office in Colombia in order to strengthen their efforts in areas relating to our mandate. It must be stated that, with some exceptions, the office in Colombia has not been consulted in the drawing up of proposed laws relating to human rights and international humanitarian law.

## **Annex II**

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

#### **A. Introduction**

1. The principal violations and breaches recorded by the office in Colombia of the High Commissioner during 2003 are incorporated here, including the modalities identified, those to whom they are attributed or who are considered to be responsible and the groups that were specifically affected. With respect to the investigations begun into a number of these occurrences or the progress made, the office in Colombia has not been able to obtain in a timely fashion the information requested from the Attorney-General's Office.

#### **B. Human rights**

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

##### **(a) The right to life**

2. This right was affected by extrajudicial executions, both individual and collective, and by death threats. Complaints have been made with respect to various extrajudicial executions directly attributed to the Security Forces. Examples include the executions of seven people, of whom two were minors, between February and September of from the indigenous communities of the Upper Atrato, in Lloró and Bagadó (Cihocó), which were attributed to members of the Army who, in almost all of these cases, presented the bodies as having been killed in combat. Another case refers to the execution of an individual in Arauquita (Arauca), in February, on the same day on which the victim had filed a complaint against members of the Army. The execution of a three-year-old girl in March in the community of San José de Apartadó that was attributed to members of the Army was also denounced.

3. Executions, both individual and collective, were committed by paramilitaries. Reliable information continued to be received that State responsibility was involved. Examples of responsibility due to omission include the massacre of 11 people in January in Tolima. Complaints were made with respect to collusion on the part of members of the National Police due to links between them and paramilitary hired assassins in the massacre of five people in July in Saravena (Arauca), which occurred moments after the police had arrived. Some of the victims had been repeatedly detained by the police and stigmatized as collaborators of the guerrilla groups. Also, responsibility was attributed to the State due to omission or complicity on the part of members of the Security Forces, particularly in executions carried out this year in Viotá (Cundinamarca), in Tame and Saravena (Arauca), in Cajibío and Timbio (Cauca) and in the executions of Kankuamo indigenous people in Cesar. The homicides perpetrated by paramilitaries in the Comuna 13 of Medellín (Antioquia), involved responsibility on the part of the State due to omission and as a result of disregarding their duty to prevent violations and to protect the civilian population, considering the control and the strong military and police presence in the zone.

**(b) Right to personal integrity**

4. There was an increase recorded in the complaints of violations of this right due to acts of torture and cruel, inhuman or degrading treatment and the excessive use of force on the part of members of the Security Forces and government employees in the field of security, particularly in Bogotá and in the departments of Antioquia, Arauca and Tolima. The Ombudsman's Office recorded 374 complaints of violations of personal integrity. Complaints of torture on the part of members of the Army against various members of the Comunidad de Paz (Community of Peace) of San José de Apartadó (Antioquia) in March, and against a person in Viotá (Cundinamarca) in May are a source of concern. There were complaints in both cases that the aim had been to gather information and that the victims had to sign a document stating that they had been well treated.

5. Persons who were detained or imprisoned in the penitentiaries were also affected by these violations. It is pertinent here to mention the case of the torture and death of the inmate José Lara Lloreda in Peñas Blancas (Calarca, Quindío) jail and the torture of six prisoners along with the mistreatment of other prisoners and their families in the jail at San Isidro in Popayán, Cauca. Torture continues to be under-recorded, mainly because in various cases it is not denounced. In other cases, because it is associated with the death of the victim, torture is not recorded. In this sense, it must be pointed out that these acts along with rapes are rarely mentioned in forensic reports on deceased victims.

**(c) Right to individual freedom and personal safety**

6. The office in Colombia recorded an increase in complaints of forced disappearances and illegal or arbitrary detentions. Among the cases of forced disappearances attributed to the Security Forces, is the case of three young people in Granada (Antioquia) in January. There was also a complaint of joint action by members of the Security Forces and paramilitary groups in the events that led to the forced disappearance of two persons, in addition to the execution of others, in Cajamarca (Tolima) in November.

7. The office in Colombia of the High Commissioner recorded various complaints of forced disappearances perpetrated by the paramilitaries in zones controlled by the Security Forces and involving attribution of State responsibility due to omission, complicity or collusion on the part of public servants. These include the disappearance of a member of the Unión Patriótica in March in the Comuna 7 of Medellín (Antioquia) and that of six people in Corocito (Arauca) in February. The increase in forced disappearances carried out by paramilitaries in Barrancabermeja (Santander) and in the Comuna 13 of Medellín must be emphasized.

8. The office in Colombia received information on massive or individual arrests carried out by members of the Security Forces, particularly the Army, without prior court orders and not in situations of flagrante delicto. In other cases, the actions of the Attorney-General's Office were questioned because the arrest orders were drawn up after the arrests had been carried out or had been undertaken in an irregular manner because the persons had not been previously identified or the basis for their detention had been intelligence reports or mere identifications, which in some cases were made by hooded informants.<sup>a</sup> During the operation Estrella VI ("Star VI") in the Comuna 3 of Medellín (Antioquia) in January, 68 people were captured, of whom only 6 were the subject of arrest warrants. This operation was based on application of the concept of

“flagrancy in the permanent crime of rebellion” a concept that is incompatible with international principles.<sup>b</sup> In the case of the 156 people detained during Operation “Ovejas” (Sucre) in August, complaints were made of the use of hooded informants and the drawing up of the warrants a posteriori. A prosecutor from the Attorney-General’s Office subsequently ordered the release of these persons after being unable to find any elements to justify their arrest. Complaints were made to the effect that in the capture of more than 70 people in September on the part of the Security Forces and the Attorney-General’s Office in Cartagena del Chairá (Caquetá), half of those detained did not have an outstanding arrest warrant and were accused based on information from intelligence and from the network of cooperating persons.

**(d) Right to due process**

9. There was an increase in denunciations of violations of due process resulting from disregard for independence and impartiality in the administration of justice, for procedural guarantees and for the principle of the presumption of innocence. A number of these actions occurred within the framework of the “democratic security” policy, in the context of arbitrary or illegal detentions, with the participation of the Attorney-General’s Office and, on occasion, the Prosecutor General’s Office.

10. There were complaints of violations of judicial independence and the autonomy of investigators who, due to their decisions or the course of their investigations, were removed from the case or from their posts. Such was the case of the prosecutor from the Attorney-General’s Office charged with investigating the terrorist act in the Club El Nogal who was transferred to another office. In the above-mentioned case of Operation “Ovejas” (Sucre), the Attorney-General initially declared his intention to remove the prosecutor responsible for freeing the 128 people detained during this operation. He subsequently announced that he would be the subject of a disciplinary investigation, as he is one of the few prosecutors whose continuity in his post is protected by career status. In other cases, judicial independence was disregarded as a result of the persistence of investigations into human rights violations in the military justice system, such as the one undertaken by the 154th Military Criminal Investigating Magistrate’s Office into the conduct of police agents in the Valle de Aburra (Antioquia) in the rape of a woman.

**(e) Right to freedom of movement and residence**

11. Forced displacements and illegitimate impediments to internal transit continue to be the gravest violations of this right. The office in Colombia was able to observe that, during the first months of this year, the civilian population of the Middle Atrato suffered from the imposition by the Military Forces of limitations and restrictions on freedom of movement as well as other impediments to the entry and exit of foodstuffs, pharmaceuticals, fuel and construction materials. In April, members of the Army, the communities and the church reached an agreement to ease these restrictions.

**(f) Right to privacy and right to inviolability of the home**

12. Both during the time in which the state of exception was in force with the application of Decree 2002, as well as afterwards, these rights were affected by the carrying out of illegal and arbitrary raids and searches. These were undertaken without a court order or under the modality

of “voluntary raids or searches”, in which a court order is dispensed with, owing to the supposed authorization by the targets of these procedures. It is worth noting those carried out in the Comuna 13 of Medellín (Antioquia), in Saravena and Arauquita (Arauca), in the rural zones of Caquetá and Santander, and those undertaken in July by the Army in the Sabanetas reservation at El Tambo (Cauca). Complaints were also recorded with respect to violations of privacy in the carrying out of Army roadblocks (the taking of fingerprints and photographs), including cases of abuses committed against certain ethnic groups who were the victims of stigmatization, such as the indigenous populations of the Embera-Katíos (Córdoba) and of the Sierra Nevada de Santa Marta (Magdalena, La Guajira, Cesar).

### **C. International humanitarian law**

#### **(a) Homicide and threats directed at protected persons**

13. The illegal armed groups continued to carry out homicides, both individual and collective, although lesser in number than in 2002. The massacre of seven people in Caldas (Antioquia), six of whom had their throats cut, and another that claimed the lives of five people in Suratá (Santander), both of which occurred in April, as well as that of five persons in a village near Sincelejo (Sucre) in August were attributed to the paramilitary groups. The January massacre of 17 people in three villages of San Carlos (eastern Antioquia) was attributed to FARC-EP.

14. In 2003, the paramilitaries and, increasingly, the guerrillas continued to make use of selective homicides and social cleansing as a military strategy. High rates of selective homicides were recorded in the Middle Magdalena, in the Montes de María (between Sucre and Bolívar), in Tolima, Antioquia, Meta, north Santander and Arauca. These were routine practices on the part of the paramilitaries in the Sierra Nevada de Santa Marta and specifically affected the Kankuamo indigenous people. In some cases, these communities were also the victims of homicides committed by FARC-EP. The paramilitary groups also carried out a strategy of making their victims disappear and then killing them, as in Barrancabermeja (Santander). The murder of local officials in Arauca, Cauca, Caldas and Antioquia demonstrate the victimization of mayors, municipal representatives and town and city councillors as part of a strategy involving systematic attacks by FARC-EP and, to a lesser extent, the paramilitary groups, especially in Cundinamarca.

15. The office in Colombia of the High Commissioner also received complaints about homicides that were attributed to members of the Security Forces. For example, during *Operación Marcial* (eastern Antioquia) in March, the murder of two civilians, one of whom was a minor, was denounced, and in *Operación Emperador* in January in Granada (eastern Antioquia) a complaint was made with respect to the killing of four civilians, including a minor.

16. Death threats continued to be the most frequent means employed by the illegal armed groups to cause the displacement or subjugation of civilians, to take over their properties or to force them to make a financial contribution.

17. The office in Colombia also received various complaints of threats to the civilian population that were attributed to the Army, such as those related to the above-mentioned operations in eastern Antioquia, or to an operation carried out in Bolívar (Cauca) in February.

**(b) Attacks on the civilian population and indiscriminate attacks**

18. The humanitarian principles of distinction, limitation, proportionality and immunity of the civilian population continued to be violated by all of the parties to the conflict and particularly by the illegal armed groups. FARC-EP have resorted to the indiscriminate use of explosive devices, killing many civilians. The death of five civilians, including two minors, were recorded in Saravena (Arauca) in August as a result of the detonation of a car bomb directed at a military patrol. The same thing occurred in Granada (Antioquia), claiming the lives of three minors and one adult and leaving 14 civilians wounded. In other cases, FARC-EP used the civilian population as human shields or for transporting explosive devices. In Fortul (Arauca) in April, a minor died when the bicycle he was riding exploded near a military checkpoint. Complaints were made of guerrilla attacks on the civilian population, especially on the part of FARC-EP, such as in the municipal centres of Jambaló and Toribío (Cauca). A policeman was killed and three civilians were wounded in the locality of Ricaurte (Nariño).

19. The paramilitary groups also continued to carry out attacks and indiscriminate attacks on the civilian population, such as one that took the lives of four people in Tierralta (Córdoba), in May. An attack by AUC on the indigenous reservation at Aponte (Nariño) in May, in which there was a complaint of joint action with members of the Army, resulted in one person dead and various wounded.

20. The office in Colombia of the High Commissioner received reports of attacks on the civilian population and indiscriminate attacks attributed to members of the Military Forces. Reports were made of joint action between members of the Army and AUC in April during an operation in the Sierra Nevada de Santa Marta (La Guajira), with respect to which there were reports of the killing of a Wiwa indigenous person, whose body was found dismembered, as well as of threats, mistreatment, looting and the desecration of tombs. Other examples were connected to the above-mentioned *Operación Emperador* and *Operación Marcial*. The latter operation also caused a massive displacement. There were cases of indiscriminate aerial bombardment and machine-gunning that damaged civilian property in Cauca, in February and September, as well as civilian dead and wounded in El Carmen (north Santander), in February and in *Operación Independencia* (Arauca), in July.

**(c) Acts of terrorism**

21. These acts were part of the systematic strategy of the guerrillas, particularly FARC-EP. Various cases were attributed to the latter, such as the explosion of a car bomb in a shopping centre next to the Attorney-General's Office in Medellín (Antioquia) that took the lives of 5 persons, including a minor, while wounding 41, and the February car bomb at the Club Nogal in Bogotá that killed 36 and wounded more than 160, many of them minors. Other examples were the explosion of a house bomb in Neiva (Huila) in February during a raid by members of the Attorney-General's Office and the National Police that killed 15, including a number of minors, as well as wounding more than 50 others, and the explosion of a bomb in Puerto Rico (Meta) in August that claimed the lives of 5 people, including 2 minors and



left 46 wounded. FARC-EP were also blamed for the detonation of a house bomb in Chita (Boyaca) in September that killed 8 and wounded 20 and for the attack in Florencia (Caquetá) in September that took the lives of 12 persons, among whom 2 were minors. An attack on a commercial centre in Cúcuta (north Santander) in March, which caused the deaths of 13 people and more than 60 wounded, was attributed to ELN.

22. The paramilitary groups also carried out actions and threats aimed at creating terror among the civilian population, such as in the case of an incursion into Ituango (Antioquia) in June that included acts of pillage and violence in a church.

**(d) Torture and other attacks on personal dignity**

23. Torture continues to be practised by the illegal armed groups. There were complaints of the torture and killing of two peasants by paramilitary forces in El Salado, El Tarra (north Santander) in February as well as the use of torture on the part of paramilitaries in the Comuna 13 in Medellín (Antioquia) and in Viotá (Cundinamarca). The cadavers found in various mass graves and individual graves and whose deaths are attributed to the paramilitary forces, showed signs of torture and mutilation, particularly in Tolima, Arauca and Antioquia. The torture and subsequent deaths of two people, including an unarmed soldier on leave in Turbo (Antioquia) in January are attributed to FARC-EP.

**(e) Hostage taking**

24. The guerrilla groups and, to a lesser extent, the paramilitary groups, have continued with the practice of taking hostages, although a decrease was recorded. It affected diverse sectors of the population along with departmental and municipal officials, including the Peace Adviser of Meta, who was taken hostage by FARC-EP in October. According to the office of the Vice-President, during the first nine months of the year, the responsibility of this group in the taking of 545 hostages was established, along with that of ELN with respect to 281 others and the paramilitary groups in 149 cases.

25. On occasion, FARC-EP killed their hostages, as in the case of the Governor of Antioquia, Guillermo Gaviria Correa, and his Peace Adviser, Gilberto Echeverri Mejía, along with eight captured members of the military forces, during a rescue operation mounted by the Military Forces in Urrao (Antioquia) in May. This was also the case in the deaths of Helmut and Doris Bickenback in June and that of a Japanese citizen, Chikao Muramatsu, in November.

**(f) Forced displacements**

26. The illegal armed groups have continued to cause forced displacements, both individual and collective. The paramilitary forces were responsible for massive displacements in El Tarra (north Santander) and Viotá (Cundinamarca) in April. The massive displacement in Argelia (eastern Antioquia) in June was attributed to FARC-EP. There were complaints in some cases of displacements caused by members of the Security Forces, such as during *Operación Marcial* in San Francisco (eastern Antioquia) in March.

**(g) Children who are victims of the armed conflict**

27. Children continued to be the victims of hostage-taking, recruitment, the use of anti-personnel mines, forced displacement, indiscriminate attacks and acts of terrorism on the part of the illegal armed groups. The *Fundación País Libre* (“Free Country Foundation”) recorded 243 children kidnapped as of September. The office in Colombia received information on various cases of recruitment of indigenous minors in Cauca by FARC-EP and in Cesar on the part of ELN. The paramilitary forces also recruited young people, in many cases in exchange for remuneration, or they made use of them for investigating or following certain persons in exchange for money or clothing, such as in Barrancabermeja (Santander).

28. The office in Colombia received reports of the use of minors by the Army as informants or within the framework of intelligence operations, such as in the case of minors belonging to the Esperanza de Dios (“God’s Hope”) humanitarian zone in the Lower Atrato (Chocó) in May.

**(h) Women victims of the armed conflict**

29. The office in Colombia received information about the diverse forms of violence, particularly sexual, with which the illegal armed groups afflict women in different areas of the country, such as Córdoba and Tolima, on the part of the paramilitary forces, as well as in Putumayo, where cases of sexual slavery by the guerrillas were denounced. The illegal armed groups, and especially the paramilitaries, continued threatening women and their organizations, as in the case of the leaders of the National Association of Indigenous and Peasant Women of Colombia (ANMUCIC, from its Spanish initials) and of the Popular Women’s Organization (OFP). In this last case, it is pertinent to point out the murder of human rights defender Esperanza Amaris Miranda in Barrancabermeja (Santander) in October. Women are often the victims of violence on the part of the illegal armed groups when they have a family member in an opposition group, or are viewed as having contacts with members of an opposing group, or for a personal relationship with a member. The case of the killing in April of a schoolteacher in Cocorná (Antioquia) by ELN was observed with concern. Complaints of the deaths of sexual professionals with sexually transmitted diseases at the hands of illegal groups in north Santander are a source of concern.

30. There were also complaints recorded of rapes on the part of members of the Security Forces in Antioquia, Chocó and Cauca. At the same time, judicial underreporting of sexual crimes persists, because the women tend not to denounce them out of fear, modesty or mistrust of the judicial system. The lack of entries in the forensic reports, as we have already stated, is an additional factor that contributes to impunity.

**(i) Attacks on the medical mission**

31. The members of the medical mission were affected by homicides, threats and harassments on the part of the illegal armed groups, especially FARC-EP, in the departments of Arauca and Cauca. The office in Colombia recorded the disappearance and subsequent homicide of a doctor in March and the planting of an explosive device in a hospital in September, as well as the killing of a hospital director in Santander de Quilichao (Cauca) during the same month. Cases of attacks on ambulances must also be mentioned, mainly on the part of FARC-EP, as in Cocorná (Antioquia) in October.

**(j) Attacks on civilian property**

32. The guerrilla groups continued their attacks on civilian property and on State infrastructure. According to the Office of the Vice-President, infrastructure attacks decreased by 35 per cent in the period up until September, destruction of bridges by 66 per cent and of electrical towers by 61 per cent. In contrast, attacks on oil pipelines increased by 61 per cent.

33. FARC-EP caused damage to civilian property in repeated attacks using explosive devices, such as the one at Coloso (Sucre) in April that left the local aqueduct in ruins. The illegal armed groups committed acts of pillage and destruction of civilian property, such as the pillage committed by paramilitaries in Abejorral (Antioquia) in October. In other cases, these groups forced civilians to sign over title to their farms, threatening to kill them if they refused.

34. There were also cases of pillage attributed to the Military Forces in operations in eastern Antioquia and the Guajira. There were also complaints made of damage to civilian property in indiscriminate operations carried out by the Air Force in Cauca in February 2003.

**(k) Use of anti-personnel mines**

35. Massive use of mines on the part of the illegal armed groups continued to be recorded. FARC, ELN and the paramilitary groups have been those principally responsible, in that order. According to the Observatory for Anti-personnel Mines, a large number of incidents continued to occur in 2003, with 253 new victims (69 dead) between January and August, of whom 87 were civilians.

36. The illegal armed groups have continued to use home-made mines that are difficult to detect, such as home-made plastic mines. It has been reported that FARC-EP indiscriminately planted mines and booby traps in Piamonte (Cauca), locating them in private residences, on outlying paths and heavily travelled roads. In May, mines wounded one person in this municipality and, hours later a young girl was killed and her child disfigured in the same place due to failure to take immediate measures for posting warnings or re-routing transit. In another episode perpetrated by FARC-EP, 11 members of the military were killed and 8 more wounded when they came across a minefield in Aracataca (Magdalena) in March.

**Notes**

<sup>a</sup> These same observations were made by the Prosecutor-General's Office in their special reports on the zones for rehabilitation and consolidation in Arauca and Sucre-Bolívar. See, for example, chap. II, point 7.2 (ii) of the latter report.

<sup>b</sup> According to this concept, because it is a permanent crime, a person accused of rebellion is found to be permanently in a situation of "flagrante delicto", without requiring application of such elements as immediacy, identification or individualization, or the possession of incriminating elements.

### **Annex III**

## **LEGISLATIVE POLICY<sup>a</sup>**

### **Introduction**

1. Legislative policy has been closely linked to the goals and implementation of the so-called policy for democratic security. The Government emphasized that “strengthening democracy requires not only effective institutions ... and a judicial system that provides support for the exercise of rights and liberties. It equally supposes that all of the State’s actions will be subject to this organization ... . This is the guarantee that the constitutional order and respect for human rights will prevail over the arbitrary actions and abuses of the illegal armed organizations”.<sup>b</sup> Nonetheless, various regulations and projects turned out to be incompatible with international principles in terms of restrictions on basic rights and liberties, and imply changes to the Constitution.

2. On 5 February 2003, the Government approved Legislative Decree 245, by means of which it extended the state of internal commotion (state of emergency). On 29 April of this same year, the Constitutional Court issued ruling C-327/03, in which it declared that this decree was unconstitutional. Faced with this situation, the Government considered it necessary to seek constitutional modifications with the aim of implementing certain restrictive measures on rights and liberties that it deemed necessary in order to achieve the objectives of its security policy. Approval of the National Development Plan was another of the Government’s legislative priorities in 2003.

3. Various legislative projects aimed at modifying the Constitution were presented. Proposed laws were submitted, one known as the “Antiterrorist Statute” and another that attempted to remove jurisdiction from the Procurator General’s Office to specifically examine disciplinary violations committed by members of the Armed Forces.<sup>c</sup> Another such proposed law aimed at decreeing structural reforms in the organization of the State. Projects were also presented for modification of the penal code, the code of criminal procedure, the penitentiary and prison code, the Organic Statute of the Attorney-General’s Office, the Statutory Law on the Administration of Justice as well as with respect to some regulations regarding compulsory military service. Additionally, other proposed legislation aimed at the inclusion of new regulations, such as the National Statute For Countering Terrorism, a proposed law dealing with national defence and security and the proposed Statutory Law on the Re-Incorporation of Members of Armed Groups. Law 418 was also regulated by means of Decree 128 of 2003.

4. In a parallel initiative, the Government promoted adoption of a referendum that proposed amendments to 15 articles of the Constitution in the economic and political fields. After the referendum, whose proposals were almost entirely rejected, the Government pushed forward a series of proposed laws in order to obtain legislative approval of the unapproved proposals.

5. A number of these legislative projects have been the object of analysis and observations on the part of the office in Colombia of the United Nations High Commissioner for Human Rights pursuant to its mandate to advise and ensure that projects that adopt or modify norms be respectful of international norms and obligations.

### **Progress and difficulties relating to the ratification of international treaties**

6. In the legislative field, it is worth noting the adoption of laws by means of which different international treaties have been internally approved as a prior step towards their ratification. Among these, it is worth mentioning Law 800 of 13 March 2003, by means of which the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was approved, supplementing the United Nations Convention against Transnational Organized Crime; Law 833 of 10 July 2003, by means of which the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was approved; and Law 837 of 16 July 2003, by means of which the International Convention against the Taking of Hostages was approved. It is also important to point to the adoption of Law 823 of 10 July 2003 containing rules with respect to equal opportunities for men and women.

7. In spite of these important legislative initiatives, it must be mentioned that, with the exception of the Optional Protocol to the Convention on the Rights of the Child relative to the sale of children, child prostitution, and child pornography, they have not been accompanied by action on the part of the Government to deposit instruments of ratification and assume the corresponding international obligations, in accordance with the recommendations of the High Commissioner and other international bodies. Ratification is thus pending of ILO Convention No. 182 (1999) on the worst forms of child labour (Law 704 of 2001); the Inter-American Convention on the Forced Disappearance of Persons (Law 707 of 2001); and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, (Law 762 of 2002). Also, the process of approval for the Optional Protocols to the Convention for the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment has yet to be initiated. Nor has the Government promoted actions aimed at recognition of the competence of the Committee against Torture and the Committee on Racial Discrimination to examine individual communications.

#### **Analysis of certain projects and regulations**

##### **(a) Regulation of Benefits for the Demobilized (Decree 128)**

8. Decree 128, of 22 January 2003, regulates Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002, with respect to re-incorporation into civil society of demobilized members of outlaw groups (guerrilla groups and self-defence groups). In the matter of legal benefits for the demobilized, the decree refers to regulations established under Law 418 and its amendments for the granting of pardons, conditional stays of enforcement of penalties, discontinuance of proceedings and preclusion of investigation or inhibitory orders, limiting them to political and related crimes and excluding heinous crimes. Analysis of the text raises certain questions regarding the fight against impunity and the rights of victims to truth, justice and reparation, in that it makes no explicit reference to these international obligations of the State.

**(b) “Draft law for penal alternatives”**

9. On 21 August 2003, the Government presented the draft Statutory Law 85 of 2003 to the Senate, which proposes to award legal benefits to those members of the illegal armed groups who are unable to benefit from the regulations contained in Decree 128, due to their responsibility for grave crimes, which include conduct constituting war crimes and crimes against humanity. The project establishes the possibility of suspension of prison sentences and proposes a series of measures that it calls “alternative penalties”.

10. The office in Colombia of the High Commissioner, by means of a communiqué issued on 8 September 2003 and during the public hearing carried out on 23 September 2003 in the First Committee of the Senate, provided observations regarding the incompatibility of its dispositions with international obligations. Among these, the project allows the State to suspend the execution of prison sentences of persons who have not even begun to serve the sentences imposed for the commission of heinous crimes; it allows the application of so-called alternative punishments instead of imprisonment to those responsible for international crimes that are so lenient and of such short duration that they violate the principles of just retribution and proportionality in penal sanctions. It does not clearly recognize the State’s obligation with respect to reparation when they are not remedied by the party directly responsible for the crimes; it establishes reparation mechanisms that do not adequately compensate or indemnify the victims; at the same time it does not adopt measures to impede the victimizers from benefiting from the suspension of the penalties before the victims have received effective reparation. The alternative punishments included in the project are neither quantitatively nor qualitatively comparable to being deprived of liberty, nor to the gravity of the crimes, reason for which they do not respect the principle of proportionality of punishments. All of these belong to the realm of what in comparative criminal law are referred to as accessory penalties, and which are imposed as a compliment to the main penalty and, therefore, do not replace it.

11. The office in Colombia also commented on the opportunity, convenience and modalities of the proposal. Among these, it raised various questions considering that the proposal refers not only to members of illegal armed groups that have signed peace agreements, in that it includes among the beneficiaries members “who individually and voluntarily give up their arms”, a reason for which it is not circumscribed as a corollary to the peace negotiations. In this respect, the office in Colombia stated that the concession of certain benefits to isolated persons, without reference to negotiations and without establishing serious commitments with the illegal armed organizations with respect to future behaviour, does not necessarily strengthen efforts aimed at the search for a lasting peace and the achievement of national reconciliation. The office in Colombia also presented elements for reflection on this topic regarding the future.

**(c) “Antiterrorist Statute”**

12. The draft Legislative Act 223 of 2003 of the Lower Chamber and 015 of the Senate, known as the “Antiterrorist Statute”, was presented by the Government on 24 April 2003 with the aim of modifying articles 15, 24, 28 and 250 of the Constitution in order to fight terrorism.

In its articles, the proposal provides the Military Forces with judicial police powers, in contradiction to the expressed recommendation of the High Commissioner. It also orders restrictions on the right to privacy and the right to appeals and provides for administrative detentions and other procedures without a court order. The project was approved on 10 December. The office in Colombia of the High Commissioner sent two messages to the members of Congress and participated in a public hearing held in the House of Representatives on 23 September 2003. The office in Colombia has voiced several objections to the project, as follow below.

13. The international organs for the protection of human rights have stated that the exercise of the functions of judicial police by persons of a military character violates the principles of independence and impartiality in the administration of justice, as enunciated in international instruments ratified by Colombia. The office in Colombia also observed that this proposal concedes faculties to the administrative authorities whereby, without a previous court order, they can carry out detentions as well as intercept or search correspondence and other private communications. In accordance with that stipulated in international norms and jurisprudence, jurisdiction in these matters must belong to the public servants of the judicial branch. The office in Colombia considered the establishment of excessively long time periods for submitting administrative detentions of persons deprived of their liberty to judicial control “in cases of terrorism” to be incompatible with international obligations. At the same time, there are observations with respect to the applicability of habeas corpus during this period. The office in Colombia emphasized that the right to submit this type of measure to the competent judicial authorities must be applicable at all times and without temporary restrictions.

**(d) National Statute for Countering Terrorism**

14. The Senate’s draft Statutory Law 18 of 2003, by means of which an antiterrorist statute is created, provides for new crimes and increases the punishments for crimes perpetrated with terrorist objectives and in support of terrorism. At the same time, it modifies certain penal classifications, such as terrorism, or the management of terrorist resources. This project includes a number of crimes that are not necessarily related to terrorism and constitute breaches of international humanitarian law, thus identifying these breaches of international humanitarian law (IHL) with crimes related to terrorism. The office in Colombia declared that, given the particular circumstances and gravity of terrorist acts, it is of fundamental importance that the strategies and policies of the fight against terrorism be specifically oriented to this type of conduct and that it be differentiated from others that constitute violations of IHL. The project also contains dispositions that raise questions in the area of due process and judicial guarantees, particularly those related to the autonomy of the investigating prosecutor, the right of the accused to defend themselves, of discrimination against foreigners and of insufficient clarity in certain criminal classifications.

**(e) “Law of national security and defense”**

15. The Senate’s draft Law 022 of 2003, which contains rules on the policy for national security and defence, includes certain dispositions that could endanger the principle of

distinction. It is important to establish clear limits with respect to the solidarity and support provided by the civilian population in the task of national security and defence, so as not to involve the civilian population in the armed conflict and so that the principle of distinction is not placed in question. This signifies a limit on the imposition of duties on private individuals in the field of public order. Clear separation between the actions, duties and responsibilities of authorities and those of the civilian population in relation to security and defence also permits and facilitates concrete application of the humanitarian principle of distinction.

**(f) “Reform of the justice system”**

16. On 29 October 2002, the Government submitted proposed Legislative Act 10 of 2002, which had the goal of modifying certain dispositions of the Constitution with respect to the administration of justice. The draft law proposed modification of the tutela (action in search of relief of a violation of a constitutional right), making it inapplicable for the protection of economic, social and cultural rights, including the rights of children and young people, the right to healthcare, the rights of the aged or the right to review of arbitrary judicial decisions that had been handed down without recognizing fundamental rights. It also proposed to limit the faculties of the Constitutional Court for guaranteeing the supremacy of the Constitution, restricting its competence and the effects of its decisions. Lastly, the draft proposed elimination of the Superior Council of the Judiciary and the creation of a new body that would be charged with administration of the judicial branch and would include members of the executive branch.

17. The draft law was later shelved because it was unable to fulfil the terms for its approval.<sup>d</sup> The Government declared its intention to submit the project to Congress when it had obtained the approval of the High Courts. The Constitutional Court publicly stated that the draft “eliminates the effectiveness of the tutela ... it impedes the Constitutional Court from defending the supremacy of the Constitution and from protecting people from arbitrary acts and abuses of power, by drastically restricting its competences, all of which gravely affects the principle of the social and democratic rule of law. Additionally, there are proposed reforms in the project that go against the autonomy and independence of the judicial branch”.<sup>e</sup> The new Minister of the Interior and Justice has stated that the Government will present this draft next year.

**(g) Penal and Criminal Procedural Codes**

18. On 20 July 2003, proposed Laws 01 of the Senate and the Lower Chamber, were presented to modify the penal and criminal procedure codes and introduce the accusatory system. Of concern is the fact that the democratic aspiration to implement an accusatory penal procedure, as a contribution towards more transparent and democratic administration of justice, appears frustrated by the presence in this comprehensive reform proposal of such elements as the evident imbalance between the accuser (the Attorney-General’s Office) and the defence, the secret character of an important phase of the investigation and the widespread use of preventive detention.



19. The model suggested by the reforms is not in accord with a criminal justice policy capable of guaranteeing the civil liberties of the individual versus the arbitrary exercise of State power. Nor is it in concurrence with the principle of minimum intervention, the acknowledgement of absolute limits for the exercise of the power of the criminal justice system, control over the institutions in charge of exercising punitive actions, or with respect to dignified treatment for people deprived of their liberty. In general terms, one notes an incongruity between the elements that provide guarantees, and the guiding rules that recognize principles in accordance with the State's international obligations, on the one hand, and the changes contained in the articles, on the other. If they are not approved before 20 June 2004 due to a lack of consensus, the President of the Republic, endowed with extraordinary powers, can approve and enact these codes.

**(h) Penitentiary and Prison Code**

20. On 20 July 2003, the proposed Senate Law 03, which proposes modification of the Penitentiary and Prison Code, was submitted. This draft law is directly linked to the accusatory system with respect to criminal procedural reform in Colombia. The draft lacks documentary support in the form of an empirical study on the problems afflicting the prison and penitentiary system. Even when it gives formal recognition to the basic rights of persons deprived of their liberty, it repeatedly emphasizes "the limitations inherent to their special condition". On the other hand, the project delegates regulation of many aspects of the prisons' and penitentiaries' internal regulations to the administrative authority. In addition, the project announces restructuring and fundamental changes in the entity that coordinates the national prison and penitentiary system without there being any mention of the authority or entity responsible for this reform.

**(i) National Development Plan**

21. The National Development Plan (NDP) was adopted on 26 June 2003 by means of Law 812. NDP sets out State policy in the economic, social and environmental fields. In a general way, it could indicate that the Government has given priority to the areas of social investment, democratic security and economic revival. The largest item in social investment, comprising 61 per cent, is directed at the social sector. According to NDP, social investment is composed of monies assigned to healthcare, employment, education, culture, housing, basic medical treatment and royalties. At the same time, democratic security and economic reactivation constitute important concerns for the Government at the moment when expenditures are allocated. The budget for social investment represents slightly more than 11 per cent of the total budget.

22. It should be noted that the Government is not sufficiently investing in areas where there are human rights concerns in order to effectively improve their situation. This can probably be explained by the fact that the Government's policies during this year have not given this topic a sufficiently comprehensive and priority treatment, nor have they done so with respect to the High Commissioner's recommendations. At the same time, the lack of a national plan for action on human rights can be another factor that led to this weakness.

### Notes

- <sup>a</sup> This annex complements the High Commissioner's report on the human rights situation in Colombia.
- <sup>b</sup> See the document entitled "*Política de Defensa y Seguridad Democrática*" ("Democratic Defense and Security Policy"), Office of the President of the Republic, Ministry of Defense, 2003, p. 15, para. 12.
- <sup>c</sup> Its sponsor withdrew this project due to the fact that it was unable to fulfil the terms contained in the Constitution for its approval during the current legislative session.
- <sup>d</sup> The Colombian Constitution mandates that legislative projects aimed at modifying the Constitution must be approved in eight debates during two ordinary and consecutive sessions (from 20 July to 16 December and from 16 March to 20 June).
- <sup>e</sup> Constitutional Court, press communiqué, 29 April 2003.

#### **Annex IV**

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

1. The High Commissioner for Human Rights of the office in Colombia continued to carry out its mandate in the area of observation, advice, technical cooperation, promotion and dissemination.

#### **Observation**

2. The office in Colombia of the High Commissioner fulfils its task with respect to observation based on thematic and geographical priorities that enable analytical and systematic follow-up on the situation of human rights and international humanitarian law in Colombia.

3. During 2003, 168 field missions were carried out and 1,144 complaints were received, of which 936 were admitted.

4. Field missions and the permanent presence in the branch offices in Cali and Medellín, enable the office in Colombia to follow up on the regional and local situation as well as to provide advice to the authorities and institutions of civil society in the field of human rights and international humanitarian law while accompanying local processes undertaken in the areas included in the mandate. In order to facilitate this work, the office in Colombia of the High Commissioner will open a new branch office in Bucaramanga in January 2004.

5. Additionally, although it is difficult to measure their impact, field missions fulfil the purpose of promoting preventive and protective measures for the communities. These visits, carried out mostly with the Colombian authorities, are made to zones in which the presence of the State has been traditionally weak or non-existent.

#### **Advisory services**

6. The office in Colombia of the High Commissioner participated in numerous activities related to advising State entities and civil society. In addition to providing documents relating to the compatibility of proposed legislation with international norms, it provided the authorities with advice in the definition of policies and programmes and stimulated follow-up on recommendations in committees and other inter-institutional bodies. Periodic dialogue was established with the authorities, in particular with the Office of the Vice-President, with various ministers, members of Congress and judicial and control bodies. The office in Colombia provided quality and impartial advice to State institutions and civil society organizations. It promoted international human rights and international humanitarian law instruments through forums, workshops and seminars.

7. The office in Colombia aided in substantive and logistical preparation for the carrying out of missions in October 2003 to Colombia by the Special Rapporteurs on the right to education and on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance. It issued two publications that afforded a better understanding of their mandates and the fields in which they work.

### **Technical assistance and cooperation**

8. In order to fulfil its mandate to advise governmental and non-governmental institutions, the office in Colombia began with the supposition that initiatives for technical cooperation must promote the active participation of these institutions in tasks that imply respect, protection and guarantees for human rights. International recommendations formulated on this subject, and especially those of the United Nations High Commissioner for Human Rights, constituted the basis for the office in Colombia's development of diverse projects for institutional strengthening and training.

9. In November, the office in Colombia of the High Commissioner signed a letter of understanding with the Office of the Attorney-General aimed at carrying out a project for institutional strengthening, in which the recommendations formulated and addressed to that institution by the High Commissioner were gathered together.

#### **(a) National Plan of Action on Human Rights**

10. The office in Colombia of the High Commissioner received a first draft proposal for a concerted National Plan of Action on Human Rights from the Presidential Programme for the Promotion, Respect and Guarantee of Human Rights and the Application of International Humanitarian Law. The office in Colombia has shared its observations with the Office of the Vice-President with respect to this document and has offered its technical cooperation and advice.

#### **(b) Institutional strengthening**

11. The studies carried out by the office in Colombia in a number of important State institutions, and the recommendations contained in them, have been the subject of accompaniment and follow-up aimed at contributing to their implementation.

##### *1. Ombudsman's Office*

12. National Office of the Ombudsman (DNDP): Based on its study of the civil criminal programme of the Public Ombudsman, four areas of work were developed during the first half of 2003: (a) technical advice in drawing up a study of the functioning of the public defender; (b) establishment of a permanent national observatory on deprivation of liberty in the national sphere; (c) adoption of a system for management and control to enable the measurement of quality, promptness and effectiveness of the service, and (d) technical assistance in the fields of internal regulation and legislative proposals.

13. The office in Colombia has provided advice to the National Office of the Ombudsman regarding legal concepts related to the right to legal defence. In the context of penal reform, it contributed analytical documents comparing the different experiences in Latin America as regards the figure of the public defender. With respect to the proposed legislation on the National System for Public Defenders, the office in Colombia analysed the proposal of the Ombudsman's Office and made contributions and observations in this respect.

14. National Directorate for Receiving and Processing Complaints: The office in Colombia completed its *Manual de Conductas Violatorias de Derechos Humanos* (Manual on Conduct in Violation of Human Rights). This document incorporates national and international jurisprudence and legislation in this field, with the aim of improving the classification that the Ombudsman's Office makes with respect to conduct reported to it that constitutes human rights violations and infractions of international humanitarian law.

2. *Office of the Procurator General*

15. The Procurator General issued the document "*Función preventiva de la Procuraduría en materia de derechos humanos*" ("Preventive function of the Office of the Procurator General in the field of human rights"), drawn up within the framework of the agreement for technical cooperation signed with the office in Colombia. This document has been widely disseminated within the Office of the Procurator as the basis for the work of the institution's employees in the area of prevention.

16. As a follow-up to the study made of the role of the Procurator's Office in disciplinary actions, the office in Colombia drew up the *Guía práctica de pruebas para las investigaciones disciplinarias por violaciones de derechos humanos e infracciones al derecho internacional humanitario* ("Practical guide to evidence in disciplinary investigations for human rights violations and breaches of international humanitarian law"). This document is aimed at public servants charged with investigating human rights violations and establishes guidelines and parameters for action that permit prompt, exhaustive and impartial action.

3. *Inter-institutional project on the situation of persons deprived of their liberty*

17. This project is aimed at strengthening the Office of the Procurator, the Ombudsman's Office, the Ministry of Justice and the National Institute of Penitentiaries and Prisons, with the goal of endowing their work with greater impact in improving the living conditions of persons deprived of their liberty. The project was initiated in July 2003 with co-financing from the European Union.

18. With respect to the Office of the Procurator, the office in Colombia of the High Commissioner has provided advice to the Delegate for Prevention in the Field of Human Rights and Ethnic Affairs in drawing up thematic documents that serve as inputs for the adoption of instructions for internal coordination as well as in the development of a policy for protection and prevention in the field of imprisonment.

19. The Ministry of Justice and the National Institute for Penitentiaries and Prisons (INPEC for its Spanish initials) have facilitated the work of the office in Colombia with all of their offices with the aim of identifying the areas that are to receive assistance and advice as part of the project. Visits to 16 prisons at all levels have been carried out in order to provide suitable advice with respect to their needs. Additionally, a study was completed of the National Penitentiary School and the training of penitentiary personnel in general, a document that will be jointly analysed with INPEC authorities.

20. The Ombudsman's Office has accompanied various visits that were undertaken and has begun a process of active intervention with the Delegate for Criminal Policy and the Regional Offices of the Ombudsman in order to formulate an institutional strategy that will permit the strengthening of this control organ in the field of penitentiaries and prisons.

**(c) Training in human rights and international humanitarian law**

21. Training in the field of human rights and international humanitarian law for governmental institutions and civil society organizations, as well as for the agencies of the United Nations system, continues to be a very important activity for the office in Colombia. The development of techniques for teaching these subjects has made it possible to update this teaching and involve the recipients more closely with human rights in an open and active manner. With respect to the publications that support this training, updates were made of compilations of international human rights law, international humanitarian law and international criminal law.

22. Training for public servants: The office in Colombia, within the framework of agreements signed with diverse State institutions, has carried out courses and workshops for training in human rights and international humanitarian law with: (a) 7 congressmen, 30 advisers and collaborators from this branch; (b) 357 public servants from the entities charged with supervising the legality of actions on the part of the Government (Office of the Procurator, Ombudsman's Office and the municipal ombudsmen); (c) 34 military penal judges; (d) 80 directors and aspiring directors of prisons and penitentiaries, and 60 guards and custodial and supervisory staff from the INPEC; (e) 141 magistrates, judges and prosecutors from the College of Judges and Prosecutors of Antioquia; and (f) 52 members of the network of trainers of the justice sector.

23. Training for municipal ombudsmen: During the period 2002-2003, 90 per cent of the country's municipal ombudsmen have been the beneficiaries of the training programme in human rights, which contributed towards strengthening the important work carried out by these functionaries. The populations of 980 of the country's 1,098 municipalities have benefited from the presence of a local public servant who is more able to provide them with representation and defence in the field of human rights. This year, 16 training workshops, 4 in evaluation and validation and a national forum on municipal ombudsmen were carried out.

24. The programme benefits from the inter-institutional effort represented by the agreement signed between the Office of the Procurator, the Ombudsman's Office and the Office in Colombia of the High Commissioner, with co-financing on the part of the European Union.

25. The project intends to invigorate the functions fulfilled by the municipal ombudsmen in defence of human rights. A sense of belonging with the State Procurator's offices has been encouraged among municipal ombudsmen and joint actions between the Office of the Procurator and the Ombudsman's Office aimed at strengthening this institution regionally and locally, have been promoted.

26. The production of teaching tools has facilitated the Municipal Ombudsmen's work of dissemination, prevention and protection of human rights. The Institute for Studies of the State Procurator's offices will be entrusted with all of these tools and will undertake the future formation of municipal ombudsmen.

27. International symposium on human rights and international humanitarian law: The College of Judges and Prosecutors of Antioquia, with the support of the office in Colombia and the Embassy of Sweden, carried out a symposium in Medellín that was attended by 150 participants and included presentations by distinguished national and international speakers.

28. Programme of scholarships for human rights defenders: The office in Colombia of the High Commissioner, the Universidad Alcalá de Henares of Spain and the American University of the United States awarded five scholarships for human rights studies to human rights defenders and public servants.

29. Civil society and the Church: A basic course on human rights and national protection mechanisms was given in Rivera (Huila) to 30 priests, religious workers and lay people from the diocese of San Vicente del Caguan and the diocese of Florencia. At the same time, the office in Colombia and the Centre for Research, Training and Information for the Amazon Service has agreed to execute the project "Training for pastoral agents of the diocese of Florencia and the Apostolic Vicariate of San Vicente del Caguan-Puerto Leguizamo from the perspective of rights".

30. The office in Colombia and the organization *Planeta Paz* ("Peace Planet") drew up a communication manual that will be published in early 2004. Also, a document was written on the right to information for low-income sectors of society, a document that was used in the preliminary work of the World Conference on the right to communication held in late 2003.

31. Global Programme "Assisting Communities Together (ACT)": Seven projects for training and promotion in human rights were executed in the departments of Nariño, Arauca, Boyacá, Chocó, Antioquia, Caldas and Bolívar.

32. United Nations system: In fulfilment of the Plan for Action contained in the Secretary-General of the United Nations' reform programme, the office in Colombia has initiated a close working relationship with the Resident Coordinator and the representatives of the system's agencies in order to gradually incorporate human rights as a central focus of its programmes, plans and activities. Four courses for training and up-dating in human rights, humanitarian law and international criminal law were provided to 79 United Nations system employees.

### **Information, promotion and dissemination**

33. With the goal of reaching the most remote and isolated populations, an agreement was signed with the Radio Nederland Training Center. The office in Colombia received 2,000 CDs containing children's stories about human rights, which are disseminated by 300 community radio stations throughout the country through the radio programme *Naciones Unidas Manos Amigas* (United Nations, Friendly Hands).

34. Among the publications created by the office in Colombia, it is worth mentioning the 5,000 copies of *Compilación de Derecho Penal Internacional* (Compilation of International Criminal Law); 3,000 copies of the *Informe annual* (Annual Report); 20,000 newspaper supplements of the *Recomendaciones para Colombia 2003* (Recommendations for Colombia 2003); 20,000 copies of the pocket edition of the Universal Declaration of Human Rights; 40,000 copies of the Universal Declaration (children's version); and 10,000 copies of the calendar *Colombia: Imágenes y realidades 2004* (Colombia: Images and Realities 2004) were printed for nationwide distribution. The total number of copies of publications of the office in Colombia distributed throughout the territory of Colombia reached 100,000.

35. The office in Colombia participated in numerous activities (seminars, forums, workshops and conferences) and was present at the Bogotá Book Fair where all of its publications were for sale. Within the framework of its work with the media, the office in Colombia organized nine workshops with regional journalists and three thematic discussions with journalists from Bogotá. Training was provided to 170 journalists.

36. Advice was provided to different civil society organizations with respect to managing communications, including the Fundación Dos Mundos (the "Two Worlds Foundation") on creating human rights murals in the department of Cauca. The office in Colombia disseminated information with various public libraries in Bogotá and organized a painting contest on human rights with children from six different schools.

37. The office in Colombia issued 37 press releases and organized eight press conferences. There appeared 1,100 press articles, 700 radio reports and 290 television reports concerning the office.

38. A National Photography Contest on human rights was undertaken jointly with the Fundación Dos Mundos, in which professional and amateur photographers, graphic reporters and students participated. An exposition of 100 photographs on human rights, out of the 1,130 submitted to the contest, was presented in the National Museum of Bogotá.

39. The office in Colombia commissioned an opinion poll with respect to its image and impact. The results showed that all of the sectors interviewed considered the presence of the office and the work it is carrying out to be of great importance for the country.

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