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**NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH
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COUNCIL RESOLUTION 5/1**

Colombia*

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I. METHODOLOGY AND EXTENSIVE CONSULTATIONS

1. Colombia supported Universal Periodic Review (UPR) in the belief that it is a helpful way of assessing States' practice objectively, encouraging cooperation and promoting best practice in upholding human rights. It undertook review voluntarily in order to permit a thorough discussion of its situation and foster better understanding and transparent cooperation with other States.
2. Internally, Colombia tried to evaluate its experience, confront challenges, facilitate dialogue with many different sectors and give priority to immediate commitments and cooperation needs.
3. An interdepartmental committee¹ was set up to prepare this report through broad consultations on the human rights situation in the country encompassing State authorities, watchdog bodies, civil society, other States, and representatives of various United Nations bodies with offices in Colombia.
4. Consultations were conducted in writing, directly, and electronically. Score charts drawn up in accordance with the UPR guidelines were distributed to 31 State authorities; 118 public organizations and 1,102 prominent municipal office-holders were sent letters inviting them to participate. There were personal consultations with the Office of the High Commissioner for Human Rights, the members of the G-24 (an informal grouping of 24 countries friendly towards Colombia that works on human rights and international humanitarian law), the Office of the Procurator-General, the Ombudsman and representatives of civil society. Electronic consultations were conducted by means of the Presidential Human Rights Programme web page.²
5. Colombia regrets that some organizations declined to take part in this process, but thanks those that did participate in the consultations for their valuable, often critical, input, comments and suggestions, which were always analysed and served, directly or indirectly, to shape the content of this report.

II. HISTORICAL BACKGROUND, CONSTITUTIONAL FRAMEWORK AND HUMAN RIGHTS INSTITUTIONS

Historical background

6. Colombia went through various periods of armed upheaval in the nineteenth century as it became a State. Beginning a little before the second half of the twentieth century there was a sizeable upheaval known as *la Violencia*, which ended with a treaty between the two contending parties.
7. The State had difficulty controlling the country. Because of that, the effects of the cold war and the limitations of Colombian democracy, there was another armed uprising against the State by guerrilla bands. The depredations these caused and the weakness of the State gave rise to the emergence of groups meting out private justice. Drug trafficking supplied the resources for these groups to fortify themselves substantially, to the point where they recently numbered around 50,000.
8. There have been countless negotiations since 1984, and major reforms have been carried out to improve the way Colombian democracy works. As a result, 7 guerrilla bands, 3 urban militias and 36 paramilitary groupings have demobilized together with 17,000 individuals - of which

3,700 were not yet adults when they demobilized. A National Constituent Assembly was held in 1991. Four of the demobilized groups took part, as did various other groups previously excluded from political life in the country. The resulting Constitution renewed national institutions, boosted participatory democracy and instituted an extensive bill of rights and mechanisms to uphold them.

9. Some groups spurned these opportunities for peace and stepped up attacks on the general public and democratic Colombian institutions. The most recent effort at negotiation, for example, took place over three years in a 42,000 square km demilitarized zone, and was followed by 10 different countries and the United Nations.

10. The human rights situation in Colombia should therefore be viewed through the prism of a pluralist Constitution which protects human rights and a policy of strengthening State institutions on the ground which will allow for negotiated breakthroughs if the illegal armed bands so choose.

Constitutional framework

11. The 1991 Constitution made Colombia a State ruled by law which would uphold human rights. Today, the country is a democracy which elects its governors and representatives, both locally and nationally, by popular vote, and there are a number of political parties which enjoy ample safeguards. Ten parties are represented in Congress; none holds more than 20 per cent of the seats.

12. Democracy is exercised through three independent arms of public authority and a collection of watchdog bodies. There are also powerful tools by which to exercise direct democracy, such as referenda and popular legislative initiatives.

13. The Constitution also provides a rich list of fundamental rights with effective protection mechanisms, which have led to important advances in jurisprudence that will be detailed below.

14. Colombia is among the countries which have ratified the most human rights and international humanitarian law treaties arising out of both the United Nations system and the Inter-American human rights institutions.³ The 61 treaties form an integral part of the Constitution, and any legal provision which contradicts them must be declared unconstitutional.

Human rights institutions

15. The institutional framework for the protection and promotion of human rights is as follows:

- In the Executive, the Presidential Human Rights and International Humanitarian Law Programme and the human rights departments in the ministries of the interior and justice, defence, foreign relations and social protection. There are also specialized governmental bodies which look after the specific rights of vulnerable population groups such as women, children, the disabled, the elderly, ethnic minorities, displaced persons and demobilized combatants.⁴
- In the Legislature, the two chambers of Congress, besides passing laws, exercise political control over the actions of the Government and have their own human rights commissions. They also have benches for ethnic groups and women.

- The Judiciary administers justice, verifies that the actions of other authorities are constitutional, and protects citizens' rights.
- The Public Prosecutor's Office, as a watchdog body, is responsible for upholding and promoting human rights, protecting the public interest and overseeing the official actions of those in public office. It includes the Office of the Procurator-General, the Ombudsman's Office⁵ and, in the regions, at least one branch office in each municipality.

16. Mention should also be made of the valuable contributions made by civil society organizations to upholding human rights in Colombia, and to their work with State bodies in many forums, which have enriched public policy on human rights.

Role of the international community

17. Colombia is open to international scrutiny and has made commitments to United Nations bodies and the Inter-American human rights system. It has had an Office of the High Commissioner since 1997; the agreement has been extended until October 2010. United Nations agencies, funds and programmes together have 23 offices in the country, and ICRC has one. United Nations and Inter-American system human rights bodies and special procedures have an open invitation to visit, and a group of 39 embassies periodically reviews the human rights situation with the Government and civil society. Eight United Nations and four Inter-American evaluation missions have visited the country since 2002, and two further visits are expected before the end of this year.⁶

18. The State is up to date in its submission of reports and pays close attention to following up on the recommendations made by the various bodies concerned. An open discussion forum has been instituted for follow-up on OHCHR recommendations, and is used by representatives of civil society and the 39 embassies mentioned above.

III. PROGRESS AND CHALLENGES IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

19. The increasingly degraded conduct of the illegal armed groups, the State's inability to control the country, actions and omissions by State employees and the effects of violence on civic culture have led to a serious situation of human rights violations. At the turn of the century, the country was experiencing about 30,000 homicides, 200 massacres and 3,000 kidnappings every year, and up to 450,000 people were being forcibly displaced.

20. Clearly, there are still challenges to be overcome if human rights are to be fully guaranteed, challenges which demand greater efforts and more efficiency on the part of the State; yet there has also been substantial progress in the promotion and protection of human rights.

21. This is because of determined, coordinated efforts by all institutions which, in conjunction with civil society, have pursued a policy including the following:

- A commitment at the highest level and at all levels of the public authorities to uphold and respect human rights
- A transparently applied Democratic Security Policy guaranteeing all inhabitants throughout the country the exercise of their rights and freedoms without distinction
- A strengthened justice system and a drive to ensure crime does not go unpunished; zero tolerance of human rights violations

- Safeguards to ensure all institutions can operate without being pressured
- Strategies to forestall human rights violations, including early warning systems and protection programmes
- Policies protecting and upholding the rights of the most vulnerable population groups
- Encouragement of a human rights culture
- Cooperative relations with the international community
- Even-handed efforts to put down all illegal armed groups
- Mainstreaming of the human rights perspective in development plans at all levels
- Significant increases in the budget for victim care, protection and human rights activities
- Demobilization operations with an obligation to respond to victims' rights
- Constant communication with all sectors of society

22. Joint drafting of the National Plan of Action on Human Rights and International Humanitarian Law has also begun. The Plan Coordination Office, comprising representatives of State, civil society and international bodies, was set up in 2006 to define plan features and parameters. Five broad areas of focus⁷ have been defined, and joint work is proceeding on the basis of a text drawn up by the State.

23. Similarly, the National Education Plan for Human Rights is intended to become public policy so that, through formal and informal education, the exercise of human rights becomes daily practice in social, cultural, political and economic life. In 2006, the Ministry of Education set up a pilot project in seven of the country's departments in order to put this Plan into effect.

24. Progress and challenges in the areas presenting most difficulties are described below: (a) prevention of violence; (b) resisting impunity and guaranteeing access to justice; (c) discrimination and vulnerable population groups; (d) economic, social and cultural rights. It is important to note that an exhaustive picture of the human rights situation in Colombia cannot be given in this report.⁸

A. Prevention of violence and maintenance of public order

25. The national crime and violence figures speak for themselves: there were 28,837 homicides in 2002, making 66 homicides per 100,000 inhabitants per year. The year 2007 closed with 17,198 homicides, 36.2 per 100,000 inhabitants, which is a reduction of 45.2 per cent. Mass killings were down still more markedly, from 115 cases and 680 victims in 2002 to 26 cases and 128 victims at the close of 2007, making a 77.4 per cent reduction in the number of incidents and an 81.2 per cent reduction in the number of victims. Terrorist attacks dropped from 1,645 in 2002 to 387 at the close of 2007, a decline of 76.5 per cent. Kidnappings for ransom, chiefly by FARC and ELN, fell by 87 per cent between 2002 and 2007, from 1,708 in 2002 (and 2,587 in 1999) to 226 in 2007. Overall, the decline in these indicators has been progressive and constant.

26. The State is keeping open the door to dialogue about the final demobilization of the illegal armed groups. It has put forward proposals for dialogue and negotiation, has made unilateral gestures such as releasing detained leaders and members of guerrilla organizations, and has supported the good offices of members of society, international agencies and the Catholic Church. Since 2002 it has been keeping up a dialogue with ELN which has proved fruitless; no dialogue with the FARC has been possible; in the case of the self-defence groups, it has secured the collective demobilization of 31,671 people subject to a legal arrangement that upholds victims' rights.

27. There is also a growing trend towards individual demobilizations, which have risen from 412 in 2002 to 3,192 in 2007, making a total of 17,161 individuals demobilized over the period, about 80 per cent of them from the FARC and 13 per cent from ELN.

28. There have recently been moves to set up new armed groups, known as emerging criminal gangs, to control the drug traffic (around 500 metric tons per year) and engage in other criminal and extortionate activities, taking advantage of the problems which Colombia's difficult topography and corruption pose.

29. The State has been firm in its resolve to oppose these groups with all its might. To do so, it has set up a joint criminal gang verification mechanism at the national and regional levels, and an integrated intelligence centre on criminal gangs. A public report on the results of its efforts is issued every month. The OAS Mission has made a valuable contribution to the follow-up on this initiative. Many gangs have been broken up, and their leaders have been jailed or killed in clashes with the police and army. It has been established that 12.7 per cent of those captured or killed had been demobilized.

30. Opposing all the groups transparently is essential if human rights are to apply in full. Suffice it to say the Ombudsman's Office reports that it has, over the past five years, received 34,743 complaints alleging breaches of international humanitarian law. Among them, blame is ascribed to members of the police or army in only 3.1 per cent (1,107) of cases; the remainder have been blamed on illegal armed groups. The register at the Ombudsman's Office indicates that most offences over the past five years have been committed by guerrilla bands.

31. Colombia will continue to make efforts to protect the general public from these bands. It appeals for international support in combating the drug trafficking which supports their existence and ensuring that the logistics, money and individuals involved in the violence have nowhere to go. Particular attention will be paid to the pursuit of strategies to prevent recruitment and the effects of doing so on women and girls.

32. That said, and in keeping with the extensive consultation process, there are special situations which arouse enormous shared concern and deserve more detailed consideration. There will thus be a review of action to forestall and combat (i) killings of protected individuals, forced disappearances and torture, and (ii) the use of anti-personnel mines by the illegal armed groups.

(i) Killings of protected individuals, forced disappearances and torture

33. One subject of great concern has been the reports alleging killings by the police and army of protected or incapacitated individuals. These have been taken very seriously indeed, and the following action has been taken in response:

- Issuance by the Ministry of Defence of directives Nos. 10 and 19 of 2007, restating the obligation to prevent such occurrences, establishment of a Reports Follow-up Committee to deal with such cases, checks to ensure the limited jurisdiction of the military court system is being strictly observed, and a requirement that someone from the prosecutor's office must attend the scene of the crime.
- Issuance by the Military Forces General Command of directive No. 300-28, 2007, which led to a review of the evaluation criteria and incentives offered to measure the outcome of operations by the police and army, reducing the importance of "downings" and increasing that of "demobilizations and captures" as measures of officers' and units' performance.
- Arrangements by the prosecutor's office for prosecutors to take up the investigation immediately if civilians die during clashes.
- Establishment of a special subsection of the Human Rights Unit to handle the investigations of such reports.
- As of 30 July 2008, 748 members of the police and army had been linked [to such reports], detention orders for 242 of them had been issued, and 110 had been charged in court. So far there have been 14 convictions covering 42 members of the army.
- All army divisions have been visited over the course of 2007 and 2008, in conjunction with OHCHR, for the purpose of conducting joint reviews of the incidents reported, the investigative methods and checks applied, the lessons learned and the application of the directives mentioned earlier.
- Instructions given to the police and army to encourage dialogue with the International Committee of the Red Cross, make maximum use of its advisory services and facilitate the application of international humanitarian law.
- Application by the military criminal justice system of rulings on jurisdiction issued by the Constitutional Court. As a result, by July 2008 a total of 226 investigations had been referred to the ordinary courts without being challenged on grounds of jurisdiction.
- Training for members of the prosecutor's office and the military criminal justice system in the investigation of such incidents while applying international standards.
- A request to the Office of the Procurator-General to give priority to dealing with such reports. The Office is currently handling over 700 disciplinary inquiries relating to such cases.

34. In February 2008, the Ministry of National Defence adopted a comprehensive human rights and international humanitarian law policy, formulated in keeping with the recommendations of OHCHR, to govern the police and army. This policy is the route map guiding the behaviour of the police and army during operations, and covers five areas of activity: instruction, supervisory machinery, protection of police and army personnel, treatment of vulnerable population groups, and cooperation with other institutions. It has also established Operational Legal Advisor posts at all levels of the Ministry of Defence, as called for by international humanitarian law, to ensure strict compliance with the Constitution and law during operations.

35. Constitutional Court decisions, Ministry of Defence policies, training and the adoption of international standards have restricted the remit of the military criminal justice system to offences committed on duty and military crimes. Constitutional jurisprudence has also made it possible for the ordinary justice system to review acquittals handed down by the military courts.

36. Colombia has taken steps to prevent, investigate and punish the crime of forced disappearance. Civil society organizations played an important role in the shaping of policy to combat this blight. Some of the steps taken are:

- Creation of an Emergency Search Mechanism for disappeared persons
- Establishment of a Commission on the Search for Missing Persons comprising State and civil society entities, whose prime objective is to support and promote investigations of disappearances
- The Commission coordinated the design and launch of the Disappeared Persons and Corpses Information System (SIRDEC)
- A national disappeared persons location scheme was devised in 2007 and is now being put into effect with a pilot project in the department of Casanare
- The prosecutor's office has set up task forces, data collection squads and biological sample collection squads throughout the country
- 1,559 cadavers have been exhumed on the strength of the different versions of the Justice and Peace Act; 202 of them have been identified and handed over [to next of kin]

37. The principal steps taken to prevent the crime of torture are as follows:

- The ban on torture is included in the standard teaching model for training in human rights and international humanitarian law at the Armed Forces training colleges.
- At the national level, the prosecutor's office teaches specialist prosecutors and investigators that torture is a *lèse humanité* offence not subject to the bar of statutory limitation, teaches them how the offence is characterized internationally, how best to tackle it under domestic law, and what the best tools are for investigating and proving it.
- With OHCHR support, members of civilian and military institutions have been given courses on the Istanbul Protocol with a view to the adoption and dissemination of international guidelines on the subject.

38. For all the steps taken by the State to combat the crimes discussed above, there are still sizable collective challenges:

- Boosting information systems and consolidated, interconnected data bases on such crimes:⁹ here Colombia considers that international technical assistance is important
- Inclining towards proper investigations and trials of all perpetrators
- Consolidating a policy of offering comprehensive care to victims and their families

- Giving the Office of the Public Procurator a greater role in disciplinary investigations of police and army personnel
- Buttressing the Commission on the Search for Missing Persons and increasing its capacity to follow up on forced disappearances and formulate policy proposals
- Initiating the ratification by Congress of the International Convention for the Protection of All Persons from Enforced Disappearance

(ii) Anti-personnel mines

39. Another large problem facing the country is the anti-personnel mines used by the illegal armed forces. The use of such mines is banned in Colombia, and the army has not used them for years. Yet between 1990 and July 2008, anti-personnel mines and unexploded ordnance scattered by illegal armed groups have claimed a total of 7,084 victims. There are three victims a day, two of whom end up mutilated while every third dies in the accident. Colombia had more new victims of such devices than any other country in 2005 and 2006.

40. Since the entry into force of the Ottawa Convention in 2001, the following action has been taken:

- Coordination of policies and plans with civil society organizations
- Destruction of the mines under the State's control. Eight of the 34 military minefields have been destroyed
- Establishment of the Presidential Programme of Comprehensive Action against Anti-Personnel Mines
- Application of the strategic plan on education about risk, victim care, humanitarian demining and information management
- Design of a comprehensive care package for victims, including medical, psychosocial, educational and employment assistance
- Training of personnel in different tasks
- Regional plans for dealing with anti-personnel mines
- Adoption of standards for risk education and humanitarian demining
- Budget allocation since 2004

41. Colombia has also benefited from cooperation with such international bodies as UNICEF, the European Union, OAS, UNDP and the Governments of Japan, Canada, Switzerland and the United States of America.

42. Among others, Colombia undertakes the following commitments in this area:

- To offer better care to victims
- To train and graduate 1,000 community outreach workers to deal with mines every year

- To train 10 new 40-member humanitarian demining teams
- To set up an emergency response team
- To adapt policy to new challenges
- To destroy the remaining 26 minefields by 1 March 2011

B. Resisting impunity and guaranteeing access to justice

43. The Colombian authorities share the concern voiced by civil society during the consultation process about the pressing need to ensure that justice is administered promptly, objectively and impartially while protecting the rights of victims and the accused.

44. Access to justice in Colombia in order to assert fundamental rights is safeguarded, among other things, by the following:

- An application for protection, which can be made at any time by anyone [who believes] that his or her fundamental rights have been infringed or are threatened by the action or omission of any public authority or private individual.¹⁰
- Popular actions and class actions, which are intended to ensure that collective rights and interests are protected and upheld.
- Applications to have decisions declared unconstitutional or struck down, which enable citizens to challenge any rule or administrative action which they consider to be against the Constitution.

45. The Constitutional Court has added much to jurisprudence to uphold fundamental rights and make it harder for crime to go unpunished. These include:

- An elaboration of the concept of fundamental rights, establishing the connection with economic, social and cultural rights, specifying their scope, building on the concept of equality and encouraging positive discrimination in favour of the most vulnerable population groups.
- Statements of an “unconstitutional state of affairs” giving orders to State bodies with a view to overcoming repeated, serious breaches of fundamental rights.¹¹
- Creating the possibility for cases culminating in acquittal to be reviewed when an international human rights tribunal finds the State has been derelict about investigation.

46. The law also offers various alternative mechanisms for resolving conflicts which are backed by the Ministry of the Interior and Justice’s National Conciliation Programme, the National Houses of Justice and Peace Programme and the Peace Court.

47. Colombia has been combating impunity by a variety of means:

- In 2006, the Government adopted a policy of resisting impunity in cases involving human rights violations and infringements of international humanitarian law. This is built around

four strategic focuses: (i) strengthening institutions and organizations; (ii) managing resources; (iii) looking after victims and witnesses; and (iv) improving operating conditions during the investigation, trial and punishment. As the policy has been put into effect, there have been important advances: institutional and budgetary reinforcement of the Judiciary, the Public Prosecutor's Office in particular; an improvement in security conditions for judicial employees in the regions; entrenchment of the powers of the ordinary courts over the military criminal court system; coordinated work among the bodies involved in the investigation, trial and punishment of human rights violations and infringements of international humanitarian law; the production of a guide to the characterization and identification of human rights violations and infringements of international humanitarian law; and follow-up on human rights violations among vulnerable groups such as trade unionists and indigenous communities. A working group has also been set up as an inter-institutional body to follow up on and coordinate policy.

- A new, oral, adversary criminal system has been introduced since January 2005. The purpose of this change in criminal procedure is to bring about a more reliable, efficient justice system that upholds victims' rights and can take on major crime. The system incorporates a number of important conceptual advances: one of the main ones is the strict differentiation between those responsible for conducting investigations (the prosecutor's office), monitoring safeguards (the judge responsible for procedural safeguards) and conducting trials (judges).
- Protection programmes for victims, witnesses and judicial personnel in criminal cases have been introduced: the Public Prosecutor's Office Victim and Witness Protection Programme, the Judiciary's Protection and Individual Security Programme for Judicial Workers, the Ministry of the Interior and Justice's Human Rights Protection Programme, and the Justice and Peace Act Victim and Witness Protection Programme.
- The budget for the justice sector has been increased: in recent years (2003-2009 (forecast)), allocations to the sector have risen by over 66 per cent.
- The Public Prosecutor's Office has been expanded with the creation of 2,166 new posts since January 2008.¹²

48. Nonetheless, large challenges remain:

- Improving coverage in rural and remote areas
- Expanding protection programmes to cover third parties involved in criminal proceedings
- Setting up the data system and designing a means of making the State information systems on human rights violations interoperable
- Increasing technical investigative capacity
- Boosting confidence in the judiciary

Proceedings under the Justice and Peace Act

49. The purpose of the Justice and Peace Act is to facilitate peace negotiations and the return, individually and collectively, of members of the illegal armed groups to civilian life while guaranteeing victims' rights to the truth, justice and reparation. Individuals who have not committed war crimes or crimes of *lèse humanité* are subject to Act No. 782 of 2002 and other legal stipulations.

50. Of the various peace processes that have been mounted around the world, this Act is the most stringent. No amnesty for war crimes or crimes of *lèse humanité* is permitted; on the other hand, offenders are granted a reduction in custodial sentence in exchange for truth, justice and reparation towards their victims and compliance with an undertaking to disarm and not reoffend. It is worth pointing out that the ordinary justice system will be obliged to take up and investigate any incidents which are not elucidated voluntarily.

51. The Justice and Peace Act has been approved by all institutional bodies including the Constitutional Court, which has tested its constitutionality on three occasions against the Constitution and the international human rights treaties that Colombia has ratified.

52. Three years since the passage of the Act, the State has taken the following action to guarantee victims' rights:

- As far as justice is concerned, by June 2008 a total of 1,141 accounts had been volunteered, resulting in confessions to an extremely large number of criminal acts. A further 283 free accounts are currently in progress.¹³
- Mobile volunteered-account chambers have been set up to convey to victims the testimony proffered by demobilized combatants to benefit under the Act.
- A single victim register has been set up: it contains about 150,000 records.
- Additional resources have been made available to bolster the Public Prosecutor's Office National Justice and Peace Unit to match its real needs, increasing the initial number of prosecutors (20) to today's total of 59 trial and 125 assistant prosecutors, and 400 investigators.
- Altogether 1,056 graves have been opened and 1,559 bodies exhumed, of which there are possible identities for 513, while 202 have already been identified and handed over [to next of kin].
- To guarantee the rights to truth and reparation, the Act established the National Reparation and Reconciliation Commission, the majority of whose members come from civil society.
- The mass media have been used to keep victims informed. The Ombudsman's office has set up legal teams and offers advice, assistance, psychosocial counselling and legal and extrajudicial representation to individuals who consider themselves to be victims.

- As regards reparations towards victims, to date demobilized combatants have donated 4,619 items of property to the reparations fund. The Government has issued Decree No. 1290 of 2008, establishing the Individual Administrative Reparations Programme (which operates in parallel to judicial reparations) with a forecast budget of 7 billion pesos (US\$ 3,668,820,788) over the next three years.
- The Justice and Peace Act Victim and Witness Protection Programme has been established, and has received \$21 million between 2007 and 2008. The Programme is currently under review on the instructions of the Constitutional Court.
- Thanks to financial and technical assistance from IOM and USAID, a special-purpose legal advice scheme to ensure that victims are indeed involved in the process and can fully assert their rights to truth, justice and reparation has been put in place.

53. Regarding the decision to extradite 14 of the 3,431 individuals currently facing legal proceedings, it must be made clear that the extraditions were carried out in accordance with the law. It was an administrative decision by the Government, which reckoned that those extradited did not meet the conditions laid down by the Act for enjoying the penal advantages which the Act affords. The decision should induce other members of the demobilized groups to honour their commitments to truth and reparation. At the same time, the entire middle command and fighting-man structure is still at the disposal of the Public Prosecutor's Office Justice and Peace Unit.

54. Before the extraditions, the Government engaged in extensive judicial cooperation with the Government of the United States of America, which assigned a legal attaché at the Embassy in Bogota to channel all requests immediately to the competent authorities. It was also agreed that all property handed over in the United States by the extradited individuals as a result of deals struck in the United States courts would be used in its entirety for making reparations to victims in Colombia. Further, the Government asked the United States to be allowed to send Colombian representatives to trials held in the United States, so that they could continue their quest for the truth.

55. The individuals extradited have indicated an interest in continuing to assist with the establishment of the truth after plea-bargaining with the United States justice system; in some cases, arrangements are being made to complete the formalities with full guarantees for the victims.

56. On the other hand, the Colombian justice system is using the statements obtained under the Justice and Peace Act and by other means to launch investigations with a view to discovering the links between the paramilitaries and the various parts of the political community. Hence 68 congressmen are under investigation; 5 congressmen, 2 former congressmen and a governor have been convicted; 5 cases against congressmen have been dropped for lack of evidence. Six mayors are under investigation, roughly a hundred businessmen have been implicated in different trials, and the Public Prosecutor's Office Justice and Peace Unit has forwarded copies [of charges against] 76 members of the Armed Forces. These figures go to show the independence of the investigations, the progress being made, and the concentrated efforts being made by the judiciary to uncover the whole truth about the paramilitary movement.¹⁴

57. Despite the progress made in implementing the Act, major challenges remain to be overcome:

- Speeding up the process of establishing the truth
- Speeding up the identification of human remains so that they can be handed over to family members

- Inquiring into and investigating crimes committed by demobilized individuals against women and children (sexual violence and recruitment of children especially)
- Promoting the National Reparation Programme
- Expanding the Victim and Witness Protection Programme
- Giving more publicity to victims' rights and taking steps which will include promoting the activities that the National Reparation and Reconciliation Commission has been carrying out
- Getting the regional property restitution committees into operation
- Completing the historical commemorative document which the Act has assigned the National Reparation and Reconciliation Commission to produce

C. Discrimination and particularly vulnerable population groups

58. Colombia remains firmly committed to eliminating and punishing any form of discrimination based on motives of race, sex, religion, nationality, gender, language, sexual orientation, economic or social status or other causes and conditions in general. The Constitution requires particular care to be taken to uphold the human rights of those parts of the population that are especially vulnerable, and positive discrimination to be practised.

(i) Indigenous and Afro-Colombian population groups

59. Some 3.28 per cent of the Colombian population claims to be indigenous, and a further 10.3 per cent claim to be Afro-Colombian. They live in 710 indigenous reserves and 159 communal Afro-Colombian districts. Since the 1991 Constitution greater efforts have been made to recognize, promote and lend visibility to their rights and cultures; substantial legislation, nuanced jurisprudence and State policies now exist for this purpose. Such population groups nonetheless face threats to their personal and geographical existence from illegal armed groups, and in some cases enjoy physical living conditions below the national average.

60. The indigenous and Afro-Colombian communities have their own special seats in political assemblies; their authorities are recognized as such; they hold collective title to the land, which they use in accordance with their ancestral customs; they enjoy affirmative action in health, education, culture and other areas, and there are established channels by which they can communicate with the State. The Colombian State must, following the most recent constitutional jurisprudence, engage in prior consultation before embarking on any plans, administrative action or legislative initiatives that will take place in or affect their legally constituted districts. The Ministry of the Interior has specific guidelines on the promotion of policies relating to indigenous and Afro-Colombian population groups.¹⁵ In respect of Afro-Colombians, three major initiatives should be mentioned: the Intersectoral Committee for the Advancement of the Afro-Colombian, Palenquera (natives of the San Andres, Providencia and Santa Catalina archipelago) and Raizal (descendants of black African slaves from the seventeenth-century British colonial period) Population Groups, the Special Strategies for the Colombian Pacific, and the Comprehensive Long-Term Plan for the Afro-Colombian and Raizal Population, 2007-2019.

61. The Ministry of Defence has issued guidelines instructing the army and police to pay special attention to protecting the human rights of indigenous and Afro-Colombian communities throughout the country. The Ministry of the Interior's Victim Protection Programme takes a tailored approach to this population group. The Public Prosecutor's Office has made great efforts to press ahead with investigations where the victims are members of indigenous or Afro-Colombian groups, and task forces have been set up to move the work forwards. The Ombudsman's Office has conducted studies on ethnic communities subject to high vulnerability.

62. There are, however, challenges to be overcome:

- Completing the policy-formulation process in conjunction with the indigenous authorities
- Entrenching prior consultation procedures in accordance with the most recent constitutional jurisprudence
- Improving the communication channels established between the Government and the ethnic authorities,¹⁶ and relations at all levels
- Strengthening the indigenous and Afro-Colombian authorities
- Ensuring that the indigenous and Afro-Colombian communities really do have a right to land
- Combating the poverty that affects the indigenous and Afro-Colombian communities
- Defining mechanisms for coordination between the ordinary and indigenous court systems

(ii) Forcibly displaced population groups

63. Forcible displacement is the most widespread human rights violation in Colombia. The Single Register of Displaced Persons reports that 2,577,402 people are displaced, but estimates put the number higher.¹⁷

64. The State has taken a variety of steps to cope with the problem. In 1997 it set out Act No. 387, defining public policy on displacement; since then, the State has undertaken to guarantee proper enjoyment by displaced persons of their rights. The Constitutional Court, taking the initiative within the State, has declared an "unconstitutional state of affairs" in this connection and ordered amendment of, and compliance with, the Comprehensive Care Policy on displaced population groups. Pursuant to the Court's ruling, the State has stepped up its efforts to develop the regulatory base,¹⁸ produce indicators, offer appropriate care¹⁹ and provide budget resources for implementation. (The implementation budget has grown nearly six-fold in the past six years.) The Court is following up on its ruling closely by means of public hearings in which forcibly displaced people participate directly.

65. The effect has been a more visible situation and better communication with victims in the design and execution of care programmes for them. The Special Representative of the United Nations Secretary-General for displaced persons has acknowledged the encouraging policy development, and the OHCHR representative in Colombia has referred to the Colombian legislative framework as one of the most advanced in the world.

66. The Comprehensive Care Policy has produced important accomplishments:
- The introduction of mechanisms by means of which forcibly displaced persons can participate throughout the proceedings
 - Improvements in the Single Register of Displaced Persons
 - An increase in the care budget (600 per cent between 2002 and 2007)
 - More timely, better-quality, more differentiated care
 - Better coordination among the entities in the system
 - Less displacement
 - Increased coverage indices for the rights to health (82 per cent) and education (76 per cent)
67. There are, however, enormous challenges:
- Effectively preventing displacement
 - Making rights-enjoyment indicators consistent
 - Consolidating the income-generation, re-housing and return programmes and the time forcibly displaced persons have access to them
 - Reinforcing the differentiated approach
 - Applying reparation policy to the displaced population

(iii) Women

68. The Colombian State has taken various steps to promote and cross-cut gender equality in the country.²⁰ Although it is aware of the challenges in areas such as political participation²¹ and combating discrimination, this report will only address the issue of violence against women, this being a point that was given priority during the consultation process.

69. Act No. 1142 of 2007 was recently promulgated to prevent and punish domestic violence, increasing the penalty for the offence, doing away with benefits (house arrest/release from prison) for perpetrators and removing the requirement that prosecution must be based on a formal complaint, so that investigations can be initiated as a matter of course. Another law has also been passed, but not yet signed by the President, which will establish new gender-oriented public-awareness, prevention, protection and specialist care measures.

70. Besides this the Government, specifically the Office of the Presidential Adviser on Women's Equality and Acción Social, with support from UNIFEM, IMO and UNFPA, has recently drawn up a joint programme, the "comprehensive strategy for the prevention, treatment and eradication of all forms of gender violence". The programme is intended to operate with other public bodies and NGOs, preventing, detecting and recording gender-based violence, providing special-purpose care to female victims, and strengthening the legal framework offering protection to women.

71. The above notwithstanding, Colombia acknowledges major challenges in seeking to restrain displays of violence against women. To that end, it must:

- Strengthen semi-official investigation in the event of sexual and domestic violence
- Guarantee female victims of such violence full access to justice
- Guarantee a safe setting and favourable environment for the exercise by women of their rights
- Safeguard the rights of women affected by violence by armed outlaw bands
- Apply the gender perspective to victim care policies and make public servants aware of that perspective

(iv) Children

72. Girls continue to suffer the consequences of violence in Colombia. Despite efforts by the State, serious violations of girls' human rights still occur. There has, however, been some progress. In 2006, pursuant to national and international recommendations, a new Children's and Adolescents' Code was promulgated, acknowledging children as full possessors of rights, establishing the guiding principles of prevalence, best interests, a differentiated approach and the collective responsibility of the family, society and the State to prevent violations and fully guarantee children's rights, organizing the services that institutions offer and setting up a special liability regime for adolescents who break the law.

73. The National Plan of Action for the Prevention and Elimination of Commercial Sexual Exploitation of Children, 2006-2011, and the National Strategy for the Prevention and Elimination of the Worst Forms of Child Labour, 2008-2015, have been put into effect; the Intersectoral Commission to prevent the recruitment and use of children by organized outlaw groups was set up in 2007.

74. The Colombian Family Welfare Institute, a State body responsible for promoting and protecting children's rights, has been given a technical and budgetary boost in recent years (its investment budget has tripled since 2002), and has become a Latin American model of its kind.

75. Other achievements include:

- Entrenchment of the Social Protection System set up to safeguard girls' rights
- Better comprehensive care for abused and sexually exploited girls, thanks to the introduction of specialist victim-care units
- The level of inter-institutional coordination brought about by the various intersectoral plans and strategies

76. The challenges facing the State are:

- To give full effect to the new Code in all areas
- To provide backing for the Social Protection System to safeguard boys' rights

- To bolster policies on comprehensive social and family protection so as to prevent recruitment
- To bring child labour indices down to 5.1 per cent by 2015

(v) Lesbians, gays, bisexuals and transvestites

77. The subject of special protection for same-sex couples has appeared on the public agenda in Colombia, and has led to important developments in jurisprudence. The Constitutional Court has on various occasions upheld the right of same-sex couples to equality. It has recognized that a de facto marital union (and the ensuing property rights), access to the mandatory health scheme and access to a survivor's pension must be safeguarded for same-sex couples on the same terms as for heterosexual couples. Colombia now faces the challenge of continuing to advance in this area.

(vi) Human rights defenders, trade unionists and reporters

78. Human rights defenders have played an important role in fostering a culture of human rights, restitution for victims and stiffer domestic standards; a culture in which the State is required to fulfil its role of upholder and guarantor, violations of rights are reported, and the international community is involved in dealing with such violations.

79. With constant backing from OHCHR, the State has secured various channels of communication and cooperation with human rights defender groups,²² seeking to build policy on the basis of joint efforts.

80. In 1997, the State set up the Ministry of the Interior Protection Programme as a result of a joint effort with civil society. The Programme was originally designed to protect the right to life, personal integrity, freedom and security of trade union leaders and the leaders of threatened non-governmental human rights organizations. Coverage was later extended to other groups, such as reporters and the leaders of ethnic communities.

81. The Programme has an advisory body consisting of State representatives and representatives of the target population, who discuss cases together and put forward consensus recommendations on the most appropriate action to take to protect a given person. The State has been working hard to enlarge the Programme budget progressively, and has increased it by 187 per cent during this Administration.²³

82. Work has been going on for years on the development of standards and a culture for public servants and society which will guarantee action in keeping with the role played by human rights defenders in a democracy. The Government's policy has been to guarantee the exercise of all freedoms and to remain in communication with all sectors of society.

83. Even so, the subject of safeguards for the work of human rights defenders has been one of the most controversial that the Government has tackled. Human rights defenders claim that they are still subject to breaches of their rights: killings, threats, information stolen from the head offices of their organizations. They also say they are subject to detentions and illegal searches, and that statements by some State officials put them in danger.

84. State officials have publicly condemned the threats and thefts of information from human rights defenders,²⁴ and have held meetings to review the situation, take steps to ensure defenders' security, and call for more vigorous investigations.²⁵ The Government considers that there are grounds for concern, but the situation is better than in the past.

85. Clearly there are differences between the Government's and some NGOs' perceptions of matters such as how the Government is working, what it is achieving, its rights-protection policy, its commitment to human rights, and the nature of the new criminal gangs.

86. In the Government's view, such discussions occur in a society with differences in judgement. It calls for objectivity in human rights reports and maintains its commitment to afford every safeguard for the activity of human rights defenders. It regards as inappropriate the strategy of avoiding discussion in national forums, claiming that safeguards are inadequate, while seeking to bring pressure to bear on the Government from the international community.

Reporters

87. The State has been particularly concerned to uphold the freedom of the press. There is a great deal of diversity to be observed in the news media in Colombia, and reporters now enjoy better levels of protection. No public official or sector of society escapes scrutiny and criticism by the Colombian press.

88. There are still problems in some areas, however, where reporters claim to be subject to pressure, violent reactions to reports of corruption, and complaints about the speed with which protective measures are put in place.

Trade unionists

89. Killings of trade unionists are known to have diminished by 87 per cent between 2002 and 2007. Given the increase recorded in 2008, the Government signed a Joint Statement in July with the trade unions,²⁶ the Public Prosecutor's Office, the Administrative Security Department and the national police, denouncing the attacks on union members and undertaking to prevent attacks, protect unionists and punish the culprits.²⁷

90. A special unit has been set up in the Public Prosecutor's Office to investigate attacks on and killings of trade unionists; this has led, so far, to convictions of 75 individuals in 46 cases, and 27 trials and 39 investigations are currently in progress.²⁸ This work has also revealed, it is important to note, that many killings of trade unionists are not motivated by union activity.

91. The Colombian State gives the following undertakings in respect of human rights defenders, reporters and trade unionists:

- To improve guarantees of the exercise of their rights
- To remain in communication with them
- To act on its commitments in the case of the tripartite agreement with ILO²⁹
- To encourage investigations of crimes against these groups
- To foster a culture in which it is easier for human rights defenders, reporters and trade unionists to operate

(vii) Individuals deprived of their liberty

92. Colombia has been making great efforts to uphold and guarantee respect for human rights within the prison system, to overcome overcrowding, inhuman and degrading treatment, and to keep the various categories of detainees apart.

93. An Agreement on Harmonized Cooperation between the Ombudsman's Office, the Office of the Procurator-General, the Ministry of the Interior and Justice and the National Prisons Institute has been in effect since 2006: human rights policy has been strengthened, giving priority to five main areas - health, food, inhabitability, recreation and legal teams. There has also been progress in identification of the prison population through censuses at detention facilities laying emphasis on prisoners held in exceptional conditions and prisoners belonging to minority groups.

94. Among the advances made, the following may be mentioned: incorporation of human rights programmes into prison policy; the posting in prisons of the motto "Your Human Dignity and Mine are Inviolable"; and the strengthening, with the backing of the Ombudsman's Office, of the Human Rights Committee at each penitentiary institution.

95. The State does, however, recognize that there are still challenges to meet. It has undertaken to expand national prison capacity by 24,331 places by building ten new prison complexes. It is also designing and introducing new means of restricting liberty such as electronic tagging as an alternative to a [prison] sentence, and the urban farming programme, which is intended to train inmates to provide enough food for themselves and their families when they are freed.

D. Economic, social and cultural rights

96. According to the consultations carried out, the three most common concerns relating to economic, social and cultural rights are poverty and inequality; education; and health. It should be noted that Colombia is making headway in measuring economic, social and cultural rights appropriately so as to be able to guarantee them fully and universally. The Ombudsman's Office has run a public human rights policy follow-up and evaluation programme, using a follow-up and evaluation methodology intended to ascertain how far social policy guarantees economic, social and cultural rights. Since 2005 there has existed, under the coordination of the Office of the Vice-President, an inter-institutional group on the construction of economic, social and cultural right indicators, which is intended to establish indicators for measuring progress in the attainment of such rights.

97. Colombia's current national development plan is based on the Millennium Development Goals.

(i) Poverty and inequality

98. The Government has developed a comprehensive policy; for this purpose, besides its macroeconomic and security policies, it has put into effect a Social Reactivation Policy using seven tools for equality: educational revolution; protection and social security; backing for the mutual economy; social management of the countryside; social management of public services; a country of property-owners; quality of urban life.

99. Some 70.2 per cent of government spending between 2003 and 2006 went towards the financing of these tools. As a result, moderate poverty has fallen from 55 per cent to 45.1 per cent under this Administration, and extreme poverty from 21 per cent to 12 per cent.

100. Similar results have been observed when poverty is measured in terms of unsatisfied basic needs. The percentage of households with at least one unsatisfied basic need has fallen from 22.3 per cent in 2002 to 18.7 per cent in 2006. The percentage of households with two or more unsatisfied basic needs also fell, over the same period, from 6.3 per cent to 4.5 per cent. Colombia's Gini coefficient fell from 0.58 in 2002 to 0.54 in 2006.

101. Among the Government's poverty-reduction programmes, the following are worth mentioning:

- The Social Protection Network for Overcoming Extreme Poverty, JUNTOS, which seeks to prompt all State institutions to become involved in helping 1,500,000 families reach 51 basic accomplishments in nine areas: identification, income and work (training for productive work and production projects), education, health, nutrition, inhabitability (housing and sanitation), family dynamics, banking and saving, and legal support.
- The Opportunities Bank, which is intended to offer the general public, but especially people on small incomes, access to financial services. It consists of a collection of tools to facilitate access to credit, savings, payments, the handling of remittances, and insurance. Its objectives for 2010 are to provide financial coverage in all Colombian townships, to increase the microcredit it extends by 5 million, and savings accounts by 3 million, to encourage 850,000 new cooperative memberships, and to increase the use of banking services by 5 per cent over the following four years.

102. The aim with these programmes is to reduce the poverty index to 28 per cent and the extreme poverty index to 8.8 per cent by 2015, as called for by the first of the eight Millennium Development Goals.

(ii) Education

103. The spread in educational coverage over the past four years has been considerable: between 2002 and 2006, gross primary and secondary (middle school) education coverage increased from 88 per cent to 94 per cent, and higher (pre-degree course) coverage, from 24 per cent to 31 per cent.

104. The current Government's strategies for expanding preschool, primary and secondary education have, through investment in school infrastructure and the adoption of flexible education models, created 1,348,703 new school places.

105. Supplementing the above there is a Ten-Year Plan for Education 2006-2016, which is intended to turn into a social compact on the right to education that, with assistance from the country's institutions and citizenry, will allow the right decisions to be identified and taken for the changes which education requires to come about.

106. Despite the State's efforts, many challenges remain. According to the report on the attainment of the Millennium Development Goals, by 2015 Colombia should have:

- Attained universal basic education
- Reduced illiteracy among 15- to 24-year-olds to 1 per cent
- Reached gross coverage levels of 100 per cent for basic education (preschool, primary and lower secondary) and 93 per cent for higher secondary (middle school) education

- Established an average of 10.6 years' schooling among the 15- to 24-year-old age group
- Reduced the repeat rate in basic and middle education to 2.3 per cent

107. Meeting these goals will be complicated by problems with quality, permanence, availability and access, the latter entailing latent problems with resources, availability of information, and access in rural areas. Where quality is concerned, studies are needed to show what steps to take to improve scores, given that achieving quality in education is not just the responsibility of the State but also of society at large. As regards permanence, there are problems such as child labour and teenage pregnancy.

108. The State has taken a variety of initiatives to overcome these problems. For instance, the National Development Plan calls for basic and middle education coverage to be extended; the SABER ("knowledge") tests that Colombian schoolteachers were required to take are intended to improve teaching quality; the Families in Action programme, launched in 2000, has improved the secondary school attendance rate among the children of beneficiary families.

(iii) Health

109. Of Colombia's 42,090,502 inhabitants, altogether 38,047,079 currently have health protection under the social security system. It should be noted that the number of subscribers to the subsidiary scheme rose from 11.4 million in 2002 to 20.2 million in 2006.

110. The delivery of health services in Colombia is decentralized. The National Public Health Plan 2007-2010 defines the methodology for the formulation, execution, follow-up, evaluation and monitoring of regional health plans and action.

111. The Government drew up a policy on sexual and reproductive health for the period 2002-2006 which resulted in a drop in the overall fertility rate from 2.6 to 2.4 children per woman, a rise in the current use of contraceptives by women of childbearing age from 76 per cent to 78 per cent, an increase in pre-natal care from 91 per cent to 94 per cent and hospital births from 86.4 per cent to 92 per cent. Coverage by cytological screening for cervical cancer rose to 84 per cent.

112. As regards progress in vaccination and infant mortality, the Expanded Programme of Immunization has been extended, nationally and regionally, and the multilateral bank has granted a loan which has facilitated greater equality in immunization and efficient use of resources.

113. To resist the spread of HIV, new diagnostic procedures and antiretroviral drugs have been added to the Mandatory Health Plan, and the related technical standards and care protocols have been reviewed and amended.

114. Health challenges include:

- Universal coverage by 2010
- Establishing 90 telemedicine stations for remote locations
- Standardizing the Mandatory Health Plan for children of all social strata as a first step towards compliance with Constitutional Court order No. T-760 of 2008, which requires benefits for children, adults and citizens in general to be standardized

- Reducing maternal and infant mortality in accordance with the Millennium Development Goals
- Putting the national public health plan and the sexual and reproductive health plan into effect
- Improving nutrition levels among girls
- Combating HIV/AIDS, malaria and other serious illnesses

115. There are, nevertheless, restrictions which make it hard to overcome these challenges. For instance, evasion and avoidance in the contributory scheme undermine the financial sustainability of the health system (coercive inspection procedures need to be applied more efficiently, there is still little supervision or monitoring).

IV. CONCLUSIONS AND UNDERTAKINGS

116. Colombia has made great efforts to comply with its human rights obligations and assign its institutions and public servants more responsibility for guaranteeing and protecting human rights. These efforts are comprehensive as regards scope and areas of work.

117. Recent experience has shown that security is essential for the full enjoyment of human rights.

118. There are still problems with fully guaranteeing human rights. These are exacerbated by the country's difficult geography, the violence of some groups and failings in some institutions.

119. In the case of Colombia, the drug trade has generated incalculable resources which have enabled illegal armed groups to survive and flourish. All illegal groups in Colombia treat human rights and international humanitarian law with the utmost scorn.

120. On the other hand, regrettably, Colombia has found itself in sharp conflict with some NGOs. The Government wants a constructive relationship with NGOs, and fluid relations with the international community.

121. The Colombian State undertakes as commitments the intentions expressed in paragraphs 31, 38, 42, 48, 57, 62, 67, 71, 76, 91, 95, 102, 106 and 114 above.

122. Last, Colombia voices its gratitude for this opportunity to discuss in depth the human rights situation within the country, commits itself [to honour] the conclusions reached, and will establish mechanisms to monitor the recommendations agreed on.

Notes

¹ El Comité Interinstitucional está conformado por el Programa Presidencial de DDHH y DIH, las Direcciones de DDHH del Ministerio de Relaciones Exteriores y del Ministerio del Interior y de Justicia. Este Comité creó un Grupo Permanente de Trabajo conformado por funcionarios técnicos de estas entidades.

² Ver anexo 1. Amplio Proceso de Consultas e Informe de ejecución.

³ Ver anexo 2. Lista de tratados ratificados de DDHH y DIH.

⁴ Se trata de las siguientes entidades del orden nacional: la Consejería Presidencial para la Equidad de la Mujer (CPEM), la Dirección de Asuntos Indígenas, Minorías y Rom del Ministerio del Interior, la Dirección para Asuntos para comunidades Negras, Afrocolombianas, Raizales y Palenqueras del Ministerio del Interior, la Agencia Presidencial

para la Acción Social y la Cooperación Internacional, a cargo, entre otros temas de atender a la población en situación de desplazamiento, la Alta Consejería para la Reintegración Social y Económica de Personas y Grupos Alzados en Armas, el Instituto Colombiano de Bienestar Familiar (ICBF), que vela por los derechos de los niños las familias y los adultos mayores., el Instituto Nacional para ciegos (INCI) y el Instituto Nacional para Sordos (INSOR). Ver anexo 3. Listado de Instituciones nacionales de DDHH.

⁵ En diciembre de 2007, el Comité Internacional de Coordinación de Instituciones Nacionales para la Promoción y Protección de los DDHH-CIC-ratificó el reconocimiento de la Defensoría del Pueblo de Colombia, en la categoría o status “A”. Este reconocimiento significa que la Defensoría cumple a cabalidad con los Principios de París.

⁶ Por la ONU, han visitado al país en los últimos siete años, la Relatora Especial sobre el derecho a la educación; el Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia; el Relator Especial sobre las situación de los DDHH y las libertades fundamentales de los indígenas, el Relator Especial sobre el derecho a la libertad de opinión y de expresión; el Grupo de Trabajo sobre Desapariciones Forzadas o Involuntarias; el Representante Especial del Secretario General sobre los DDHH de los desplazados internos; el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental; la Relatora Especial para la Niñez y el Conflicto Armado y, por último, visitarán el país en el segundo semestre de 2008 el Grupo de trabajo para el tema de detenciones arbitrarias y la Experta Independiente sobre la cuestión de la Pobreza Extrema. Por la OEA, han visitado el país el Relator Especial sobre Libertad de Expresión, el Relator Especial sobre derechos de la Mujer, el Relator Especial sobre derechos de las personas privadas de la libertad, el Relator Especial sobre población Afrodescendiente.

⁷ El contenido del Plan se ha organizado en cinco ejes temáticos que se reconocen como los problemas en los cuales se debe trabajar de manera enfática: a) cultura en DDHH, b) derechos a la vida y a la integridad personal, c) lucha contra la discriminación, d) políticas públicas en materia de educación, salud, vivienda y trabajo, y e) administración de justicia y lucha contra la impunidad.

⁸ Temas de gran importancia que no se abordan en este documento son, entre otros, los siguientes: Medio ambiente, libertad de religión, vivienda, alimentación, derechos culturales, derechos de los migrantes, trata de personas, derecho al agua.

⁹ Existen los siguientes sistemas de información sobre estos delitos en el país: sistema de información de las Fuerzas Militares (SIJUR), Registro Nacional de Desaparecidos, Sistema de Vigilancia Epidemiológica de Lesiones de Causa Externa (SIVELCE), Sistema de Información Red de Desaparecidos y cadáveres (SIRDEC) y base de datos única sobre casos de tortura que ha creado la Fiscalía.

¹⁰ “La acción de tutela contra particulares procede cuando: (i) cuando el particular contra el que se dirige tenga a su cargo la prestación de un servicio público o desempeñe funciones públicas; (ii) cuando la conducta del particular contra el que se dirige la tutela afecte grave y directamente el interés colectivo; (iii) cuando el solicitante se halle en estado de subordinación o de indefensión frente al particular contra el cual se interpone la tutela” (Sentencia T-798/07).

¹¹ El “estado de cosas inconstitucional” se da cuando “(1) se presenta una repetida violación de derechos fundamentales de muchas personas - que pueden entonces recurrir a la acción de tutela para obtener la defensa de sus derechos y colmar así los despachos judiciales - y (2) cuando la causa de esa vulneración no es imputable únicamente a la autoridad demandada, sino que reposa en factores estructurales” (Sentencia SU-090/00). La Corte Constitucional ha declarado el Estado de Cosas Inconstitucional en seis situaciones: para proteger los DDHH de las personas privadas de la libertad, para advertir sobre la falta de protección a los defensores de derechos humanos, para examinar el tema de distribución de recursos en materia de educación y para proteger los derechos de las personas pensionadas, de los notarios removidos de su cargo sin acto administrativo motivado de autoridad competente, de quienes se encuentran en situación de desplazamiento.

¹² El Decreto 122 de 2008 creó 1 412 nuevos cargos de carácter permanente 753 cargos transitorios.

¹³ Los Procuradores Judiciales Penales II como Agentes del Ministerio Público han intervenido en 1 216 versiones libres.

¹⁴ La Fiscalía cuenta con una lista de 12 personas que pueden tener presuntos nexos con las FARC y a los cuales se les podría iniciar una investigación penal.

¹⁵ Dirección de Asuntos Indígenas, Minorías y Rom y Dirección de Asuntos para Comunidades Negras, Afrocolombianas, Raizales y Palenqueras.

¹⁶ Se han creado, conservado y apoyado tres espacios de concertación con los pueblos indígenas: la Mesa Nacional de concertación, la Mesa Nacional de Derechos Humanos; y Mesa Amazónica; que ameritan ser fortalecidos en cuanto a presupuesto, continuidad y representatividad por parte de los pueblos indígenas, y otras instancias para temas sectoriales.

¹⁷ El Director de la Agencia Presidencial para la Acción Social y la Cooperación Internacional estima que hay alrededor de 3 millones de PSD. Algunas ONG advierten un número incluso mayor 4.361.355 (CODHES2008). Al respecto, la Corte Constitucional ha manifestado que, si bien el sistema oficial de registro ha avanzado considerablemente desde el año 2004, aun no refleja cabalmente la realidad (Corte Constitucional, Auto 218 de 2006. M.P. Manuel José Cepeda. P.2.1). ACNUR ha tomado esta providencia como fuente para sus informes, en particular, la cifra de “unos tres millones de personas desplazadas.

¹⁸ Entre las normas más importantes, podemos resaltar el Decreto N° 250 de 2005 por el cual se expide el Plan Nacional para la Atención Integral a la Población Desplazada por la Violencia; la Directiva Presidencial N° 06 de 2005 emitida para dar cumplimiento a la sentencia T-025/04, el Documento CONPES 3400 el cual define metas y compromete recursos para atender a desplazados por la violencia; y los Acuerdos aprobados en el marco del Consejo Nacional de Atención Integral a la PSD, entre los que se destacan: el No 3 sobre la protección contra prácticas discriminatorias, el No. 5 mediante el cual se adopta el Plan de Atención para la comunidad Nukak Maku y demás comunidades indígenas en riesgo (actualmente se han formulado 11 planes para comunidades indígenas en riesgo); y el número 8 referido a la implementación del enfoque diferencial teniendo en cuenta las perspectivas de género, etnia, edad y discapacidad.

¹⁹ Por ejemplo, en el caso de las mujeres, la Corte ha ordenando: a) la creación de trece programas específicos para colmar los vacíos existentes en la PAIPSD desde la perspectiva de género, de manera tal que se contrarresten efectivamente los riesgos en el desplazamiento; b) el establecimiento de dos presunciones constitucionales que amparan a las mujeres desplazadas; y c) la adopción de órdenes individuales de protección concreta para seiscientas mujeres desplazadas. Con el fin de enfrentar este problema, la Consejería Presidencial para la Equidad de la Mujer, en desarrollo del convenio suscrito con el ACNUR, viene adelantando el diseño de una Directriz de prevención, atención y estabilización socioeconómica para la población desplazada con enfoque de género.

²⁰ Con el fin de garantizar la equidad de género, en el Plan Nacional de Desarrollo 2003-2006, se consagró especialmente la política “Mujeres Constructoras de Paz y Desarrollo”, la cual introduce de manera transversal, el enfoque de género en el diseño, la ejecución y la evaluación de sus políticas públicas para lograr la eliminación de todas las formas de discriminación contra la mujer, en 5 áreas de intervención: Empleo y Desarrollo Empresarial, Educación y Cultura, Prevención de las Violencias contra las Mujeres, Participación Política y Fortalecimiento Institucional. La Alta Consejería para la Equidad de la Mujer adelanta un conjunto de acciones afirmativas a favor de las mujeres, realiza el seguimiento a la política social con igualdad de oportunidades desde la perspectiva de género e implementa la estrategia de transversalidad de género. Y a pesar de que en el Estado de Colombia todavía queda un importante camino por recorrer, la labor del Observatorio de Asuntos de Género (OAG), que tiene como función dar seguimiento desde la perspectiva de género a políticas públicas, leyes y sentencias, ha sido reconocido por la CEPAL como una buena práctica.

²¹ Frente a la participación política de las mujeres, vale la pena resaltar, que si bien aún no se han alcanzado los niveles de participación deseados, se han logrado algunos avances con la implementación de la Ley 581 de 2000, conocida como Ley de cuotas, creada para garantizar la efectiva participación a que tienen derecho las mujeres en todos los niveles de las ramas y demás órganos del poder público. Actualmente, se ha dado amplia participación a la mujer en las altas instancias del Gobierno Nacional pero en los cargos de elección popular la participación de la mujer aún es muy limitada. A pesar de la escasa representación femenina, en el Congreso de la República se ha conformado una bancada de mujeres congresistas de diferentes movimientos y partidos políticos, con el objetivo de impulsar proyectos de ley relativos a la garantía y protección de los derechos de la mujer.

²² Se destacan espacios como la Comisión Consultiva de Alto Nivel (para Comunidades Afrocolombianas), la Mesa Nacional de DDHH de los Pueblos Indígenas, Mesas de diálogo social (DDHH de los Trabajadores), Consejo Nacional de Atención Integral a la PSD, Mesa Nacional de Fortaleciendo a las Organizaciones de la PSD, el Comité de Reglamentación y Evaluación de Riesgos (Personas del Programa de Protección del Ministerio del Interior) y la Mesa de seguimiento a la implementación de las recomendaciones anuales de OACNUDH (participan organizaciones sociales, entidades del Estado concernidas y comunidad internacional).

²³ El presupuesto del programa ha pasado de \$26.064 millones (US\$13,660,592) en el año 2002, a \$74.717 millones (US\$39,160,468) en el año 2007, invirtiéndose \$279.725 millones (US\$146,608,699) en los últimos cinco años.

²⁴ El 11 de julio de 2007 el Director del DAS denunció públicamente el robo continuado de computadores en las sedes de varias ONG con sede en Bogotá y manifestó toda su colaboración para que éstas puedan ejercer su labor. El Vicepresidente de la República, el 9 de septiembre de 2007, en su intervención en la ceremonia de firma de la prórroga del acuerdo entre Colombia y OANUDH manifestó que: “agradezc[e] la participación de las organizaciones defensoras de los DDHH en este acto y su valiosa contribución al objeto de la vigencia de los DDHH en Colombia. Reiter[ó] la decisión del Gobierno Nacional de brindar todas las garantías para el ejercicio de su labor en nuestro país. Conden[ó] las acciones hostiles contra estas organizaciones representadas en amenazas y robos a sus sedes. Quienes realizan estos actos enlodan nuestra política de disenter con la opinión ajena respetando sus derechos; r[ogó] a las autoridades judiciales poner todo el empeño en esclarecer estos hechos y castigar a los responsables.” Respecto de las amenazas recibidas el 11 de marzo de 2008 mediante correos electrónicos, el Ministro del Interior rechazó enfática y públicamente estas comunicaciones de amenazas, manifestó que “rechaz[a] categóricamente las amenazas que por medios electrónicos, las personas que se identifican como la organización criminal “Águilas Negras” han hecho llegar a organizaciones o personas que organizaron la marcha del pasado 6 de marzo.”

²⁵ Sobre los robos de información a las sedes de ONG se llevaron a cabo varias reuniones entre las cuales se puede mencionar, las realizadas el 10 de julio y el 25 de septiembre de 2007. En éstas participaron representantes de ONG nacionales e internacionales, el Director del DAS, funcionarios de la Policía Nacional, de la Fiscalía y el Director del Programa Presidencial de DDHH y DIH. Las acciones adoptadas fueron: la designación de agentes especiales en las investigaciones por parte de la Procuraduría, la asignación de varias de estas investigaciones a al Fiscal delegado ante los Jueces del Circuito de la Unidad de delitos contra el Patrimonio, y el reforzamiento de las medidas de seguridad que fueran necesarias por parte de la Policía Nacional y el Ministerio del Interior. Respecto de las amenazas recibidas el 11 de marzo de 2008, se realizó una reunión el 13 de marzo con la Fiscalía, la Policía Nacional, el DAS, el Ministerio del Interior y el Programa Presidencial de DDHH y DIH, en ella se adoptaron las siguientes acciones: expedición de la Resolución 1532 por parte de la Fiscalía asignando la investigación a la Unidad de DDHH de la Fiscalía, e instrucciones a la Policía y al Ministerio del Interior para reforzar las medidas de seguridad que fueran necesarias.

²⁶ Central Unitaria de Trabajadores (CUT), Confederación de Trabajadores de Colombia (CTC), y Confederación General del Trabajo (CGT).

²⁷ Entre otros, la Declaración comprende los siguientes compromisos: reforzar el grupo de fiscales especializados que investigan crímenes contra sindicalistas; adelantar una campaña en los medios de comunicación defendiendo los derechos de los sindicalistas; convocar a una reunión de empresarios, dirigentes sindicales y Gobierno para establecer un mecanismo conjunto que evite el constreñimiento a la libertad sindical y tomar medidas para castigar a los infractores de este derecho; optimizar el mecanismo de alerta temprana y reforzar el protocolo de prevención para identificar los casos críticos; crear una Red Virtual para atender alertas de amenazas en tiempo real; informar por parte de los comandantes de Policía Departamentales la situación de riesgo y protección de los sindicalistas en sus jurisdicciones; ofrecer recompensas por informaciones que conduzcan a la captura de los condenados por crímenes contra sindicalistas.

²⁸ En estos procesos hay 26 personas detenidas y 53 con medida de aseguramiento vigente.

²⁹ En junio de 2006, se suscribió el Acuerdo Tripartito por el Derecho de Asociación y la Democracia, dirigido a promover los derechos fundamentales de los trabajadores, a fortalecer el diálogo social y a implementar programas para combatir tanto la violencia contra trabajadores y como la impunidad. Con ocasión del Acuerdo Tripartito, se han tomado las siguientes medidas, entre otras: Establecimiento de una representación permanente de la OIT en Colombia. Nombramiento de tres jueces de descongestión, por parte del Consejo Superior de la Judicatura. Mejoramiento del diálogo social a través de la reactivación de la Comisión de Concertación de Políticas Salariales y Laborales, la creación de la Comisión de Tratamiento de Conflictos, la Comisión Interinstitucional de Derechos Humanos y la Comisión Intersectorial para promover la formalización del Trabajo decente en el sector público. Implementación de la oralidad para la justicia laboral. Regulación de las Cooperativas de Trabajo Asociado. Establecimiento y constitución de sindicatos sin injerencia del Estado. Proyecto de ley presentado por el Gobierno Nacional, mediante el cual se busca que la competencia para declarar la ilegalidad de las huelgas, quede en manos de los jueces laborales.
