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ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH COMMISSIONER AND THE SECRETARY-GENERAL

Note verbale dated 2 February 2009

The Permanent Mission of Colombia to the United Nations Office and other international organizations at Geneva presents its compliments to the secretariat of the Human Rights Council and has the honour to transmit herewith the observations* of Colombia concerning the report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia in 2008.

The Permanent Mission of Colombia further requests that the observations of Colombia concerning the report of the High Commissioner on the situation of human rights in Colombia in 2008 be issued in Spanish and English as a document of the Human Rights Council at its tenth session at the same time that the High Commissioner's report is issued.

* Reproduced in the annex in the language of submission and in English only.

Annex

OBSERVATIONS OF COLOMBIA CONCERNING THE 2008 REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

Colombia wishes to express its gratitude for the High Commissioner's report on the situation of human rights in Colombia in 2008 and for the activities of the High Commissioner's Office in the country. The report successfully gives a full, comprehensive and broad picture of the workings of human rights and international humanitarian law in Colombia. All complaints raised are covered in the report, as are most of the State's efforts, and the progress made and challenges that remain are clearly described.

The report shows that independence and a commitment to human rights do not conflict with recognition of positive action and measures taken by the State. Colombia's State institutions recognize the proactive and constructive spirit that characterizes and guides the report. Bearing this aspect of the report in mind, Colombia would like to make a number of general comments on the report rather than an exhaustive analysis of its content.

Colombia welcomes the recognition given to its policy of openness to the international community; it has been consistent in its policy of honouring its international commitments, cooperating to achieve the goals shared by all humankind and being open to all opportunities for examining the situation within the country. This policy has included the presence in Colombia of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for 11 years, a visit by the High Commissioner at the invitation of the Government, visits by the bodies described in the report and an ongoing dialogue with the international community and civil society involving the Embassies of 39 countries accredited to the Colombian Government.

It should be recalled that Colombia volunteered to participate in the universal periodic review process of the Human Rights Council on 10 December 2008. In the context of this exercise it undertook a profound analysis of the real human rights situation in Colombia; the exercise also allowed Colombian institutions to carry out a comprehensive analysis as part of the preparation process for the review and to accept 69 voluntary commitments aimed at improving the promotion, guaranteeing and protection of human rights. Colombia accepted the vast majority of the recommendations made by other States. Colombia has created an Internet link to disseminate the contents and conclusions of the review and will publish a report every four months on progress made in the implementation of the voluntary commitments and recommendations accepted.

In her report, the High Commissioner emphasizes the effect of violence on human rights, the failure of the illegal armed groups to recognize international humanitarian law, and the multitude of war crimes committed by these groups, such as kidnapping in inhuman conditions, indiscriminate attacks, the planting of anti-personnel mines, murders and massacres, the recruitment of minors and attacks on medical missions. She begins her recommendations by "call[ing] for dialogue and negotiations to achieve lasting peace". This subject merits further observations, as follows.

The Colombian people's rejection of the actions of illegal armed groups has been total and repeated, as exemplified by the mass demonstrations of 4 February 2008. The Colombian

political system is a democracy which is improving daily and whose legitimacy is based on popular support. The Colombian political system is pluralist, with guarantees for all political parties; 10 of these are represented in parliament, and no one party holds more that 20 per cent of all seats. The country's capital and other cities are governed by members of political parties other than those in the Government coalition, which does not prevent them from working in a coordinated and respectful fashion with the national Government.

In Colombia, violence cannot be justified by alleged political goals or supported on any grounds. It is only resources obtained from drug trafficking, over 500,000 square kilometres of jungle and the criminal arrogance of some chiefs that has allowed the strongholds of illegal armed groups to continue to exist. Such groups are increasingly being eliminated by State action and by desertion, as evidenced by the fact that there have been over 15,000 individual cases of voluntary demobilization, with some individuals choosing to flee with hostages in order to free them from this inhuman treatment.

The Colombian Government has developed a policy to combat all forms of crime and to protect the population and democratic institutions, as is its duty, and has demonstrated through its actions its willingness to engage in dialogue. However, it demands that this dialogue coincide with a cessation of hostilities and with a real desire to reach agreement. Neither the Government nor Colombian society can accept that a peace dialogue should once again be used as a means of deceiving by promising peace even as these forces gather strength and plan fresh attacks on the population and its legitimate institutions.

Anyone who is genuinely interested in peace in Colombia must cooperate in combating drug trafficking - the main source of resources for all violent groups in Colombia - and call for the cessation of all hostilities and a sincere desire for peace to achieve a negotiated solution in the country, which is the only route to the "lasting peace" invoked by the High Commissioner. This is the desire of Colombian society and the Colombian State; unfortunately, some groups are still choosing violence over this option.

The report also acknowledges the efforts being made by all State institutions to comply with their constitutional, legal and ethical obligations, recognizing such actions as: efforts to strengthen the rule of law throughout the country; the "willing[ness] to adopt measures to protect and respect human rights"; efforts in the area of training; steps taken to combat impunity; efforts to ensure the exercise by victims of their rights; progress in determining the truth; reforms to guarantee the right to strike; and increased efforts to assist internally displaced persons. Such recognition encourages the efforts of all State institutions to fully realize and guarantee human rights in Colombia.

Obviously, the allegations of murders committed by members of the public security forces outside combat were a central theme in the review of the human rights situation in Colombia in 2008 and are given significant coverage in the report. Colombia wishes to stress that there have been no reports of such cases since October and that it will redouble its efforts to prevent any further such complaints and investigate and punish any cases that are reported.

The report's limited space has meant that the immense efforts being made by Colombia to address these cases cannot be fully taken into account. What is most important is that an analysis of the complaints shows that they are on the decrease: in fact, there have been no such

complaints since October 2008. It must always be borne in mind that the allegation of an offence does not mean that the offence was actually committed, and that all allegations without exception are being investigated. The number of prosecutors at the Human Rights and International Humanitarian Law Unit of the Office of the Attorney-General was increased by 150 per cent in 2008, and 20 of these prosecutors are dedicated exclusively to investigating these complaints. The commitment of the military criminal judges has been such that in 2008 they referred nearly 150 cases to the Office of the Attorney-General for consideration in the ordinary courts. In short, no investigative effort has been spared.

Colombia is therefore surprised at the repeated affirmation that "institutional policies adopted by the Ministry of Defence and the Army High Command to combat such practices have not had a significant impact in reducing the occurrence of these acts". The figures given in the report, the awareness of the problem, the importance attached to the matter in the national agenda and the population's perception all demonstrate the opposite.

Attention is drawn to the 15 measures that the Ministry of Defence announced in November, which are hardly mentioned in the report. These are substantive measures which include: the establishment of an Immediate Inspection Commission to provide a real-time response to any serious allegations, an effort that has already yielded significant results in 2009 leading to the removal from service of a dozen officials; the establishment of a mechanism to authorize the use of military force to support the National Police in combating criminal gangs, as well as the institution of a new system of rules of engagement; the establishment of a new system for performance evaluation; introduction of the requirement of certification in human rights for admission to courses for promotion to the rank of General; and strengthening of judicial support for operations and requiring all military commanders to conduct, in their respective units and within three months, a review of doctrine as applied to intelligence, operations and logistics.

Thus the State's efforts have not consisted solely of the removal of a series of officials, but in fact include full investigations, preventive measures, a transparent security policy and a doctrine that represents a substantial and significant advance in all matters relating to the use of force by the State. In truth, the State is taking all possible steps to identify the possible "additional action" called for in the report.

It will be recalled that Colombia took the decision to tackle the largest and best financed threat faced by any democracy in the world by legal means, respecting the rule of law and without the involvement of any paramilitary group. The measures described in the report have been taken by the State on the basis of its commitment to absolute transparency in combating terrorism effectively; the descriptions given in the report make it clear that the measures have been permanent and creative, and that they seek to respond to the complex problems that Colombia faces.

Every two weeks the President of the Republic issues a public human rights report on the public security forces in a live broadcast on the public television channel. Moreover, the Office of the Attorney-General has had the full support of the Government in its criminal investigations, and no member of the public security forces has been allowed to bypass the justice system.

The State has faced this painful reality with total transparency and is thus in a position to state that the Colombian public security forces have made huge progress in the area of respect

for human rights, that the Colombian armed forces are committed to defending democracy and security and protecting the population, that the defence of democracy and the freedom of Colombian men and women has cost the lives of or maimed thousands of members of the Colombian armed forces, and that the great shining victories of Colombia's legitimate armed forces cannot be sullied by these events.

A significant effort has been made to grasp the complexity of what the report describes as the "illegal armed groups which emerged after the paramilitary demobilization". Some have tried to discredit or to question the demobilization of former self-defence groups, alleging that these groups continue to exist. The High Commissioner's Office in Colombia has shown that these groups are chiefly interested in drug trafficking and organized crime, that they are not homogeneous or structured like military organizations and that many of their actions are aimed at the settling of scores or so-called social cleansing. In contrast, the report describes groups that currently exist in Meta, Vichada and Nariño as a different type of organization that is more akin to the demobilized self-defence groups.

Colombia wishes to point out that the decision to combat these groups has been clear and confirmed on numerous occasions, and notes that the director of the National Police issues a public report every month on progress made in this regard. With the cooperation of the Organization of American States (OAS) Mission to Support the Peace Process in Colombia, a joint inspection mechanism is being developed at the regional and national levels; the mechanism held 30 national meetings and 28 regional meetings in 2008. Known heads of groups who were captured or died in confrontations with the public security forces in 2008 include Ever Veloza (alias "HH") and the Mejía Múnera twins (alias "Don Diego", "Memin", "El Soldado" and "El Coyote"). Over 40 high-ranking ringleaders have been captured over the last two years, and 3,093 weapons and dozens of tons of cocaine were seized from them.

Colombia does not deny the problem, nor does it refuse to study new strategies for combating it, but it wishes to remind the international community of the importance of building the capacities of Colombian institutions to address the problem and of monitoring transnational trade such as drug trafficking, weapons trafficking and money laundering. Without effective international cooperation, Colombia's efforts will be futile.

With respect to the rights of victims and the implementation of the Justice and Peace Act, it should be recalled that the guarantee of victims' rights established in the Act has no precedent in peace or demobilization processes anywhere in the world. Decisions regarding legal benefits are to be taken by the judicial authorities independently; all offences committed while a member of an armed group must be confessed upon demobilization; victims have the right to legal representation and to participate in proceedings before the Justice and Peace Unit of the Office of the Attorney-General; a National Commission for Reparation and Reconciliation is to be established with the full involvement of civil society and of victims; and rights to full reparation and to conservation of historical memory are to be recognized.

In 2008, the Colombian Government decided to issue a decree to provide administrative reparation, given the protracted nature of the judicial process, and applied to the Inter-American Commission on Human Rights for advice on drafting it. Implementation of the decree required an expenditure by Colombia of US$ 4 billion. In addition, the Justice and Peace Unit has been strengthened with the addition of hundreds of staff; for example, while the Justice and Peace Act

provided that the Unit should have 20 prosecutors, the reinforcement carried out in 2008 has resulted in a total of 184 prosecutors in the Unit. Following a Supreme Court decision of 23 July 2008 to allow partial indictment hearings, 40 such hearings have been held. This process has yielded information on 20,000 criminal offences and has made it possible to refer 3,126 cases to the ordinary courts.

All of this allows Colombia to say that its commitment to victims' rights is not limited to discussion on the public and political agendas, as stated in the report, but is real and effective. The same holds true for the concept of "international standards" as it applies to victims in the demobilization and peace processes: if one compares Colombia's experience with that of other countries that have undergone peace processes, the Colombian legal framework is much more rights-based than all other cases seen to date.

Colombia shares the concern expressed in the report regarding the slow pace of implementation of the Justice and Peace Act but wishes to draw attention to the complexity and magnitude of the phenomenon under investigation. In the national report, which it submitted for the universal periodic review, Colombia undertook voluntary commitments to speed up the process. In January 2009, the Inter-Agency Committee for the implementation of the Justice and Peace Act adopted a set of indicators, which are to be made public, to evaluate the implementation of all aspects of the Act. Colombia appeals for international solidarity to build its capacities to meet the objectives set in the Act and requests that its strengths be recognized; at the same time, it is committed to reviewing implementation strategies in order to achieve greater speed and efficiency.

It should be borne in mind that over 170,000 complaints have been received to date from persons claiming to be victims of the groups covered by the Act and that the Presidential Advisory Office for Social Action and International Cooperation, the State body responsible for reparations, has sent 80,000 communications to victims advising them on how to obtain reparation.

The report's assertions with regard to Colombia's progress in achieving the Millennium Development Goals probably reflect a lack of information on the part of the High Commissioner's Office. National Economic and Social Policy Council document No. 91 was adopted in 2005 with the aim of identifying how to achieve the Goals. According to forecasts, Colombia is expected to achieve those set for the education and health sectors by 2010. According to the United Nations web page that tracks achievement of the Goals (www.mdgmonitor.org), Colombia has achieved Goal 2 and is on track to achieve Goals 4 and 5. According to the United Nations, none of the Goals is unachievable for Colombia, and only one of them will be achieved by less than 50 per cent by 2010; the achievement rate for most will be 50 per cent to 80 per cent. In short, Colombia is committed to and is working steadily towards achieving the Millennium Development Goals.

Independence of the judiciary is one of the guarantees of the democratic system in Colombia and is cherished by the country's institutions and society. The national Government must therefore make a clarification as regards its relationship to the Supreme Court. While it is true that there have been disagreements and public debates over the action and decisions of the Supreme Court, these debates have been based on differences in interpretation of situations or the need to discuss publicly complaints received by the Government over alleged improprieties

by its members. Such disagreements have never been the result of investigations by the Supreme Court but reflect the importance that is attached to ensuring that it acts with justice. The Government does not protect impunity or injustice, and it respects the autonomy of the judiciary.

Colombia wishes to thank the High Commissioner's Office once again for its efforts in 2008, its commitment to the highest ideals of humanity, which are human rights, and its contribution to the achievements described positively in the report. These achievements are the result of the joint efforts of OHCHR, Colombian society, some sectors of the international community and Colombian institutions.

Colombia fully accepts the recommendations contained in the report and will, in its plan for implementing them, voice a few concerns relating to some of the terms used. It will, however, act in good faith and with total commitment to their implementation.
