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

Summary

In accordance with the mandate set forth in the 1996 agreement between the Government of Colombia and the Office of the United Nations High Commissioner for Human Rights (OHCHR), the present report analyses the most important developments relating to the situation of human rights and international humanitarian law in Colombia in 2009. It records, among other issues, the significant progress made in terms of a drastic reduction in the number of complaints of extrajudicial executions and the continuous prosecution of members of Congress and public officials for alleged links with paramilitary organizations.

The report recognizes the Government's openness to international scrutiny, which it has demonstrated by receiving four Special Rapporteurs and self-monitoring the recommendations of the universal periodic review. The High Commissioner acknowledges the spirit of cooperation that exists between the Government and OHCHR-Colombia and the commitment of the Government to address human rights challenges.

The report demonstrates how the internal armed conflict continues to pose many challenges for the country, including the complete disregard for international humanitarian law by guerrilla groups. This situation is exacerbated by violence against civilians committed by illegal armed groups that emerged after the demobilization of paramilitary organizations, links between illegal armed groups and drug trafficking, and the particularly acute impact of the internal armed conflict on indigenous peoples and Afro-Colombian communities.

* The present report is being circulated in all official languages. The annex is circulated in English and Spanish only.

** The present document is submitted late in order to reflect the most recent information.

The report further analyses difficulties in the implementation of Law 975 (2005) (the “Justice and Peace Law”), the increase in threats and illegal use of intelligence services against human rights defenders and others. It deals with the polarization between the Government and the human rights community and the Supreme Court. The report also deals with the increase in cases of sexual violence. It addresses significant gaps in the full realization of economic, social and cultural rights and de facto discrimination and marginalization of Afro-Colombian and indigenous populations in several departments.

The present report also summarizes some of the main activities carried out by OHCHR-Colombia and formulates a number of recommendations.

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I. Introduction

1. On 29 November 1996, the Government of Colombia and the Office of the United Nations High Commissioner for Human Rights (OHCHR) agreed on the establishment of an office in Colombia of OHCHR (“OHCHR-Colombia”). This agreement was extended, with no changes, until 30 October 2010.

2. In the framework of its mandate, OHCHR-Colombia observes the situation of human rights and international humanitarian law in order to assist authorities in the development and application of policies, programmes and measures to promote and protect human rights, and submits analytical reports to the High Commissioner. The present report covers 2009 and focuses on a number of priority issues, which were regularly discussed with the Government.

3. In 2009, Colombia demonstrated a high level of openness towards international mechanisms for the protection of human rights. Upon invitation of the Government, visits were made by four special rapporteurs: (a) the Special Rapporteur on extrajudicial, summary or arbitrary executions (8–18 June); (b) the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (22–27 July); (c) the Special Rapporteur on the situation of human rights defenders (7–18 September); and (d) the Special Rapporteur on independence of judges and lawyers (7–16 December).¹

4. The Deputy High Commissioner visited Colombia between 28 November and 4 December 2009 to participate in the Second Review Conference of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention). She held meetings with the Vice-President, ministers and high-level public officials, representatives of civil society organizations and the international community. She travelled to Putumayo for a first-hand observation of the local challenges to human rights and international humanitarian law.

5. Three treaty bodies analysed the situation in the country: the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families (21 and 22 April 2009), the Committee on the Elimination of Racial Discrimination (12 and 13 August), and the Committee against Torture (10 and 11 November).² The Government also underwent the universal periodic review of the Human Rights Council in March, and on 19 August the Secretary-General presented to the Security Council the first report on the situation of children in armed conflict in Colombia pursuant to resolution 1612 (2005).³

6. The main challenge for 2010 is to advance in the effective implementation of the recommendations emanating from these reviews and all previous pending recommendations of the High Commissioner, a process in which OHCHR-Colombia offers its cooperation and advice.

II. Context

7. The full realization of human rights in Colombia continues to be affected by a complex internal armed conflict, which is exacerbated by organized violence, particularly

¹ Colombia was the most visited country in 2009 by special procedures mandate holders.

² The Committee on Economic, Social and Cultural Rights and the Human Rights Committee formulated their lists of issues to be addressed in the review of the periodic reports of Colombia. The actual review of those reports will take place in May and July 2010, respectively.

³ Document S/2009/434.

related to drug trafficking. This situation has negatively affected the functioning of democratic institutions and the socio-economic development of the country. The security improvements of the past years and the overall reduction of homicides in 2009 at the national level were affected by a sharp increase in killing rates in some cities, such as Medellín, a rise in intimidation and the number of death threats against, inter alia, youth and human rights defenders, and the expansion of, and the violence against civilians from, illegal armed groups that emerged after the paramilitary demobilization.

8. Other developments which affected human rights were serious irregularities involving the Department of National Security (DAS); on-going tension between the Government and the Supreme Court, including the impasse in the selection of the Attorney General; difficulties in achieving more releases after the release of, inter alia, various kidnapped policemen and politicians by the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) in the first half of the year; continued disregard for international humanitarian law by guerrilla groups and their attacks on the civilian population; and the political polarization fuelled by the uncertainty around a possible referendum that could allow President Alvaro Uribe to run for a third term.

9. A number of normative advances and policies adopted by the Government have helped improve the human rights situation, including the drastic reduction in the number of complaints of extrajudicial executions attributed to the army.

III. Human rights and international humanitarian law

A. Situation of the judiciary

10. Tension and public disputes between the executive and judicial branches during 2009 may have undermined the independence of the judiciary. OHCHR-Colombia documented public statements by high-level government officials and social and political actors discrediting the Supreme Court and its magistrates, as well as undue interference, direct or indirect, into their functions through lobbying, pressure and threats. These acts could constitute a violation of the United Nations principles of judicial independence⁴ and raise concerns over some magistrates' personal security.

11. Persistent structural problems in the administration of justice⁵ and disagreements within the judicial branch have prompted claims for reform of the judiciary. Any reform should be participatory and transparent to ensure the full realization of the right to a competent, independent, impartial and prompt justice for all.

12. It is essential to strengthen the work of the judiciary, especially the Supreme Court, guaranteeing its ability to exercise its responsibilities with independence, security, freedom and professionalism, without restrictions or pressure.

13. During her visit in December, the Special Rapporteur on the independence of judges and lawyers advocated for better protection for all judicial actors to secure their independence.

⁴ General Assembly resolutions 40/32, 29 November 1985, and 40/146, 13 December 1985.

⁵ OHCHR-Colombia has consistently reported problems such as "the underreporting of crimes to the authorities, difficulties of access to the judicial system, the insufficiency of funds and technological resources (despite increased budgets), the lack of uniform criteria in the application of the law, the high workload of judges and prosecutors, the slow pace of proceedings and cases of corruption" (A/HRC/7/39, para. 12).

B. Intelligence services

14. Information was made public in 2009 that DAS (the national civil intelligence agency reporting directly to the President) had conducted widespread and systematic illegal intelligence operations going at least as far back as 2003. These operations targeted, inter alia, human rights defenders, political opposition leaders, journalists and high-level Government officials, such as the Vice-President. Furthermore, disturbing information appeared in the public domain that even magistrates of the Supreme Court were subject to surveillance. The Inter-American Commission on Human Rights, a United Nations special rapporteur and OHCHR-Colombia itself were targeted as well. These actions, in many cases, had the objective of invalidating the work of the victims, who were considered as “legitimate targets” for being potential opponents to Government policies.

15. Illegal activities by DAS included wiretapping of phones and Internet lines, surveillance, harassment and threats, theft of information and break-ins into offices and homes. This has provoked a climate of fear and insecurity and, in some instances, sabotage and discrediting of the work of human rights defenders. Actions against women included direct threats against their children, at times with violent sexual content.

16. These activities appear to have been carried out by informal structures created by high-ranking officials within DAS, which provided the semblance of legality and hierarchy necessary to obtain, administer and exchange information, as well as access to the human, technical, and financial resources of the institution. In some cases, even DAS protection schemes for human rights defenders and others were used to obtain information.

17. The Procurator General and the Attorney General initiated investigations against approximately 40 DAS officials, including 4 former directors. The Government took measures to restructure DAS, including accepting resignations, conducting internal investigations and separating judicial police functions from intelligence activities. In September 2009, the President ordered the closing of DAS and the creation of a new intelligence agency.

18. Additionally, some members of the public security forces continued to use State intelligence services to conduct illegal and clandestine operations against social and political sectors that were critical of the Government, using similar methods as described above. Such activities were also directed against public officials working in defence of human rights. Illegally obtained information was occasionally used by different units of the Attorney General’s Office to bring charges against human rights defenders and social activists.

19. Of particular concern was a case of theft of information regarding children’s rights from a United Nations staff member by unknown perpetrators.

20. The challenge now is to establish the responsibilities and circumstances that facilitated these illegal DAS activities and to identify those who allowed them to happen and/or benefited from them. Difficulties faced by the prosecutors in the initial phase must be overcome to enable the investigations to continue safely and independently, without pressure or threats. Impunity, as well as a lack of democratic control and oversight of intelligence services, has made such criminal conduct possible.

21. Therefore, beyond the announced closing of DAS, the necessary legal, political and administrative conditions as well as robust controls and oversight of its intelligence services should be established. The new Intelligence Law and its corresponding Decree should be enabling in this regard. The Government is urged to take specific, time-bound and transparent measures for their implementation. In this respect, a plan of action for the creation of a national mechanism to purge files should be expedited by the relevant Government institutions, in consultation with all relevant stakeholders and victims,

facilitating an active role of the Procurator General, as previously recommended by OHCHR-Colombia.

C. Human rights defenders, journalists and trade unionists

22. OHCHR-Colombia has registered cases of, inter alia, killings, threats, arbitrary detentions, sexual offences, break-ins into homes and offices and information theft directed against human rights defenders. These violations have been attributed to members of illegal armed groups that emerged after the paramilitary demobilization and guerrilla groups, in particular FARC-EP, as well as, in some cases, members of security forces.

23. In 2009, there was an increase in intimidation and death threats through pamphlets and e-mail against human rights defenders, social and community leaders, as well as members of marginalized groups. While progress has been made in some investigations, most of the threats remain unaccounted for, and, at times, authorities were quick to dismiss them without prior investigation.

24. Meanwhile, some charges of rebellion, terrorism, defamation and/or slander brought against human rights defenders and journalists who question Government policies or denounce corruption and human rights violations have been promptly investigated. The Attorney General's Office must act with transparency, impartiality and in a timely manner in every case, regardless of whether a human rights defender is a victim or accused of a crime.

25. Of particular concern are the threats against and killings of trade union members,⁶ journalists, lesbian, gay, bisexual and transgender (LGBT) persons and those who promote their rights. Similar concern is held for those advocating for the ethno-territorial rights of Afro-Colombian communities and indigenous peoples. Representatives and supporters of victims in the framework of Law 975 (2005), particularly if they advocate for the restitution of stolen lands, were subject to harassment, and even killed, as were peace activists, community leaders and public officials who promote and defend human rights, such as the analysts of the Early Warning System⁷ and municipal ombudsmen.

26. In the past few years, the Government has invested large amounts of human and financial resources into protection programmes for different groups at risk. This important effort, however, requires better coordination and must be expanded, for instance, to include staff of the Early Warning System, incorporate a gender focus, and expedite and reduce delays between the adoption of protection measures and their implementation. The ongoing transfer of protection schemes to private companies and other related reforms should be made in consultation with beneficiaries, in the understanding that the State obligation to uphold, protect and ensure the full enjoyment of rights within its jurisdiction cannot be delegated.

27. Between April and May 2009, the Government and national networks of human rights, social rights and peace activists agreed on a procedure to discuss the guarantees required by human rights defenders to undertake their work. In April, actively supported by the international community, a national round table was established to this end and a series

⁶ Between January and October, the Presidential Programme for Human Rights registered 27 killings of trade unionists, 14 of which were teachers. In the same period, the Unitary Workers Union (Central Unitaria de Trabajadores, CUT) reported 37 killings, including 4 women.

⁷ The Early Warning System, in its Spanish acronym SAT, is a system housed in the Ombudsman's Office with a mission to produce risk alerts about gross violations of human rights and international humanitarian law.

of discussions took place in approximately half the departments. OHCHR-Colombia welcomes this exercise and the specific commitments reached, and it calls for their prompt implementation by the Government. A number of death threats were received by human rights defenders involved in this exercise. They have yet to be properly investigated.

28. OHCHR-Colombia notes with concern that public officials and military personnel have continued making statements against human rights defenders, accusing or suggesting that their work is contrary to the interests of the State or sympathetic to guerrilla groups. Such statements increase security risks for human rights defenders and can limit their activities, engender self-censorship and deepen the distrust between State and civil society.

29. In this respect, OHCHR-Colombia welcomes regulations issued and statements made by the President, the Vice-President and the Minister of Interior about the legitimacy of the work of human rights defenders.⁸ High-level officials are encouraged to maintain a consistent and active public discourse in support of human rights defenders and lower-level public officials should follow it. The Government and the Procurator General should apply sanctions to public officials who continue to stigmatize human rights defenders.

30. During her visit in September, the Special Rapporteur on the situation of human rights defenders recognized that the Government had undertaken important efforts supporting human rights defenders, but confirmed that they continue to operate in a non-conducive environment of hostility and fear.

31. Some progress has been achieved in the construction of national plans for human rights. The National Round Table on Guarantees is an important step towards a concerted national action plan on human rights and international humanitarian law. The National Plan for Education on Human Rights, which should be promptly implemented in all departments and municipalities by the Ministry of Education, was launched in November 2009.

D. Investigations into alleged links of members of Congress and public officials with paramilitary organizations

32. Since the detention of three members of Congress in November 2006, the number of politicians and public officials investigated for alleged links with paramilitary organizations, or cases of “*parapolitica*”, continued to increase. By November 2009, there were 93 open cases against members of Congress consisting of 268 elected parliamentarians for the period 2006–2010, from 15 different political parties. As of December 2009, there was a total of 13 convicted persons, 5 acquitted and 9 released due to lack of sufficient evidence to proceed.⁹ By November 2009, 249 cases had been initiated against 12 governors, 166 mayors, 13 departmental representatives and 58 councillors.

33. Forty-three members of Congress have resigned in order to be investigated by the Attorney General instead of the Supreme Court. In September 2009, however, the Court ruled that it would continue to exercise jurisdiction when the alleged crime is related to their position and function as members of Congress.¹⁰ The new jurisprudence should promote a more standardized investigation of these cases.

⁸ In a public statement made on 17 September 2009, the President acknowledged that “the defense of human rights is a necessary and legitimate action for democracy”.

⁹ Another five were released after partially completing their sentences.

¹⁰ Providence 27032, Álvaro Araujo Castro, Criminal Court of Cassation, Act No. 291, 15 September 2009.

34. OHCHR-Colombia welcomes measures taken by the Supreme Court that have improved due process, such as the explicit separation of roles within the Court between the investigative and prosecutorial function and adjudication.¹¹ Further measures, however, are still necessary, such as the right to appeal, which the Supreme Court seems to be considering.

35. “*Parapolitica*” cases underscore the need for the State and civil society to closely monitor the electoral processes scheduled for 2010 and 2011, including those at the municipal and departmental levels, to prevent the recurrence of such cases. Relevant authorities should undertake all necessary measures to ensure fair, transparent and democratic election processes.

E. Extrajudicial executions

36. Since November 2008, complaints of extrajudicial executions attributed to security forces, particularly the army, have drastically decreased,¹² primarily as a result of the implementation and monitoring of the measures adopted in October and November 2008 by the President and the Ministry of Defense.¹³ In 2009, new rules of engagement and an Operational Law Handbook, containing important rules for the respect and protection of human rights, were issued by the Ministry of Defense. Total and sustained elimination of extrajudicial killings will require continued efforts by the Ministry of Defense and the army. OHCHR-Colombia welcomes that the Ministry of Defense accepted its offer to monitor the implementation of some of the policy measures aimed at strengthening compliance by the army with human rights and international humanitarian law.

37. The large caseload of alleged extrajudicial executions is a matter of serious concern for the coming years. By September 2009, the National Human Rights and International Humanitarian Law Unit of the Attorney General’s Office had been assigned the investigation of 1,273 cases, with a total of 2,077 victims (122 of them were women and 59 minors) in 29 departments. These figures demonstrate that the alleged executions were not isolated acts and that it is necessary to allocate sufficient human, technical and financial resources for this Unit to effectively function to ensure that the cases do not go unpunished.

38. During his visit in June, the Special Rapporteur on extrajudicial, summary or arbitrary executions acknowledged the efforts undertaken by the Government, but noted with concern the gap between policies and their implementation.

39. Further efforts are required to reinforce full assimilation and adherence by all military personnel to the policies adopted by the Ministry of Defense regarding extrajudicial executions. Indeed, some members of the security forces continued to make statements that discredit those who denounce cases of executions, adopt corrective measures, investigate cases and punish those responsible. Some of these statements suggest that military personnel are frequently faced with frivolous judicial charges of extrajudicial executions with a view to questioning military operations. However, there are 109 indictments, 38 convictions and three acquittals that put into question the validity of such allegations, at least in some cases.

¹¹ Supreme Court agreement number 001, 19 February 2009.

¹² In 2009, the Human Rights and International Humanitarian Law National Unit of the Attorney General’s Office recorded 7 cases compared to 144 in 2008 and 464 in 2007.

¹³ Among other measures, 3 Generals and another 24 officers and sub-officers were separated from service by the President.

40. A series of procedural practices by defence lawyers in legal proceedings have been considered as dilatory and unjustified and a number of private lawyers of military personnel are illegally presenting themselves as officials of the Ministry of Defense and/or the so-called Military Defense (DEMIL) to pressure witnesses into changing their testimonies. These activities openly violate the policies of the military high command and the Ministry of Defense, and should be rejected and duly sanctioned.

41. The military jurisdiction continued to hand over cases of human rights violations to the ordinary justice system.¹⁴ However, the fact that there are 249 jurisdictional disputes yet to be resolved regarding alleged extrajudicial executions demonstrates that these efforts need to be reinforced to ensure that such disputes do not become a systematic practice to unnecessarily delay judicial proceedings. Military jurisdiction should be limited exclusively to cases of service-related offences, as clearly stipulated in the revised Military Criminal Code.

42. In 2009, there was also evidence of serious shortcomings in the protection of the families of victims, witnesses, prosecutors and judges. OHCHR-Colombia registered death threats, a killing and an assassination attempt against two relatives of victims. Threats were received even by active members of security forces who cooperated with the justice process. Together with attempts to discredit or delay judicial proceedings, this could constitute a pattern of harassment to prevent the processes from moving forward. The Government should adopt measures to increase the protection of witnesses, families of victims, and judicial officials, publicly legitimize their work and counteract any actions that promote impunity.

F. Sexual violence

43. Statistics on cases of sexual violence, including those committed in the context of the internal armed conflict, continue to be incomplete and fragmented. According to the National Institute of Legal Medicine, the number of registered cases of sexual violence, occurring in different contexts including the internal armed conflict, increased from 12,732 in 2000 to 21,202 in 2008. It is of particular concern that in almost 86 per cent of these cases the victims were girls, most of whom were between 10 and 14 years (31.5 per cent). Several efforts are under way to address sexual violence and it is imperative to properly assist victims, encourage the pressing of charges and ensure effective reporting and investigation of cases.

44. In 2009, OHCHR-Colombia received an alarming amount of information on cases of sexual violence against women and girls that were attributed to members of FARC-EP and the illegal armed groups that emerged after the paramilitary demobilization. The latter were accused of committing acts of sexual violence and creating networks of prostitution, human trafficking, and sexual slavery, occasionally with the acquiescence and even collaboration of some members of the National Police, particularly in Medellín. OHCHR-Colombia was informed of cases of rape in Tolima and recruitment by FARC-EP of women and girls in Antioquia, who were also victims of forced contraception.

45. Of particular concern are several cases where the alleged perpetrators are members of security forces in Antioquia, Arauca, Bogotá, Bolívar, Cesar, Chocó and Guaviare. In the majority of these cases, the victims were girls. In some cases, military and legal authorities have implemented adequate measures, such as public recognition of wrong-doing and expediting investigations, but, in other cases, members of security forces contributed to the

¹⁴ By November 2009, 251 cases have been handed over to the ordinary justice system.

stigmatization of the victims or pressured them to withdraw their accusations through coercion, threats or payoffs.

46. These cases indicate the need for security forces to undertake firm, clear and definitive measures of “zero tolerance” regarding sexual violence, including separation from service. Without waiting for or excluding the results of prosecutions and disciplinary proceedings, it is necessary to adopt preventive measures, publicly recognize the facts (without exposing or re-victimizing victims) and ensure reparations and minimum guarantees of non-repetition. Some good efforts in this regard include the creation of round tables on gender-based violence organized by the Ministry of Defense and the United Nations and the adoption of measures to assist and protect victims and to prevent sexual violence.

47. Despite the significant efforts by the Attorney General to train his personnel and create special investigative units, impunity for acts of sexual violence remains widespread. The Constitutional Court ruled in its order 036 of 2009 that investigations of 183 cases of sexual violence by the Attorney General’s Office were not satisfactory. Further progress is also needed to implement the court-ordered prevention programmes against sexual violence, which, by November 2009, were still only in the design stage and require the active participation of women.

48. The corresponding Decree should be promptly issued for Law 1257 (2008) on measures for raising awareness and prevention and punishment of all forms of violence and discrimination against women. Meanwhile, there are existing legal provisions, such as non-compulsory conciliation, which should be directly and immediately applied by competent authorities.

G. Torture and other cruel, inhuman or degrading treatment or punishment

49. Colombia continues to lack a reliable source of official data on torture and cruel, inhuman and degrading treatment. The existing data do not seem to reflect either the magnitude or the real impact of the problem. The victims’ fear of reprisals, the lack of trust in institutions, the absence of appropriate legal and psychosocial support, the lack of adequate and differentiated protection, and the social stigmatization of victims hamper the full understanding of the extent of the problem.

50. By June 2009, the Attorney General’s Office was investigating 10,545 cases of torture. These cases relate to both physical and psychological torture and, for the most part, the victims had been tortured in conjunction with other crimes, such as enforced disappearance, kidnapping or sexual violence. That they are associated with other human rights violations do not diminish the gravity of the crime of torture.

51. Some social groups are particularly vulnerable to torture, such as women, children, youth, incarcerated persons, and LGBT persons, in particular in Antioquia.

52. Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as an instrument for prevention and technical cooperation, would contribute to a more efficient protection against this scourge.

H. Enforced disappearance

53. Enforced disappearance continues to be of major concern. By December 2009, the National Registry of Disappeared Persons reported 37,300 cases, of which almost 10,000

were cases of enforced disappearance.¹⁵ Most of these cases remain unsolved, and their perpetrators and motives unidentified. In the fight against criminal gangs, especially in Medellín, there have been a number of cases of enforced disappearance attributed to the National Police.

54. Victims of enforced disappearance continued to be primarily young, unemployed men from poor families, living in shanty towns or in isolated rural areas. The impact on their families, especially on those headed by women, including the suffering from not knowing the whereabouts of their loved ones, has been tortuous.

55. The Attorney General's Office has continued conducting exhumations.¹⁶ By December 2009, under Law 975 (2005), there were 2,520 cases of enforced disappearance, out of a total of 35,664 crimes confessed. As a result, 2,388 graves with 2,901 bodies have been found. However, the identification and return of the remains and bodies continued to be very slow: 910 have been fully identified, of which 796 have been handed over to the families.

56. Investigations prior to the exhumation process are essential to determine the circumstances of the events and identify the victims. However, it is difficult to ensure full participation of the victims' family in the proceedings, as the identity of the person to be exhumed is usually unknown. This requires improved institutional coordination between the Attorney General's Office and national institutions responsible for the search for disappeared persons, in order to exchange and cross-reference all available information. OHCHR-Colombia welcomes the efforts made during 2009 and notes that there is still a long way to go before relatives can fully participate in these processes.

57. The Law to Respect, Locate and Identify Victims of Enforced Disappearance, adopted in November 2009, is a step forward in the recognition of victims' rights. OHCHR-Colombia further welcomes the initial steps taken by the Senate towards the integral and prompt ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, which will require aligning national legislation to international standards.

I. Illegal armed groups which emerged after demobilization of paramilitary organizations

58. Across the country, OHCHR-Colombia notes with great concern the expansion, increasing activities and violence against civilians perpetrated by illegal armed groups that emerged after the demobilization of paramilitary organizations.

59. Among the violent acts perpetrated by these groups in 2009, there were massacres, selective murders, threats, forced displacement and sexual violence. Victims include social leaders, indigenous and Afro-Colombian persons as well as local public officials, in particular if they were involved in processes of restitution of lands or if they controlled public resources. The attacks have targeted those who resisted the demands of these groups, possessed property of interest to a particular group, were seen as collaborating with or belonging to other groups, or happened to be in an area of dispute between rival groups. There are also a number of demobilized persons among victims, due to a "settling of personal scores" or for refusing to join these groups.

¹⁵ National Registry of Disappeared Persons, December 2009.

¹⁶ The National Unit for Justice and Peace coordinates exhumations ordered by prosecutors at the national level, through the Virtual Center for Identification (CUVI).

60. The organized violence perpetrated by these groups in rural and urban areas allows them to enforce visible “social control”, forcing people to directly or indirectly support their activities. They continue to forcibly recruit and use children and youth, through deceit or economic incentives, inter alia, for drug trafficking, killings or intelligence work.

61. Some of these groups operate in similar ways to old paramilitary organizations, participating in criminal activities such as drug trafficking, extortion, stealing of lands, prostitution, and human trafficking, as well as engaging in lawful but at times irregular activities, such as lotteries and security services. Their ranks include demobilized and non-demobilized former members of paramilitary organizations, some recruited voluntarily and others forcibly. Several former paramilitary middle-ranking fighters and former military personnel now hold senior positions in these groups.

62. These groups occasionally reach agreements amongst themselves or with local combat units of FARC-EP or the National Liberation Army (ELN) to facilitate illegal businesses, particularly drug trafficking. They engage in bloody disputes with rival groups or even amongst themselves, generating further violence against civilians who are caught in the middle. OHCHR-Colombia has identified cases of collusion, principally as a result of corruption, but also tolerance and acquiescence, of members of the security forces with these groups.

63. These groups are evolving rapidly and continuously. While the Popular Revolutionary Anti-Communist Army of Colombia (ERPAC), which operates in the Los Llanos region, has a structure similar to that of the former United Self-Defense Forces of Colombia (AUC), other groups have adopted a cellular operational structure, co-opting and contracting criminal organizations to carry out their activities. OHCHR-Colombia is increasingly receiving information about some groups, such as ERPAC or the *Rastrojos*, which, in some regions of the country, would exhibit the operational and organizational capacity typical of armed actors, as defined by international humanitarian law.

64. The scope of organized violence committed by these groups, their substantial economic power, capacity to corrupt authorities and State institutions, links with local authorities and local networks of influence, their impact on social actors and the alarming levels of violence against civilians make them a daunting challenge to the rule of law.

65. Government efforts against these groups have achieved positive results, but the challenge posed by these groups goes well beyond common criminality. The fact that these groups operate in regions where former paramilitary groups once operated, using their economic and political structures, reiterates the need to both redouble preventive mechanisms for the population at risk (especially youth in urban and rural areas) and protect and attend those affected.

J. International humanitarian law

1. Guerrilla groups

66. In recent years, the internal armed conflict has moved towards the periphery and border regions of the country, forcing guerrilla groups to retreat and operate in small groups, at times dressed as civilians, using small arms and anti-personnel mines in a widespread manner. In these areas of retreat, FARC-EP and ELN have had a long-term presence and have been able to obtain resources from illicit crops, smuggling and extensive extortion.

67. In 2009, a large number of civilian killings were attributed to FARC-EP and ELN.¹⁷ Among other breaches of international humanitarian law attributed to guerrilla groups, there were at least 27 massacres,¹⁸ indiscriminate attacks, acts of terrorism, forced displacement, torture, sexual violence against women and girls, hostage takings and attacks on medical missions and on infrastructure. Their victims included elected local public officials, community leaders, teachers, women, children and adolescents. FARC-EP, in particular, has resorted to collective threats in a systematic manner, obstruction of the freedom of movement of persons and goods, and, in general, enforcement of strong social control in areas of their influence, limiting overall freedom.

68. In 2009, the number of killings of indigenous people increased by 63 per cent compared to 2008. Indigenous leaders and representatives were frequently victims of accusations and threats. Some of the most affected communities are located in Antioquia, Caldas, Cauca, Nariño and Putumayo. The two massacres perpetrated against members of the Awá people in February and August, where 23 persons died including 8 children, are tragic examples of the vulnerability of indigenous peoples.

69. In a difficult social context of poverty and lack of opportunities, FARC-EP and ELN continue to recruit children.¹⁹ OHCHR-Colombia continues to call on the guerrilla groups to immediately stop recruiting children and release those already recruited. To prevent this practice, the Inter-institutional Committee for the Prevention of Recruitment has provided technical support to authorities and communities in over 100 municipalities and, as a result of significant efforts by mayors and municipal ombudsmen, at least 61 municipalities now have a policy to prevent recruitment.

70. The planting of anti-personnel mines has generated numerous victims and has led to the isolation of a large number of Afro-Colombian and indigenous communities. According to the Presidential Programme for Comprehensive Action against Anti-Personnel Mines, in 2009, 67 members of the military and 44 civilians died and 373 military personnel and 148 civilians were injured; of the civilians, 11 were women and 49 were minors. In December 2009, the Government hosted the Second Review Conference of the Ottawa Convention in Cartagena.

71. Guerrilla groups also continued kidnapping. In December 2009, the Governor of the department of Caquetá was taken hostage and later murdered by FARC-EP, which continues to keep civilians and members of security forces as hostages under cruel and inhuman conditions, some of whom have been held hostage for over 10 years. Reiterating the call for the release of all without distinction, immediately and unconditionally, OHCHR-Colombia calls on all parties involved to prioritize the interests of those being held in captivity.

2. Security forces

72. To a lesser degree, security forces, and particularly the army, have also been responsible for breaches of international humanitarian law. There are reports of killings, indiscriminate attacks, forced displacement, looting, torture and cruel, inhuman and degrading treatment, threats and arbitrary restrictions to freedom of movement of persons and goods. Occasionally, restrictions on the circulation of food could have affected the levels of malnutrition, in particular of children.

¹⁷ The Presidential Programme for Human Rights recorded 142 killings in Arauca in the first semester of 2009; the majority resulted from confrontations between ELN and FARC-EP.

¹⁸ Presidential Programme for Human Rights, November 2009.

¹⁹ On 6 May, the sixth Front of FARC-EP informed the population of Jambaló, Cauca, that their children could be recruited.

73. Members of security forces continued to intermittently occupy schools, homes or other civilian premises, and set up military posts nearby. To the extent that these are deliberate actions, it is necessary to thoroughly review the reasons why the training received in international humanitarian law is being ignored, and why soldiers on the ground do not comply with directives issued by the Ministry and the army command.

74. In some areas, the progressive militarization of civilian life and the involvement of civilians, including children, in intelligence work or military actions are putting civilians at risk of being threatened and attacked by guerrilla groups. It is thus imperative that the governmental coordination mentioned in Presidential Directive No. 01 of March 2009 on territorial consolidation, which includes civilian and military actors, fully respects the precautionary approach and the “do no harm” principle, securing the humanitarian space necessary to assist civilians.

75. OHCHR-Colombia welcomes Constitutional Court Sentence C-728 of October 2009, which urged Congress to adopt a law on conscientious objection to military service.

K. Forced displacement

76. Forced displacement continued to increase in 2009, although at a lower rate than in past years, with a continuous under-registration of cases. Forced displacement occurred throughout the country, with higher frequency in areas of hostilities. In 2009, the impact of forced displacement by illegal armed groups in the departments of Antioquia, Córdoba, Chocó and Nariño were particularly worrisome.

77. In early 2009, the Constitutional Court issued Order 008 of 2009 to follow up on Sentence T-025 of 2004 evaluating how the Government addressed forced displacement and assisted internally displaced persons. The Order underscored the persistence of the “unconstitutional state of affairs” assessment and noted the absence of effective public policies to prevent displacement. OHCHR-Colombia encourages the processes that have been initiated in response to Sentence T-025, which should include the Procurator General, the Ombudsman and civil society organizations.

78. The Early Warning System continued to be underutilized. Although the number of risk reports issued in 2009 was similar to that in 2008, fewer actions were taken in 2009. There continued to be mass displacements in regions where early warnings and/or risk reports were ignored, or imperfectly implemented by the Inter-institutional Committee for Early Alert. The financial commitment made by the Government in 2009 to cover the budget of the system with national resources is welcomed.

79. Land grabbing by illegal armed groups is a decisive element in many displacement situations. Displaced populations may have lost between 1.2 million to 10 million hectares of land as a direct result of displacement.²⁰ Most of these lands remain in the hands of perpetrators and their proxies. The numerous threats against, and murders of, leaders or participants in processes for the restitution of land that have been registered are a matter of great concern.

²⁰ Follow-up Commission about public policies on forced displacement. Sixth report to the Constitutional Court, National Verification Process, June 2008.

L. Victims' rights and Law 975 (2005)

80. The importance of the Colombian process of transitional justice has been internationally recognized, as recent references in the Secretary-General and the High Commissioner's report on human rights and transitional justice demonstrate.²¹ Based on the analysis of past years, OHCHR-Colombia suggests that judicial and non-judicial mechanisms be tried in parallel to uphold the rights of victims in a timely and comprehensive manner.

81. Despite efforts made by the Attorney General's Office, progress in the realization of victims' rights under Law 975 (2005) has been modest. By December 2009, there had been no convictions under this Law;²² the possibilities for victims to know the truth about what happened to them and their loved ones have been mostly restricted to the voluntary depositions,²³ and no reparations have been provided under these proceedings. This situation has caused, among the victims who participate in the process, increasing scepticism, re-victimization and fractures in their efforts to become organized.

82. However, the need for such a legal instrument to enable individual criminal prosecution remains undiminished. Currently, the right to justice under Law 975 (2005), as previously noted by OHCHR-Colombia, is limited by the excessive leniency in the process of individualization of punishment. Moreover, the introduction of certain procedural changes in the Law should be considered, such as the need to distinguish between crimes "not subject to pardon"²⁴ and less serious and punishable offences; the possibility of collective indictments; or that the Attorney General's Office not be required to prove the veracity of all the crimes mentioned during the voluntary depositions, as currently required by the Law, but rather only those "not subject to pardon".²⁵

83. The right to truth under the Law has achieved some positive results, thanks to the efforts of the Attorney General's Office. There have been important advances in seeking truth, such as in the cases of "*parapolitica*", the more than 6,000 evidences obtained that served to reopen unresolved criminal investigations, and the above-mentioned efforts in the search for disappeared persons. However, the right to truth warrants the implementation of non-judicial mechanisms as well. In this regard, OHCHR-Colombia notes the proposal of the Supreme Court to begin exploring the possibility of a truth commission.²⁶

84. Regarding the right to reparations, Decree 1290 (2008) on the administrative reparations programme does not seem to have yet attained the necessary distribution of financial resources. By December 2009, of the over 275,000 requests received, resources had been approved for 10,593 persons. Other efforts, such as the Regional Commissions for Restitution of Property of the National Commission on Reparations and Reconciliation

²¹ A/HRC/12/18 of August 2009.

²² Between August 2002 and October 2009, 51,992 persons have individually and collectively demobilized; 3,957 are facing charges under the Law 975. By December 2009, 737 voluntary depositions were under way.

²³ As a result of the extradition of the most important paramilitary commanders to the United States of America in 2008, due to the absence of legal cooperation mechanisms with that country, even this was further restricted.

²⁴ It might be necessary to consider a reform of the list of crimes not subject to pardon, in order to incorporate those mentioned in articles 6 to 8 of the Rome Statute of the International Criminal Court.

²⁵ Other aspects are, for example, partial indictments, which were questioned by the Supreme Court, even if they appeared to be an option originally accepted by the Court (Sentence 32022, 21 September 2009). In December 2009, however, the Court reiterated the viability of partial indictments (Sentence 32575, 14 December 2009).

²⁶ Court Sentence 32022.

remain isolated and limited. The Trust Fund for victims provided for in Law 975 (2005) (which is meant to receive cash and properties from perpetrators admitted in the procedures provided by the Law), has not received expected resources.²⁷ In this respect, proceedings for the confiscation of property rights (*extinción de dominio*) should be expedited and property in the hands of paramilitary proxies should be reverted to legitimate owners.

85. A key opportunity was lost when Congress failed to adopt a victims' law in June 2009. Such a law that is consistent with international standards remains a desirable addition to the transitional justice framework for Colombia. It could fill the gaps in the judicial and administrative reparation processes, incorporate mechanisms for restitution of goods and property, including lands transferred to third parties or proxies, and provide for reparations for violations of social, economic, and cultural rights, with differentiated attention according to age, ethnicity and gender.

M. Poverty and economic, social and cultural rights

86. Poverty and extreme poverty, inequality and the internal armed conflict continue to restrict enjoyment of economic, social and cultural rights. It remains an imperative for the Government to fight poverty and to reduce the significant gaps between the rich and the poor. Poverty reduction strategies and policies must seek a fair distribution of the benefits of social development for all.

87. The Mission to Link Employment, Poverty and Inequality Surveys (MESEP) revealed that overall poverty levels have reached 46 per cent of the population and are even higher in rural areas (65.2 per cent). Extreme poverty has reached a national average of 17.8 per cent, but it is almost double in rural areas (32.6 per cent).²⁸ Disparities are also found in other social indicators, such as illiteracy rates.²⁹ Enjoyment of the right to health is also more restricted in rural areas, because of, inter alia, physical obstacles to access to services, lack of infrastructure and information, and the impact of the internal armed conflict. Profound socio-economic disparities can be detected between departments.³⁰ The data on the Millennium Development Goals, disaggregated by region, show that while some departments have achieved their proposed objectives, others are lagging far behind.

88. In the framework of the Millennium Development Goals, some areas require particular attention by decision-makers. Gender equality, environmental sustainability and housing are among the areas that have received fewer resources in departmental development plans.³¹

89. There are an estimated 4.3 million undernourished persons in Colombia, equivalent to 10 per cent of the total population.³² As a result of the internal armed conflict, activities to obtain traditional sources of food, such as fishing and hunting, have been interrupted or

²⁷ By December 2009, funds amounted to approximately Col\$ 27 billion (US\$ 14 million), while the 2009 budgeted amount under Decree 1290 was approximately Col\$ 200 billion (US\$ 100 million).

²⁸ Phase 1, MESEP Labour Market, Poverty and Inequality (2002–2008), executive summary, November 2009.

²⁹ In rural areas, it reaches 14.8 per cent, while the national average is 6.9 per cent (Quality of Life Survey 2008, Departamento Administrativo Nacional de Estadísticas (DANE)).

³⁰ The Human Development Index for Bogota is 84.3; it is 67.4 for Chocó and 72.2 for Caquetá (National University of Colombia).

³¹ "The Contribution of Departmental Development Plans to Achievement of the Millennium Development Goals", Colombia Líder, October 2009.

³² Food and Agriculture Organization of the United Nations/World Food Programme, *The State of Food Insecurity in the World* (Rome, 2009).

suspended. In some areas, fumigation has damaged subsistence crops (*pancoger*). Food insecurity is particularly acute for internally displaced persons.³³

N. Discrimination

90. In 2009, the Constitutional Court determined in several sentences that persons with disabilities are subject to various human rights violations, especially in the context of the internal armed conflict, and in particular with regard to education, health and work.³⁴ The ratification by Colombia of the Convention on the Rights of Persons with Disabilities in July 2009 is an opportunity to move forward in ensuring differential attention and protection of the rights of these persons. The Government is urged to also ratify the Optional Protocol to the Convention.

91. Attacks against the LGBT community have been on the rise in cities such as Bogotá, Cali, Medellín and Cúcuta. The Constitutional Court, through sentence C-029 of 2009, underlined the lack of protection for same-sex couples.

92. The Government's decision to support the United Nations Declaration on the Rights of Indigenous Peoples, its spirit and guiding principles is welcomed. However, there are still major challenges with respect to ethnic minorities, including the adoption of a law to punish racial discrimination, reaffirming commitments made in the Durban Review Conference of April 2009, and the creation of a statistical system with disaggregated data on indigenous peoples and Afro-Colombians.

93. Available data appears to indicate that indigenous peoples and Afro-Colombian communities are marginalized and subject to de facto racial discrimination. The five departments with the highest percentage of population living below the poverty line or in conditions of extreme poverty (Bolívar, Cauca, Chocó, Córdoba and Nariño) coincide with those where there is a high concentration of Afro-Colombian and indigenous populations.³⁵

94. Several indigenous communities face malnutrition. Cases of death related to child malnutrition were reported in Cauca, Chocó, Nariño and Risaralda.

95. Government efforts to overcome ethnic inequalities have led to the formulation of specific policies for these communities.³⁶ However, some of these efforts did not involve sufficient consultation and lacked an ethnically differential approach. Policies need to be translated into tangible improvements in the living conditions of these groups as soon as possible.

96. Several indigenous and Afro-Colombian communities have reported the lack of free, prior and informed consultation with regard to the "mega-projects" for exploration and exploitation of natural resources in their territories in Antioquia, Caldas, Cauca and Chocó. Some indigenous leaders who participated in consultation processes and consensus-building

³³ Sixteenth Report to Congress of the National Ombudsman in Colombia, July 2009.

³⁴ For example, T-022 (education), T-096 and T-105 (health), T-125 (work).

³⁵ In Chocó, 82.12 per cent of the population is Afro-Colombian and 12.67 per cent indigenous; in Cauca, 21.55 per cent is indigenous and 22.2 per cent Afro-Colombian (DANE 2005 census). In these departments, the child mortality rate is 54/1,000, but in Medellín it is 8/1,000 (National Health Survey (Enquesta Nacional de Salud, ENDS) 2005). The maternal mortality national average is 73 deaths for every 100,000 live births, while in Chocó the rate is 250 and in Cauca 125 (Colombia, *Health Situation in Colombia: Basic Indicators 2007* (Ministerio de la Protección Social, 2007)).

³⁶ For instance, the Comprehensive Long-term Plan for the Black, Afro-Colombian, *Palanquera* and *Raizal* Populations 2005–2007; and the "State Policy for the Colombian Pacific Coast" (Colombia, Consejo Nacional de Política Económica y Social (Conpes) Doc. No. 3491, 2007).

spaces have been killed. In 2009, the Constitutional Court declared the Rural Development Statute invalid, because of the absence of consultation.³⁷ The Government initiative to prepare a draft law to regulate the right to consultation is welcomed. This process must involve consultations with the indigenous and Afro-Colombian communities and guarantee their active participation.

97. In Order 004 of 2009, the Constitutional Court ruled that the internal armed conflict could cause the cultural or physical extermination of many indigenous peoples and ordered the formulation and implementation of plans for ethnic preservation of 34 peoples. To date, and despite efforts undertaken by the Government and indigenous organizations, these plans are still in a preliminary stage and require a significant boost to ensure rapid protection. Moreover, in Order 005 of 2009, the Court declared that the fundamental rights of Afro-Colombian communities were being systematically and continuously ignored.

98. Unlike in 2008, demonstrations promoted by indigenous organizations (*Minga*) in 2009 were conducted in an overall peaceful manner, due to the constructive cooperation between indigenous organizations, governmental authorities and security forces. Investigations into the violence produced during the 2008 *Minga*, however, should be advanced in order to identify and punish those responsible for acts of violence and excessive use of force.

99. Recognizing Government initiatives to promote rights to health, education and territory of indigenous peoples, during his visit in July, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people stressed that all measures should be strengthened and their effective implementation ensured in consultation with the indigenous peoples affected.

IV. Summary of activities of OHCHR-Colombia

100. OHCHR-Colombia continues to fulfil its mandate to observe and promote human rights, as well as to advise and provide technical cooperation. As of 30 December 2009, 1,387 complaints had been received and OHCHR-Colombia had followed up on 1,279. A total of 264 observation missions were undertaken, which represented a total of 788 days in the field. Such missions, frequently undertaken in areas with weak or non-existent State presence, made it possible to monitor regional and municipal situations, support local processes, and provide advice to authorities and civil society organizations. In 2009, the President requested OHCHR-Colombia to support and monitor the investigations into the August massacre against Awá peoples. In response, OHCHR-Colombia travelled to the crime scene, supported victims and the prosecutor in charge of investigations and shared its observations and recommendations with national authorities.

101. OHCHR-Colombia supported the review of the country by treaty bodies as well as the mechanism to follow up on the recommendations of the universal periodic review. It further cooperated with the Government to organize a database for tracking international recommendations and requests for action, including those of OHCHR-Colombia and special procedures mandate holders. It also organized seminars on indigenous justice, the rights of persons with disabilities, and human rights and private business with emphasis on the role of the Global Compact. It provided the Attorney General's Office with expert support in investigations of sexual violence. It undertook or participated in a total of 3,047 meetings: 1,542 with public institutions, 981 with civil society, 263 with United Nations organizations and 261 with the international community.

³⁷ Sentence C-175 of 2009.

102. In November, OHCHR-Colombia and the Government exchanged letters on the cooperation to be provided for the 2010/2011 biennium and made a commitment to monitor measures adopted by the Ministry of Defense to overcome extrajudicial executions.

103. OHCHR-Colombia provided logistical support for the visits of four special rapporteurs and the Deputy High Commissioner, and expresses its thanks for the full cooperation received from the Colombian State and civil society organizations in this endeavour.

104. During 2009, OHCHR-Colombia printed and distributed 103,179 copies of various publications, of which 18 were new and 10 reprinted; 1,008 press notes appeared in mass media about OHCHR-Colombia; 31 press releases were issued; and, for the first time, a 24-hour Internet concert was organized to celebrate International Human Rights Day. OHCHR-Colombia has opened Facebook and Twitter accounts, where news, issues and human rights promotion tools are publicly discussed and disseminated.

V. Recommendations

105. **The High Commissioner reiterates her previous recommendations and again urges the Government, illegal armed groups, and civil society at large to give priority to full respect for human rights and international humanitarian law. Further, the High Commissioner, with a view to contributing to achieve lasting peace through dialogue and negotiations:**

(a) **Reiterates the call on all parties to the conflict to fully accept and abide by international humanitarian law, respecting the life, integrity, property and autonomy of the civilian population, without exception, in particular the most vulnerable, and insists that illegal armed groups release all kidnapped persons immediately and unconditionally, immediately stop child recruitment and release all children recruited;**

(b) **Urges the Government to implement the 15 measures established by the Ministry of Defense in an effective manner, and to protect victims, witnesses and judicial officials involved in the prosecution of extrajudicial executions, and requests strict adherence to the limitations of military jurisdiction;**

(c) **Also urges the Government to guarantee the protection of the civilian population from the organized violence perpetuated by illegal armed groups that emerged after the demobilization of paramilitary organizations, by implementing appropriate strategies to combat them; and recommends increased efforts to prevent, investigate, prosecute and punish, firmly and without ambiguity, any links, tolerance or acquiescence by security forces towards these groups;**

(d) **Encourages the Attorney General to create a system of reliable information collection on the occurrence of acts of sexual violence and gender-based crimes and calls on the Ministry of Defense to undertake a “zero tolerance” policy for these violations, including the separation from service of those responsible;**

(e) **Encourages the relevant authorities to strengthen the work of the Early Warning System to effectively respond to the alerts issued and to provide adequate protection to its members;**

(f) **Invites the Government to form an inter-institutional working group to consider, in a concerted, transparent and participatory manner, thorough structural and procedural reforms to Law 975 (2005), as well as the establishment of non-judicial transitional justice mechanisms;**

(g) Recommends that the Procurator General sanction those public officials whose statements discredit or put at risk the work of human rights defenders, and urges the Government to promptly implement the agreements reached in the National Round Table on Guarantees for human rights defenders;

(h) Calls on the Government to take specific measures to ensure that all intelligence services respect human rights and are subject to strict civilian and legal controls, to move forward in the investigations of the material and intellectual perpetrators of the crimes committed, and to implement an effective mechanism for purging the files with the active participation of the Procurator General;

(i) Exhorts the competent authorities to move forward in the investigations into the origins and perpetrators of threats made in 2009 through pamphlets and e-mail;

(j) Calls for the prompt implementation of plans to protect indigenous and Afro-Colombian communities, as well as concerted measures to effectively ensure free, prior and informed consultation on all matters that affect their life, culture and territories, and encourages the Government to develop and implement further policies.

Annex

Illustrative cases of violations of human rights and breaches of international humanitarian law

As a complement to the High Commissioner's report on the situation of human rights in Colombia, and by way of illustration, a number of cases of human rights violations and breaches of international humanitarian law that have come to the attention of the office in Colombia of the High Commissioner for Human Rights ("OHCHR-Colombia") during the reporting period are described below.

Situation of the judiciary

The following cases illustrate the tension and public disputes between the executive and judicial branches during 2009, as well as the security difficulties sustained by certain magistrates of High Courts:

(a) In a press release issued on 25 November, the Government stated that the President of the Supreme Court had "not told the truth" when he denied that he had informed the President of the Republic that the difficulties identified by the Court to elect the Attorney General had been overcome after the withdrawal of one of the three candidates;

(b) A Supreme Court magistrate, former President of the Court, was subject to illegal surveillance attributed to the Department of National Security (DAS). In May 2009, the Inter-American Commission on Human Rights granted precautionary measures in favour of the magistrate.

Intelligence services

Information was made public in 2009 that DAS (the national civil intelligence agency reporting directly to the President) had conducted widespread and systematic illegal intelligence operations going back at least as far as 2003. These operations targeted, inter alia, human rights defenders, political opposition leaders, journalists and State officials. The cases below illustrate how the operations affected the human rights situation:

(a) On 11 and 13 February, in Santa Fe de Antioquia and Marinilla (Antioquia), several people in plain clothes, without requesting authorization, videotaped prosecutors of the Human Rights National Unit while they were performing official activities relating to cases of extrajudicial executions attributed to the army. When these people were asked who they were by the prosecutors, they identified themselves as members of military intelligence units;

(b) On 27 May, in a rural area of Yopal (Casanare), while prosecutors were performing official activities relating to an alleged extrajudicial execution in which members of the Army Unified Action Groups for Personal Freedom (Spanish acronym, GAULA) were involved, a vehicle with polarized windows, parked in front of the GAULA premises and driven by armed men in plain clothes, was seen on a number of occasions following those prosecutors and staff members of OHCHR-Colombia who were supporting them;

(c) In 2009, OHCHR-Colombia learned that, in 2004 and 2005, the DAS Intelligence Special Team G-3 ordered operations similar to the following, with the intention to instil fear in victims and force them to cease their activities. In 2005, a female lawyer, who is a human rights defender, received at home a package reading “For my beloved daughter” with a puppet and a note: “You have a beautiful family, take care of it and do not sacrifice it”. The puppet had the head and the arms separated from the body, a broken leg and torn clothes. The puppet also had the pelvic area painted in red, like blood, and a cross on the chest, with cigarette burns on one of the arms, the back and the eyes;

(d) A journalist, who is a human rights defender, has been the subject of threats since she started investigating the murder of prominent journalist Jaime Garzón in 1999. As a result, she and her young daughter had to leave the country in 2004. In 2009, OHCHR-Colombia learned that at least one of the threats was ordered and executed by DAS.

Human rights defenders, journalists and trade unionists

The following are illustrative cases of killings, threats, arbitrary detentions, sexual offences, break-ins into homes and offices and information theft directed against human rights defenders, which have been attributed to members of illegal armed groups that emerged after the paramilitary demobilization and guerrilla groups, in particular the Revolutionary Armed Forces of Colombia-People’s Army (FARC-EP), as well as, in some cases, members of security forces:

(a) In May, in Arauca, the Attorney General’s Office released a prominent human rights defender, who had been in detention for more than six months on rebellion charges. No evidence was found against him;

(b) In Antioquia and Santander, five peasant leaders were released as evidence was not enough to proceed against them. They were detained for periods between 5 and 16 months;

(c) A human rights defender, who was detained in Sucre more than a year ago, is still in detention. He was accused of criminal association with paramilitary groups, although he himself had denounced these groups. The prosecutor who ordered the detention is under investigation for corruption;

(d) Between February and March, pamphlets proffering threats against sectors of the population appeared in at least 24 of the 32 departments in the country. These pamphlets, designed in a standard format, were distributed in just two weeks in places as distant as Armenia, Barranquilla, Bogotá, Chocó, Cúcuta, Medellín and Valle del Cauca. The document promoted the so-called “social cleansing” of, among others, sex workers, homosexuals, drug addicts and persons with HIV. The pamphlets warned that “[whoever] is found [...] after 10 p.m. [in the streets], we are not responsible”, ordered people to “spend more time with their family” and demanded “forgiveness from society if innocents are killed”;

(e) At the beginning of May, threatening pamphlets were distributed in Cesar, La Guajira and Magdalena. The pamphlets referred to “a gang of lawyers, public officials from Social Action, the Ombudsman’s Office, municipal ombudsmen and leaders of displaced persons” as criminals, because they defended the rights of internally displaced persons. The pamphlets threatened to “eradicate them”;

(f) On 17 and 24 February, unidentified individuals forced their way into the offices of two organizations undertaking social work in Commune 13 and north-eastern Medellín and stole only the hard drives of the computers containing information on their work;

(g) On 11 August, two computers were stolen from the premises of the Ombudsman's Office in Córdoba (Montería), located in the offices of the Regional Ombudsman and the Community Ombudsman of Alto Sinú;

(h) On 24 April, in Patía (Cauca), a journalist from *Radio Super Popayán*, recognized for his work in denouncing abuses, was killed by an unidentified individual who broke into his home and shot him dead;

(i) On 20 May, in Currillo (Caquetá), the director of a local television station, recognized for his work in denouncing abuses, was shot dead by unidentified individuals who violently broke into his home;

(j) Between 15 and 18 June, two men and one woman, members of the National Movement of Victims of State Crimes (MOVICE) in Sucre, received death threats via e-mail, text messages and telephone calls. A few days before, on 12 June, these persons had actively participated in the Regional Round Table on Guarantees for human rights defenders in Sincelejo (Sucre).

Extrajudicial executions

The following cases show that total and sustained elimination of extrajudicial executions, of which complaints have drastically decreased during the reporting period, requires continued efforts, including ensuring that those found responsible are properly punished in an environment of security for all parties involved:

(a) In Salento (Quindío), two men and one 18-year-old woman were killed on 16 January during a joint operation between the Army High Mountain Battalion No. 5 and DAS. The victims were reported by the army as members of FARC-EP killed in combat;

(b) In Tumaco (Nariño), on 23 May, the army allegedly killed a person whom they had previously detained. The Military Criminal Judge of Ipiales (Nariño) was in charge of the investigation for several months;

(c) In Yondó (Antioquia), on 17 October, soldiers from the Army Energy and Highways Battalion No. 7 were allegedly responsible for the death of two teenagers, 15 and 16 years of age. The victims were reported to be travelling on a motorcycle when they were shot several times without any prior warning or order to stop;

(d) In Zaragoza (Antioquia), on 15 May, a retired army sub-officer who had denounced an extrajudicial execution was killed by unknown individuals;

(e) In Bogotá, on 4 February, the brother of a victim of extrajudicial execution was murdered after instigating the investigation of his disappeared brother in Soacha. His brother had been reported as killed in combat by the army in Norte de Santander, shortly after his disappearance;

(f) In Cali (Valle del Cauca), on 10 May, a murder attempt against the brother of a victim of an extrajudicial execution was reported. The attempt was reported five days after the beginning of the judicial hearing against the individuals allegedly responsible for the execution;

(g) In Pitalito (Huila), on 8 March, a police patrol unit with two agents arrived at "Los Pinos" neighbourhood and stopped a man. One of the agents, who stated that he thought that the victim was a criminal, getting out of his vehicle, shot him in the chest. Several neighbours witnessed the scene and claimed that the police agents did not allow them to immediately assist the victim. He died in a hospital two days later;

(h) On 2 June, the Third Penal Court of Montería (Córdoba) sentenced a major, a captain and four soldiers of Army GAULA of Montería to 28 years of imprisonment for the extrajudicial execution of two youths. Their defence included false accusations against the female prosecutor in charge of the case of bribing a witness to testify against the members of the army.

Sexual violence

The cases below exemplify how girls and women are exposed to the sexual violence generated by all parties to the conflict, as well as by illegal armed groups which emerged after the demobilization of paramilitary organizations:

(a) In August, OHCHR-Colombia received information that criminal gangs, “*combos*” (small criminal groups of youth) and unidentified illegal armed groups were recruiting and using children from Communes 5, 6 and 7 of Medellín (Antioquia), for prostitution and sexual slavery activities, drug dealing and collection of extortions payments. It was reported that members of the National Police had a permissive attitude vis-à-vis these activities;

(b) On 16 August, in Puerto Caicedo (Putumayo), a 15-year-old girl was raped, and received death threats if she denounced the abuse. The abuse was allegedly committed by a demobilized paramilitary member, who is currently a member of the illegal armed group “Los Rastrojos”;

(c) In Puerto Asís (Putumayo), it was reported that in May members of the illegal armed group “Los Rastrojos” offered money to girls at their schools to convince them to engage in prostitution activities;

(d) In March, in Riosucio (Chocó), it was reported that the commander of the police station was allegedly responsible for the sexual abuse of two girls, aged 8 and 10;

(e) On 14 June, in the Tercer Milenio park of Bogotá, a junior police officer allegedly raped a displaced girl while other junior officers videotaped the rape;

(f) On 11 August, a 5-year-old Nukak girl from the El Refugio indigenous territory in San José del Guaviare (Guaviare) was sexually assaulted, allegedly by a soldier from the Joaquín París Army Battalion. Four other girls from the same indigenous communities, aged between 13 and 17, were said to have suffered similar assaults and to have been subjected to sexual exploitation by soldiers from the same army battalion;

(g) In March, in Yondó (Antioquia), two 15-year-old girls were allegedly raped by a soldier from the Calibío Army Battalion. The soldier was also accused of having detained the two girls for several hours and injured them;

(h) In March, in the rural area of Casabianca (Tolima), a woman was raped and subjected to other acts of sexual violence, reportedly by members of FARC-EP. In addition, the woman and her children received threats warning they would be killed if the case was reported;

(i) In accordance with the statement of a girl who had been recruited by FARC-EP, it was reported that the 18th Front of FARC-EP forced pregnant young girl members of the group to abort;

(j) In Cauca, through information reported by the health centre in 2009, it was charged that a girl recruited by FARC-EP was forced to use contraceptive measures.

Torture, other inhuman or degrading treatment or punishment

The existing data does not seem to reflect either the magnitude or the real impact of the violation. The cases below are a few examples of the seriousness of the situation:

(a) On 26 January, more than 260 inmates from the Bellavista prison (Medellín) were ordered out of their cells by members of the National Police and the Penitentiary Guards. Around 150 inmates were separated from the group and sent to two different locations within the prison, where they were allegedly held in overcrowded conditions with no access to water, food, toilets and toilette facilities;

(b) On 9 February, it was reported that two handcuffed youths were doused with gasoline and burned alive in a police station in Bogotá;

(c) In Plato (Magdalena), it was reported that, on 21 June, two detained youths were beaten and threatened to death in the police station;

(d) On 26 August, in Medellín (Antioquia), two youths who had been arrested by members of the National Police suffered physical and verbal assaults, cigarette burns, and injuries produced with a steel can, and were doused with aerosol spray on their faces and bodies;

(e) In Mesetas (Meta), on 15 November, a youth was illegally detained and allegedly tortured by three National Police officers, who suffocated him by covering his head with a plastic bag.

Enforced disappearance

Enforced disappearance continues to be a major concern of OHCHR-Colombia. Most of the situations remain unsolved, and their perpetrators and motives unidentified. Below are illustrative cases of this violation:

(a) On 15 February, a woman, member of the trade union SINTRAGRIM, disappeared in Miravalles, El Castillo (Meta), after having denounced that civilians had been ill-treated by members of the Army Battalion 21 Vargas;

(b) On 26 March, in Medellín (Antioquia), a man disappeared after having been arrested by National Police officers allegedly for not carrying ownership documents of the motorcycle he was riding. There is no record of him having been transferred to the police station and he was allegedly handed over to a criminal gang;

(c) On 29 May, in Itaguí (Antioquia), three women were arrested and handed over to a criminal gang, presumably by National Police officers.

Illegal armed groups that have emerged after the demobilization of paramilitary organizations

OHCHR-Colombia notes with great concern the expansion, increasing activities and violence against civilians perpetrated by illegal armed groups that emerged after demobilization of paramilitary organizations, as illustrated below:

(a) On 1 March, five members of the same family, including a man with a disability, a woman and two children aged 2 and 8, were killed in Patía (Cauca), presumably by members of the illegal armed group “Los Rastrojos”;

(b) The killing of two fishermen and the enforced disappearance of another five in Litoral de San Juan (Chocó), on 19 March, were attributed by the authorities to the same illegal armed group “Los Rastrojos”;

(c) Between 2 and 3 November, eight Afro-Colombians, members of the same family, were killed in Barbacoas (Nariño) by individuals who presented themselves as members of the illegal armed group “Águilas Negras”;

(d) In the Bajo Cauca region (Antioquia), during the first semester of 2009, members of the different illegal armed groups in the region were recruiting and using children for logistics activities, intelligence work and selective killings (*sicariato*);

(e) In July, officers of the National Police in Córdoba captured two demobilized paramilitary members, who were travelling in a public bus with 16 newly recruited youths. The youths were recruited to join the different illegal armed groups conducting activities in the south of the department;

(f) In Meta, in mid-2009, the illegal armed group Popular Revolutionary Anti-Communist Army of Colombia (ERPAC) was reported to have been recruiting and using youths from marginalized neighbourhoods from various municipalities, primarily with promises of short-term employment. The families have not heard from these youths since their reported recruitment.

International humanitarian law

Guerrilla groups

Guerrilla groups continued to disregard and reject international humanitarian law, attacking and killing civilians, especially members of indigenous peoples, planting antipersonnel mines, recruiting and using children, causing forced displacements and kidnapping, among other breaches, as exemplified below:

(a) On 4 January, in La Vega (Cauca), members of the National Liberation Army (ELN) were allegedly responsible for the death of an 11-year-old boy who had witnessed the murder of his father at the hands of the same guerrilla group;

(b) On 13 January, in Roberto Payán (Nariño), members of FARC-EP attacked a police station with cylinder bombs, instantly killing two girls and one boy in a sports field;

(c) In Urrao (Antioquia), on 5 February, FARC-EP was reported to have killed two Afro-Colombian youths and to have been responsible for the displacement of 10 families who fled their homes following accusations by FARC-EP of being collaborators of the army;

(d) On 19 February, in Barbacoas (Nariño), members of FARC-EP killed 11 Awá indigenous people, including several children and two pregnant women;

(e) In March and October, during the blockades imposed by armed forces by FARC-EP in Arauca and Putumayo, the civilian population suffered severe restrictions to free movement and access to medicine, food and fuel;

(f) In Villavicencio (Meta), on 6 March, members of FARC-EP were allegedly responsible for attacks against the aqueduct that provides drinking water to the city, leaving its 300,000 inhabitants without water for more than 10 days;

(g) Between April and June, over 180 people from different rural communities in Ituango (Antioquia) remained isolated for two months, as a result of antipersonnel mines laid by FARC-EP;

- (h) On 13 April, members of ELN allegedly broke into the hospital of Saravena (Arauca) and shot dead two hospitalized National Police officers;
- (i) In May, a 17-year-old boy died as a result of the explosion of several grenades when he was forced by FARC-EP to attack a police station in Putumayo;
- (j) In El Tarra (Norte de Santander), on 17 May, a man who was being transported in an ambulance was killed, allegedly by members of ELN. Medical personnel were threatened and, after this incident, the single functioning medical centre in the area suspended its services;
- (k) On 26 May, in Carmen de Atrato (Chocó), FARC-EP threatened several people in the indigenous Emera and Katio communities and informed them that a number of antipersonnel mines had been laid around schools, private dwellings and communal places;
- (l) On 29 May, members of FARC-EP entered the municipality of Garzón (Huila) and took hostage of an elected municipal official. Two private security guards and one policeman were killed during this action;
- (m) In Quibdó (Chocó), on 7 June, members of FARC-EP launched a grenade against a liquor store, supposedly because the owner did not pay an illegal tax imposed by the group (*vacuna*). The attack caused serious injury to six civilians who happened to be there;
- (n) In Tame (Arauca), on 11 June, a Makaguan indigenous man was killed, allegedly by members of ELN;
- (o) On 21 June, in Teteyé (Putumayo) members of FARC-EP were reported to have killed an Awá indigenous man who belonged to the local Community Action Council;
- (p) Between July and August, two girls of 15 and 17 years of age and a boy of 15 years of age were recruited by FARC-EP in Toribio (Cauca);
- (q) On 19 August, a 17-year-old boy was killed when transporting explosives to the mayor's office in Guapi (Cauca), reportedly upon orders from FARC-EP;
- (r) On 12 October, the chief constable and traditional medicine doctor from the Embera Katío indigenous territory in Puerto Libertador (Córdoba) died after stepping on an antipersonnel mine, allegedly laid by FARC-EP;
- (s) On 17 October, the hospital of the municipal capital of Toribio (Cauca) was severely damaged during an attack by members of FARC-EP;
- (t) Members of FARC-EP allegedly killed two elected municipal officials from the Liberal Party, on 18 October, in Sumapaz (Cundinamarca);
- (u) In Dabeiba (Antioquia), on 5 November, three adults died and two children were injured after stepping on antipersonnel mines allegedly laid by FARC-EP. They were all members of the same family;
- (v) On 20 November, members of FARC-EP burned an inter-municipal bus in Nariño, causing the death of seven people, including two children;
- (w) On 21 December, for the fifth time since 1987, the 68-year-old Governor of Caquetá was taken hostage by members of the FARC-EP, while he was at home. During this action, two policemen were injured and one killed. The next day, members of the army and the National Police found the body of the Governor, with his throat cut by members of FARC-EP, surrounded by explosives;

(x) During 2009, it was reported that FARC-EP has been recruiting children in Antioquia, Cauca, Cesar, Chocó, Nariño, Putumayo, Tolima and Valle del Cauca.

Security forces

OHCHR-Colombia continued to register complaints about breaches of international humanitarian law by members of the security forces, especially against children:

(a) In February, in several regions of Cauca, the army temporarily occupied a number of schools;

(b) In February and March, in several rural areas of Valle del Cauca, it was reported that the army offered food to children in exchange for information on the whereabouts of illegal armed groups in the region;

(c) On 11 February, in the rural area of Guaviare, two boys and a girl who were attending school were injured by army gunshots discharged in response to an attack by a FARC-EP sniper who had killed a soldier;

(d) In May, troops of the Divisionary Reaction Force (FURED) from the Army Third Division established a camp within the school premises of a village in Florida (Valle del Cauca);

(e) It was reported that in July, the army had restricted free access to food in Frontino (Antioquia);

(f) In Santa Rosa (Bolívar), on 16 November, a 4-year-old child died as a consequence of an armed confrontation between the army and FARC-EP;

(g) In La Macarena (Meta), on 24 November, a farmer travelling with his 5-year-old son was shot dead in the head by a soldier of the Army Mobile Brigade No. 1. The case was presented as a “military error”.

Forced displacement

Forced displacement continued to increase in 2009, although at a lower rate than in past years, with a continuous under-registration of cases, throughout the country, with higher frequency in areas of hostilities. As illustrated below, forced displacement as a result of the internal armed conflict and caused by illegal armed groups was particularly worrying in the departments of Antioquia, Córdoba, Chocó and Nariño:

(a) Following the February massacre by FARC-EP in Barbacoas (Nariño), 500 persons mostly children, were massively displaced;

(b) Between June and July, in Ituango (Antioquia), over 1,000 persons were displaced as a result of landmines allegedly laid by FARC-EP and threats from this group;

(c) On 8 June, a confrontation between the illegal armed groups “Águilas Negras” and “Los Rastrojos” caused the displacement of 513 persons in Tumaco (Nariño);

(d) On 7 July, confrontations between the army and FARC-EP caused the displacement of 49 families in the Zenú indigenous territory in Córdoba;

(e) On 23 July, a displaced population leader was murdered in Santa Fe de Ralito, Tierralta (Córdoba) by unknown individuals. The victim had been working since 2007 on a process to claim over 1,400 hectares of land stolen by former paramilitary members;

(f) In Chocó, on 17 August, 117 people from an Afro-Colombian community were displaced due to confrontations between two illegal armed groups for the control of the Bajo Baudó River area;

(g) Between 5 and 20 September, military operations carried out by the army against the illegal armed group “Los Rastrojos” caused the displacement of approximately 50 families in Bolívar (Valle del Cauca);

(h) During 2009, in Barrancón (Guaviare), several displaced groups from various indigenous peoples (Jiw/Guayabero, Nukak Makú) still lacked access to drinking water and health care was only provided once a month. In addition, the ability of the school to provide education was insufficient to cover all needs.

Poverty and economic, social and cultural rights

As shown below, poverty and extreme poverty, inequality and the internal armed conflict continue to restrict enjoyment of economic, social and cultural rights:

(a) It has been reported that the inhabitants of the rural area of San José del Guaviare, near the Guayabero River (Guaviare), were denied health care by municipal authorities on the grounds that they were members of guerrilla groups or their collaborators;

(b) In some rural areas of Guaviare, several education institutions lack infrastructure and proper sanitary conditions, as well as study materials. Several teachers abandoned such institutions because of fear for their lives, as a result of the intensity of the internal armed conflict in the region.

Discrimination

As shown below, attacks against the lesbian, gay, bisexual and transgender (LGBT) community have been on the rise in cities such as Bogotá and Medellín. Moreover, cases have been registered of attacks and massacres against members of indigenous peoples, as well as lack of and unsuitable free, prior and informed consultation:

(a) Cases of abuse attributed to members of the National Police against the LGBT community in various communes of Medellín (Antioquia) have been reported;

(b) In April, in Bogotá, the manager of a bar regularly attended by members of the LGBT community was physically and verbally assaulted. He also received death threats by unidentified individuals. The victim had previously received a threatening pamphlet from the so-called “Chapinero Social Cleansing Group, for a society free of gays”;

(c) Three indigenous communities of Chocó and Antioquia requested the suspension of the exploratory works for the “Careperro” mine in their territories. In some cases, the requests were made on the basis of lack of prior consultation and, in others, on the basis of irregularities in the process. Furthermore, the army entered the indigenous territories to provide protection to the construction of a heliport on a place considered as sacred by the communities;

(d) On 2 August, an indigenous leader from the Inga Villa Catalina indigenous territory of Puerto Guzmán (Putumayo) was killed by unknown individuals. The victim had been leading a consultation process since 2006 for the exploitation of 18 oil deposits located in the indigenous territory. As a result of the killing, and several threats against other indigenous leaders of the region, the Permanent Working Table of the Inga Indigenous Peoples of Puerto Guzmán withdrew from the consultation process;

(e) On 26 August, in the indigenous territory of Gran Rosario in Tumaco (Nariño), an unidentified group of armed men broke into a private house and fired their guns at close range and without consideration to women or children, against a group of people. Twelve Awá indigenous people, including two girls, five boys and an 8-month-old baby were killed during the attack. Another three people, including a girl, were wounded.
