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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Note verbale dated 25 February 2011 from the Permanent Mission of Colombia addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of Colombia to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to convey the comments and observations of Colombia on the report of the High Commissioner on the situation of human rights in Colombia (A/HRC/16/22),* to be considered by the Human Rights Council at its sixteenth session.

The Mission of Colombia kindly asks the Office of the High Commissioner to number the attached document and to have it published on the webpage of the sixteenth session of the Human Rights Council.

* Reproduced in the annex, as received, in the language of submission only.

Annex

Observations of Colombia on the report of the United Nations High Commissioner for Human Rights in Colombia for 2010

I. General remarks

The Colombian State wishes to express its thanks to the Office of the United Nations High Commissioner for Human Rights for the draft annual report it has prepared on this country for the year 2010. The document is the result of objective and comprehensive work and analysis of the national situation in human rights and International Humanitarian Law, which has taken account of information from the State and from civil society organizations.

Likewise, Colombia repeats its firm commitment to the protection and guarantee of fundamental rights and liberties of all citizens inhabiting its territory, without distinction, as has been evidenced in the range of actions and efforts on the part of the State and its institutions, acting in the framework of the Constitution, and respecting the rule of law.

In this, the Colombian State expresses satisfaction at the recognition which the High Commissioner's Office affords it in relation to several measures implemented, whose final purpose is to facilitate conditions which will secure full enjoyment of rights throughout the Colombian territory. It must be stressed repeated that Colombia is a country where human rights is the foundation of its policies and the basis of the exercise of democratic freedoms. It is the Colombian Government’s policy and commitment to work untiringly and with determination, together with civil society and the international community, for a holistic respect for human rights.

Likewise, the Colombian State wishes to express its thanks to the High Commissioner's Office for the positive reflections made in the report with regard to the following points:

- The election of Colombia as a non-permanent member of the United Nations Security Council for the period 2011-2012.
- The recognition of the commitment of President Juan Manuel Santos to human rights; and of the first measures adopted during the beginning of his period of office, such as the sanction of Law 1408 of August 9, 2010, known as the "*Homage Law*", the exclusion contained in Article 3 of the new Military Criminal Code, in respect of any cognizance which the Military Criminal Justice System might have in relation to human rights; the draft bill for victims and the restitution of lands, currently discussed in Congress; the improvement in the relations between the Executive and civil society, the Judiciary, and our sister nations, Ecuador and Venezuela.
- The positive evaluation of the Ministry of Interior and Justice’s Protection Programme.
- The welcoming which the High Commissioner gives to the inclusion of a chapter in Human Rights and International Humanitarian Law and Transitional Justice in the National Development Plan for the period 2010-2014, "*Prosperity for all*".
- The use by the Government of the concept of *"Disarmament of words"* in its relations with civil society and the rest of Colombia's national institutions; and the express recognition as a positive event of the signature of the *"Joint declaration between the Government, the Office of the Inspector General, the People's Defender*

-other State entities- civil society and the international community: towards an integral holistic policy for human rights and International Humanitarian Law", signed in November 2010 under the leadership of Vice-President Angelino Garzón.

- The confirmation of the reduction in the number of cases of extrajudicial executions.
- The positive evaluation of the National Police, for having opened up dialogue with the Colombian Office of the High Commissioner for Human Rights, with regard to alleged cases of excessive use of force.
- The debates currently being conducted in the Colombian Congress with regard to the draft bill to make racial discrimination a criminal offence.
- Recognition of the progress which Colombia has made in terms of human development.

Despite this, from a general point of view, the Colombian State respectfully wishes to draw the attention of the High Commissioner's Office to several points contained in the draft report, in Section II, entitled *"Context"*.

With regard to Paragraph 8, where it is said that *"(...) Public considerations with regard to possible approaches to peace by President Santos' Government and the guerrillas*", it is important to note that the Government has kept open the possibility of dialogue with the illegal armed actors, provided that they satisfy certain minimum requirements, such as respect for human rights and the application of the norms of International Humanitarian Law. However, these illegal armed groups persist in their criminal activities, influenced by the drug-trafficking industry; and further, there is no legal or legitimate ideology or policies underlying their actions.

Nonetheless, the State will continue to provide mechanisms and strategies for dialogue, in order to obtain lasting peace, in the context of justice, truth and reparation. The President of the Republic will lead these actions personally.

Furthermore, and with reference to the statement that "(...) Also, it is a matter of for concern in that there is draft legislation to harden the criminal law, and to reduce the age of criminal responsibility, in the context of the fight against organized crime and urban violence", the Report makes reference to a draft bill tabled in September 2010 by Senator Gilma Jimenez, of the Partido Verde, who seeks to introduce tougher penalties for adolescents who commit serious crimes such as murder, sexual abuse, robbery with violence, kidnap and extortion.

First, we consider it convenient to clarify that this bill is not a Government initiative: and it comes from a political party which does not form part of the Government´s political benches.

It must also be said that the passage of this bill through both chambers of the Colombian Congress is an autonomous process. Therefore, it will only become a law of the Republic if it is approved in those debates, and with the sanction of the President of the Republic. Meanwhile, the Congress is the scenario on which bills may be laid open to all kinds of objections thought relevant.

Again, the law as it stands states that minors may only be sentenced to up to eight years imprisonment if convicted for crimes such as murder, kidnap or extortion. The law also says that they may only remain in the centers of confinement until they reach the age of 21, while crimes such as rape do not even merit detention. If the draft bill is approved, the minimum sentence would be 10 years, and minors who commit sexual offences or cause grievous bodily harm will be treated as criminals.

This initiative for the legislature has been proposed as a solution to the problem of young offenders, which has become markedly more serious in Colombia in recent years. The Director of the Family Welfare Institute ICBF, Dr. Elvira Forero, says that *"88% of minor offenders in Colombia are male, and 12% female. 67% are in the age range of 16-17. The statistics tell us that the crimes most commonly committed are theft (32%), trafficking, manufacture or carrying of narcotics (25%), and bodily harm (9%)"*. For its part, the People's Defender Dr. Volmar Pérez has said that although he is not familiar with the bill, it *"(...) is going in the direction of recognizing a reality, that one class of hired assassins in Colombia is that of young people aged 14-17".*[1]

II. Specific observations on the draft report

1. Human rights defenders, union leaders and journalists

Paragraph 10

The Prosecutor General's Office is concerned at the continuous aggression of which human rights defenders, leaders, community defenders, members of the community action boards, Afrocolombians, members of indigenous communities, municipal ombudsmen, union leaders, personnel of the Early Warning System of the Office of the People's Defender and journalists are the victims.

The follow-up made to investigations into several incidents which have affected these groups, and which are a matter of investigation by the Prosecution Service, shows that there has been a marked increase in collective intimidation of a wide range of social organizations of human rights defenders, members of Congress, officials of the Office of the People's defender, amongst others. Therefore, joint actions are being deployed by the Prosecution Service's National Unit against the Emerging Bands-(BACRIM), in order to determine the source of these threats in relation to organized criminal structures, and to act appropriately in communicating with the victims, in order to establish their source, and place criminal responsibility on the perpetrators.

With regard to cases of murder, the Prosecution Service continues to work on the control and monitoring by the National Directorate of the Prosecution Service in coordination with its Regional Directorates, and the National Human Rights and International Humanitarian Law Unit. During 2010, Technical-Legal Committees were formed to push forward cases under the special supervision of advisers of the National Directorate of the Service. This brought about the reactivation of a good number of investigations, an accumulation of processes in some cases, and reallocation of others to the National Human Rights and International Humanitarian Law Unit.

In addition, the Prosecution Service recognizes that it is its duty as a State entity to introduce constant improvements in response to the repression of offences against human rights defenders and other citizens. However, the criminal investigations pursued for crimes of threats against human rights defenders have shown that there are a series of obstacles to the successful conclusion of these investigations[2], such as:

[1] Taken from www.eltiempo.com/archivo. Headline: National debate reopened for minors to be tried the same as adults. January 24, 2011.

[2] The obstacles have been detected in various Executive Reports received by Regional Directorates and the entire experience of the Technical-Legal Committees.

(a) On occasion, there is a lack of corroboration on the part of the victims, who do not appear when summoned by the Prosecution Service officers, to attend interviews and establish the facts.

(b) Difficulty in locating the victims and witnesses for them to appear before the Prosecution Service for interviews or statements, as the case may be.

(c) Cases had been detected in which denunciations have been made in order to obtain benefits, or security schemes.

(d) The National Human Rights and International Humanitarian Law Unit has recorded a number of denunciations of human rights defenders which lack any information which would allow the investigations to go forward with any certainty. In addition, the presence of victims and their defenders in criminal proceedings has not been constant, and there has been a preference to resort to international instances rather than national ones.

Paragraph 11

With regard to murder and other forms of aggression against representatives of the displaced and group leaders in processes of restoration of land in certain parts of the country, and in relation to the cases referred to in this Section of the Report, it should be noted that the Prosecution Service is pursuing the following actions in each case:

Murder of Rogelio Martinez

Case No.: 707136001051201080112
Prosecutor office: Sincelejo 1 Regional Office
Stage: Instruction
Date of the event: May 18, 2010

Relevant actions: On November 12, 2010, one of the alleged authors of this crime was captured, charged, and held in custody.

The case was reassigned especially to Special Prosecutor 48 of the Human Rights Unit, in a resolution of December 3, 2010, issued by the Attorney General.

In this investigation, the Attorney General has requested the hearing to be held for formal indictment, and at present, the case awaits the decision of the court to set the date for the hearing to be held.

Murder of Alexander Quintero Martinez

Case No.: 1986000633201000677
Prosecutor: Prosecutor 1 Santander de Quilichao, Popayán Regional
Stage: Interrogation
Date of the event: May 23, 2010

Relevant actions: A number of actions have been taken as part of the Methodological Programme, designed to clarify events and identify those responsible. This case has also been the object of a Technical-Legal Committee, and there is currently a request for special assignment to the Human Rights Unit.

Murder of Oscar Maussa-Contreras

Case No. 132446001117201001202
Prosecutor: Prosecutor 22 Carmen de Bolivar, Cartagena Regional Office
Stage: Interrogation
Date of event: November 24, 2010

Relevant actions: Proceedings required to respond to urgent action were pursued, and the results of the objectives stated in the Methodological Programme are awaited.

The Human Rights Unit requested a change of assignment of the investigation, and a decision is now awaited.

Paragraph 12

In relation to the situation of murders committed against union leaders, the Local Offices of the Prosecution Service, and according to information supplied by the Ministry of Social Protection as to whether the victim of a crime is a union leader, in 2010 there were 37 cases of murders of union leaders, of which five have come before the courts in less than one year.

Paragraph 13

It should be noted that the Attorney General's Office has adopted a number of institutional policies to secure efficiency in the investigation of crimes in which the victims are persons identified as human rights defenders. The following are the policies:

- Regular control and follow-up investigations
- Implementation of technical committees to push cases forward. In Memorandum 035 of March 6, 2008, the National Directorate of the Prosecution Service created the Technical-Legal Committees. Their purpose is to create an opportunity to analyze cases and push them forward; to evaluate the progress of investigations, and to identify obstacles, and failures which have hampered progress. The foregoing is designed to give prompt application to solutions required for cases to follow their proper course.
- Differential methodologies in investigations. In memorandum 080 of June 3, 2008, a line or strategy was designed for investigations of cases of threats to members of human rights defenders organizations. This contains a series of strategies designed to make the investigation process more efficient, with practical tools designed intended to help the judiciary to act more speedily.
- Reactivation of filed investigations. In order to avoid impunity in cases of human rights violations, Prosecutors had been asked to analyze the legal viability of reopening some filed investigations. This has been done by asking the Prosecutors to provide a reasoned opinion with regard to the reopening of investigations, in accordance with transnational organizations' instruments and decisions.

In the case of the threats of which the victims were Pastoral Social in Tumaco, along with other members of human rights defenders organizations, since 2007, it should be noted that there are Interrogations 5200160200 4852007813237 and 520016000485200901101, and these cases were reassigned to Special Prosecutors on December 9, 2010, due to the connotation of the events, the nature of the victims and considering that in cases of e-mail threats there are special difficulties in the determination of their origin.

Further, this Paragraph says that in relation to the situation of human rights defenders, union leaders and journalists, the Inspector General's Office has not obtained any visible results in its disciplinary investigations, despite its public commitment to do so.

Here, it should be noted that the Procurator General, Alejandro Ordoñez Maldonado, issued Directive 12/2010, exhorting the authorities to provide guarantees to the valuable work of human rights defenders, and to refrain from stigmatizing these persons or their organizations. Likewise, he gave instructions for Judicial Procurators to intervene promptly

in cases involving human rights defenders, in order to secure due process, and comply with Memorandum 00121 of 09/06/09 of the Deputy Inspector General for Criminal Matters.

It should be noted that during this year, the Inspector General's Office dismissed a junior officer accused of the murder of a union leader.

Paragraph 14

In relation to arbitrary detentions referred to in the Draft Report, where it is assumed that human rights defenders are the victims, and mainly bases its conclusions on informer statements, reports from demobilized personnel or military intelligence reports, without matching them to other sources; it should be clarified that the judiciary is independent and autonomous, and in Colombia there is freedom of evidence (rather than what doctrine calls the 'table of evidence'). That freedom and its restriction appear in the Criminal Procedure Code which states that "*(….) the written order (...) will clearly and succinctly indicate the motives for arrest*" (Article 298), and that *"(...) a warrant for arrest will be issued when the evidential material and physical evidence collected and secured, or from information legally obtained, can lead to be reasonably inferred that the person implicated may be the author of or a participant in the criminal conduct investigated*" (Article 308), without demanding or excluding any specific items of evidence.

Likewise, it should be noted that the Constitutional function of the Prosecutor General's Office of the Prosecution Service is to investigate conduct which bears the characteristics of criminal activity, and therefore once information has been obtained and analyzed, the Prosecutor for the case - in concordance with the work of Judicial Police - is responsible, with full autonomy and independence, for evaluating whether the case has merits or not, in order to set related enquiries in train.

If it happens that, in a given case, those allegedly responsible for the conduct investigated are human rights defenders, they, like any other citizen, will have their constitutional rights respected, and they have guaranteed access to the investigations, where they can exercise their right to defense, and may dispute the decisions made within each individual case. Likewise, the Attorney General has said that the judicial apparatus has not been allowed to be used as a mechanism of persecution against human rights defenders.

Paragraph 15

In relation to the statement regarding *"(...) The assignment of schemes of protection to private enterprises*", we should note that this action of the State should not be considered as contrary to standards or presumptions of law, nor to legitimate action, in the context of the obligation to guarantee and respect human rights of the beneficiaries of means of protection.

The Colombian State, in accordance with the parameters of the Constitution, is responsible for satisfying the rights of the individual. Likewise, the State is empowered to take actions through the agency of private persons, strictly subject to the terms of the Constitution and the law. On this matter, it would be important to note two essential points:

- The State, when exercising the service of protection and security for individuals through or with the collaboration of private persons, does not surrender its obligations, because it is an inherent assumption of the existence of the State that it has a duty in relation to the rights of those subject to State jurisdiction.
- The allocation of actions in the operations and functions in services of personal protection and security to private persons is in no sense of the word a privatization. Indeed, the Constitutional Court has expressly stated that *"(...) the assumption of administrative functions by private persons is a phenomenon which has been*

becoming increasingly common among us in the context of the concept of the State, and it is not surprising, but rather, it is a logical progression of this same notion. It is therefore appropriate to say that the issue of the assumption of administrative functions by private persons should not be confused with issues of privatization of certain public entities"[3].

It is also important to note that the entity responsible for mandating an administrative function to a private individual at no point divests itself of the content of its competency. Likewise, the assignment of administrative functions to private persons is of an exceptional nature, and may only be exercised in the conditions given in the law.

Likewise, the provision of security and protection services may be the responsibility of private persons in the terms given in the Constitution and the law, and this in no way implies a shedding of obligations for account of the State, or the substitution of the person responsible for providing the service or eliminating controls to be exercised for its proper execution. On the contrary, the management of administrative affairs by private persons places a further item in the catalogue of obligations, not only for account of the State - the principal party obliged - but also for account of the private persons involved, in accordance with the current legal regime, which is broad-based and rigorous in relation to protection and security services.

In the interest of securing efficient service, there has been an open and transparent public tendering process with the private sector, for the provisions of the services required to manage the operational component of mobile protection schemes. It should be noted also that the Protection Programme of the Ministry of the Interior has not surrendered its obligations and responsibilities to ensure the correct functioning of the protection schemes administered by private enterprise. Likewise, it should be noted that during this process of transfer of the operating aspects of the system, the organizations were consulted. As a result of this consultation, they submitted a document to the Human Rights Division of the Ministry of Interior, which was then analyzed by the public policy group, but did not offer any other solution as an alternative to the current contracting of the operating system of the Protection Programme **(see Annex 1)**.

Further, Decree 1740/2010 in no way modified the implementation of measures in the context of the Protection Programme. The Human Rights Division has received a number of communications which express the disagreement of organizations and sectors in civil society in relation to the functioning and structuring of CRER and regarding the elimination or modification of some protective measures. However, this has not been the case in relation to their implementation. At present, the Minister of Interior and Justice has before him some proposed amendments to Decree 1740/2010 which have been negotiated and agreed, in order to find a solution to concerns expressed by the organizations, without detriment to the quest for improvements in the Protection Programme process.

Finally, and referring to the mention of *"(...) the absence of a differential focus*" in the Protection Programme, the Programme is coordinating actions to hold a workshop-forum on the process of the construction of a differential focus in the context of public policy. This workshop-forum will be attended by women's defenders organizations and gender issue organizations, state entities, and the Rapporteur of the Inter-American Commission for Human Rights for Women and Gender matters. The event will be held in March 2011, and it is expected to be an opportunity for dialogue and exchange of proposals, to generate material for the construction of public policy with a gender focus.

[3] Decision C-886/1999

Paragraph 16

In relation to the statement that *"(...) the implementation of commitments assumed by the previous Government at the Guarantees Working Group for Human Rights Defenders continues to be insufficient*", it should be noted that among the difficulties and challenges, we recognize that the implementation of the commitments made at the Working Groups has been a slow process.

This is due to the fact that in some parts of the country the spaces for dialogue between the human rights organizations and State institutions have not been set up. Further, and in some scenarios, there was no clear definition of the scope of the commitments made. Also, the satisfaction of some of the commitments requires the development of long-range strategies.

This means that no adequate results can be demonstrated. However, this does not mean that policies for implementation have not been developed, or that efforts have not been made to comply with them.

Indeed, on January 17, 2011, the most recent meeting of the National Guarantees Working Group was held, attended by the Minister of Defense, the Attorney General, and the Minister of Social Protection (a.i.), the Minister of Interior, and senior state and Government authorities. During that session, the organizations presented their concerns with regard to issues related to investigations, the protection of human rights defenders, and the actions of the forces of law and order. The parties agreed to approach each of the matters raised in depth through the programmed working groups set up for individual issues during February and March, to be chaired by the senior authorities on each issue. The objective is to conduct a review of commitments already acquired, to evaluate progress, and if necessary, to establish new commitments which will be better suited to the situations and needs of each of the populations concerned.

2. The intelligence services

Paragraph 22

Paragraph 22 of the Report refers to the cleaning up of intelligence files, and says that no substantive progress has been made by the Office of the Procurator General. We must therefore note that it is a matter of the highest concern to the Procurator General that the report affirms that no substantive progress has been made.

In 2010, the Procurator General's Office set up a working group with the intelligence services, accompanied by the Colombian Office of the United Nations High Commissioner for Human Rights, and started on the project whose objectives are to analyze the cycle of intelligence and intelligence records, in particular those relating to human rights defenders issued by State security services; then, based on the results of the diagnosis, and with the accompaniment of the intelligence services, to prepare procedures for cleaning up the information, and organizing and following up of information and documentation, in order to institutionalize a mechanism for preventive control; and finally, to design a protocol for the Prevention Inspector to act, in regular follow-up to intelligence reports on human rights defenders, and proceeding to check on the review and cleaning up of intelligence service files.

As part of this project (which has no precedent in democratic regimes), the co-operation of USAID was obtained, and an invitation was sent out to experts in the matter, to select an international consultant and a Colombian consultant to provide their services to the Procurator General's Office in achieving the objectives of the project.

As is known, in the second half of 2010, the present Government took office, with the swearing in of Ministers and a new high command for the armed forces and police. It is also known that the Constitutional Court declared the *"Intelligence Law"* to be unconstitutional, and this obviously postponed the taking of any action which was expected in accordance with the provisions of that law.

Paragraphs 23 and 24

On November 2009, in the wake of the Constitutional Court's decision to declare the intelligence law (Law 1288/2009) unconstitutional, Congress was sent a new Bill (Law 185-Senate, 189, Chamber Representatives), to create a new civil intelligence agency, and to suppress the present structure of the security police DAS.

This project is the result of the diagnosis prepared in four studies conducted in the last five years, which agree on the need to focalize and specialize DAS activities. Further, the technical study was prepared considering the various economic, financial, legal and operational scenarios - amongst other aspects - involved in the process of suppressing the present structure and the creating a new civil intelligence agency.

Also, a White Paper was prepared, "*The way towards a new civil intelligence agency*", which is a roadmap for the journey towards a new intelligence agency.

3. Extrajudicial executions and related cases

Paragraph 26

In relation to the figure of 600 active cases of alleged *"extrajudicial executions"*, in the Military Criminal Justice System mentioned in this Paragraph, it is important to note that in principle this would refer to cases which have been the subject of complaints on the grounds of the crime of murder. Further, after consulting with the Military Criminal Justice System, it was found that the number of cases of murder denounced at December 2010 is of 531.These investigations for the crime of murder are those which some have been the subject of some sort of complaint before a Colombian or international organization, and therefore the Executive Directorate of the Military Criminal Justice System has made them the subject of special follow-up.

Paragraph 27

In Colombia, the Military Criminal Justice System is today more independent, autonomous and impartial. The Colombian legal order (Article 221 of the Constitution) says that the Military Criminal Justice System may only take cognizance of crimes which had been committed by members of the armed forces on active service, and if the crimes are related to that service.

Currently, Law 522/1999 contains the Military Criminal Code, which repealed Decree 2550/1988. On August 17, Law 1407/2010 was sanctioned, approving a new Military Criminal Code to modernize jurisdiction, updating the substantial part of the code to match the legal dogma of the ordinary Criminal Code (Law 599/2000), and adopting the *"accusatory"* or oral system.

In the last 20 years, the Military Criminal Justice System has undergone changes and significant evolution, responding to internal legal developments, and treaties, accords, and domestic and international jurisprudence with regard to the restricted application of the specialized jurisdictions.

As one expression of this, the Military Criminal Justice System may not take cognizance of cases or investigations which involve crimes against humanity or violations of International

Humanitarian Law, or other forms of conduct which break the functional nexus with the service, in the terms that this is a restricted jurisdiction for cases strictly related to the constitutional mission entrusted to the forces of law and order.

Now, a Military Criminal Instruction Judge starts an investigation when cognizance determines - through the available evidence and an examination of the circumstances of time place and manner of the commission of the deed - that there is a close and direct relationship with the service. Otherwise, the Judge is obliged to remit the case to the ordinary courts.

The judicial operators in the Military Criminal Justice System are prepared and instructed to recognize, detect and demonstrate possible violations of human rights and International Humanitarian Law within cases and investigations they take up. Therefore, there should be no investigations or cases involving such elements within the investigations of the Military Criminal Justice jurisdiction. Likewise, and by law, the Military Criminal Judges have a duty to take measures designed to guarantee that material items of evidence are not altered, concealed or destroyed. To do so, they may take all manner of actions they consider necessary to preserve the evidence. Therefore, the role of the Military Criminal Judge when visiting the scene of the events is limited to the completion of preliminary proceedings. Nonetheless, in cases of deaths in combat, these proceedings are conducted by the Judicial Branch of the National Police, or the Judicial Police investigators, or the CTI of the Prosecution Service (Articles 413 and 414, Military Criminal Code), in accordance with Law 906/2004.

Article 230 of the Constitution says that **judges' decisions are subject only to the rule of law**. Thus, failure to observe these principles will lead to **disciplinary and criminal action for the responsibility they have in the administration of justice**.

From the foregoing, it can be seen that the Colombian legal order is clear in stating that any conduct which could potentially be a configured as a crime against humanity or an offence against International Humanitarian Law, is alien to the military or police service, and therefore its investigation is the business of the ordinary courts.

Further, in relation to the statement "(...*) The truth, in relation to denunciations of extrajudicial executions, repeatedly claimed and encouraged by the Ministry of Defense, is essential but insufficient..*", the adjective "*insufficient"* should be understood in the light of the complexity and number of cases which come before the criminal courts, and many other factors which make it difficult to pursue investigations effectively in order to complete a case for a extrajudicial execution.

Each of these processes deserves an in-depth investigation which will aim to obtain the truth with regard to the events which are the matter of investigation in the most appropriate and effective manner, and to discover the perpetrators, this being one of the most important matters to determine competency, and the motivation or context in which a crime took place. This last point is one of the characteristics in which a conflict of competency is identified and resolved, since conflicts of this kind do not arise due to a refusal to remit certain cases to one or other jurisdiction, but they are themselves part of a legal process which is governed by parameters of evidential value, and which leads to the judicial truth (which is not a simple and arbitrary decision of an investigating judge), and due to the complexity of the case, does not make it possible to achieve a rapid solution.

Paragraph 28

In this section, in relation to the statement that *"(...) dismissals and transfers of certain Military Criminal Judges may have been motivated by their collaboration with the ordinary courts*", the following clarification should be made:

Decree 91/2007 "*Regulating the special careers system in the defense sector, with provisions on personnel administration*", Article 8, states the following:

> *"Article 8. Posts of free appointment and dismissal. The following are posts of free appointment and dismissal:*
>
> *(...)*
>
> *7)* ***The posts in the Military Criminal Justice System contained in Law 940/2005 as amended, supplemented or substituted, with the exception of fixed-term posts.***
>
> *(...)"*

Therefore, this is a matter of the post of free appointment and dismissal, and the criteria for filling it corresponds to the discretionary powers of the appointing agency, based on fulfillment of the requirements for the post, and factors of security, which are prime considerations in filling the post. Therefore, dismissals and transfers are discretionary, and are designed to achieve better performance indicators, restructuring, or improvement of the service.

With regard to the Military Criminal Justice, the Constitutional Court has made several pronouncements[4] to state that the Military Criminal Justice System has a special character, like any other jurisdiction or body, and should therefore work for independence and impartiality in order to guarantee due process, and further, it should follow the precepts of the Constitution for the administration of justice.

Nonetheless, a draft bill is currently passing through the Senate, as Law 046/2010, *"Passing the Military Criminal Justice System from the Executive to the Judiciary"*. This bill aims to provide guarantees of the right to equality before the law to those who are in military posts. The bill not only modifies the structure of the State, it also seeks to convert the Military Criminal Justice System into a specialized branch of the ordinary justice system. This had not previously been provided for in the Constitution, and therefore needs careful analysis, since the changes proposed would need to be treated as a "Legislative Act".

The reform of the Military Criminal Justice System is a priority for President Juan Manuel Santos and his Government, since for him "T*he reform(...) implies institutional adjustments and an investment budget to guarantee independence and professionalism; this will clean up the illegal forms of conduct of members of the Armed Forces"*[5]. Likewise, for the Ministry of Defense, the investigations are of vital importance, and therefore a direct communication channel has been set up with the Prosecution Service in case there are delays in investigations. Likewise, Phase 1 of the "*Agreement to effect follow-up to the implementation of the 15 measures*", signed with the Colombia Office of the United Nations High Commissioner in December 2009 has been set in motion. So far, there have been visits to Division III and Division V.

Further, joint work has been done with the Prosecution Service in a project to strengthen the Human Rights Unit, particularly in pushing forward investigations for alleged extrajudicial executions, or aggravated homicide.

In order to facilitate the work involved in the investigation of alleged extrajudicial executions, a Directive is being prepared, giving instructions designed to unify and preserve operations files. This is being done so that there will be an operational history on file, and

[4] http:www.radiosantafe.com/2010/04/13/juan-manuel-santos-reformaria-el-das-y-la-jusiticia-penal-militar

[5] http:www.radiosantafe.com/2010/04/13/juan-manuel-santos-reformaria-el-das-y-la-jusiticia-penal-militar

information required by the judicial, disciplinary or control authorities will be made available more quickly.

In matters of prevention, during the second half of 2010, instructional materials were prepared for army personnel to improve their understanding of the application of the rules of engagement. This material contains some stories which recreate operational situations, and a video which dramatizes real-life situations in the context of military operations.

Paragraph 30

It should be noted that "*(...)* continued *denial of responsibility in the face of the commission of 'extrajudicial executions' "* is not a policy of the High Command of the Armed Forces, and indeed, instructions have been given designed to counteract any type of conduct which may offend human rights and International Humanitarian Law, or run counter to their Constitutional mission of the Armed Forces.

Standing Directive 10/2007 repeats the obligations for the authorities responsible for law enforcement, and voiding the murder of protected persons, communicating the Ministry of Defense's directives on this issue to all levels of command.

With regard to the recommendation to prepare procedures of measures to protect members of the Armed Forces who collaborate with justice, Decree 1740/2010, regulating Article 81 of Law 418/1997, Article 1, states that the object of the Decree is to establish guidelines for the protection of policy for persons in a situation of extraordinary or extreme risk, as a direct consequence or by reason of their political public, social or humanitarian functions.

Therefore, the Ministry of Interior and Justice Protection Programme has already been asked to include three individuals who are serving army personnel. Despite this, and precisely because there is no clarity as to the legal route to be followed in providing personal protection to civilians or to military personnel, a Directive is being prepared on the issue.

Likewise, Article 4.3 of the Decree states that the Programme will provide protection to witnesses in cases of violations of human rights and International Humanitarian Law, amongst others, regardless of whether a disciplinary, criminal or administrative case has been instituted against them or not. The Decree also makes the Human Rights Division of the Ministry of Interior and Justice and the Committee for the Risk Regulation and Evaluation (**CRER**) to be the competent instances to develop the Protection Programme.

4. Illegal armed groups arising from the demobilization of paramilitary organizations

Paragraph 32

There is a mention of the authorization given by the Ministry of Defense to the Armed Forces to engage six criminal bands in combat, and it is important to note that the authorization given by the Armed Forces is to undertake these operations in the context of International Humanitarian Law. In all events, and if required, the Armed Forces may mount operations against threats, in the framework of human rights, following its mandate under the Constitution and law.

With regard to progress in the struggle against the BACRIM, it should be noted that there has been a steady process of evolution and attrition which has meant a reduction of the order of 79% in terms of structural components, from 33 in 2006 to 7 this year. This has been the result of continuous National Police operations to prevent their expansion.

Equally, there has been a reduction of 15% in the direct influence on Departments, falling from 20 Departments in 2006 to 17 this year. The chart below shows the chronological development of the BACRIM, and the actions of the forces of law and order against them:

Drug-trafficking BACRIM disbanded, excluded and absorbed by action of the forces of law and order, 2006-2011

Year	***Drug Trafficking***	***Area of influence***	*Situation*	*Total*
2006	Protección al Campesino	Antioquia	Disbanded	7
	Gang in Florida Valle and Miranda, Cauca	Valle and Cauca	Disbanded	
	Bloque Pijaos	Tolima	Disbanded	
	Social Cleansing, Tuluá	Valle	Disbanded	
	Todos por Colombia (Granada)	Meta	Disbanded	
	Bloque Antisubversivo del Sur	Caquetá	Disbanded	
	Águilas Negras de Caquetá	Caquetá	Disbanded	
2007	Cordillera	Risaralda	Disbanded	3
	Gang in formation in Guamo	Tolima	Disbanded	
	Águilas Negras de la Guajira	Guajira	Disbanded	
2008	Vencedores de San Jorge	Córdoba	Absorbed	8
	Los Traquetos	Córdoba	Absorbed	
	HH	Meta	Disbanded	
	Bloque Llanero del Casanare	Casanare	Absorbed	
	Private security Vichada and Meta	Vichada and Meta	Disbanded	
	CACIQUE Pipinta	Caldas	Disbanded	
	Rastrojos de Putumayo	Putumayo	Structure serving drug traffickers	
	Rastrojos de Nariño	Nariño	Structure serving drug traffickers	
2009	Águilas Negras del Magdalena	Magdalena	Absorbed	11
	Los Nevados	Magdalena	Disbanded	
	Autodefensas Campesinas de Casanare	Casanare	Disbanded	
	Codazzi	Magdalena	Absorbed	
	Del Cesar	Cesar	Absorbed	
	Del Magdalena Medio	Middle Magdalena, Caldas, Tolima	Evolution of Oriente de Caldas (Disbanded)	
	Caquetá	Caquetá	Evolution of Operación Rastrojos (Disbanded)	
	Águilas Negras de Antioquia	Antioquia	Absorbed	
	Águilas Negras of Sur de Bolívar	Middle Magdalena and southern Cesar	Absorbed	
	Nueva Generación	Nariño	Disbanded	
	Águilas Negras del Norte de Santander	Norte de Santander	Absorbed	

Paragraphs 33 and 34

With regard to the assertion in the Report on the use of "(...) terminology and paraphernalia proper to paramilitary organizations, and to their modus operandi", the following points should be noted:

A report prepared by the Vice-President's Human Rights and International Humanitarian Law Observatory argues that they "(...) have pronounced differences with regard to the paramilitaries who demobilized. In essence, the BACRIM do not have an anti--guerrilla profile, to which we should add that they have not formed themselves as confederations, seeking political recognition (...)"[6]. On the contrary, the BACRIM have close relationships with the drug traffickers (an illegal business which is the reason for their existence), and generally, they move in the world of common crime. One of the prime objectives of the paramilitaries was to obtain legitimacy, which has not been a priority, or even a need, among the BACRIM.

Although there are certain similarities between the paramilitary groups and the BACRIM, there are substantial differences which make the comparison impossible with regard to modus operandi, such as:

- The territorial coverage of the BACRIM[7], which is much more limited than that of the paramilitaries.
- The paramilitaries had a strong influence on local power, while the BACRIM have significantly less, since they do not have any capacity to divert or influence resources, or other characteristics of situations of this kind.
- In the matter of murder, the paramilitaries engaged in massacres and systematic selective killings, in order to weaken support for the guerrillas. Today, the BACRIM commit murder, but generally on members of their own structures, persons engaged in drug-trafficking, sometimes against individuals who are not in favor of their interests, demobilized irregulars who refuse to participate in their networks; and social leaders who defend the restoration of land and indigenous communities.
- Drug-trafficking had been one of the objectives of the paramilitaries and of the BACRIM, but the emphasis is not the same in both cases: for the BACRIM, the objective is purely criminal, whereas for the paramilitaries, drug-trafficking was the pivot of a political and social project.
- One fundamental element is the alliance between the BACRIM and the guerrillas, unlike the paramilitaries, who were their constant enemies.
- The paramilitaries were characterized by the unity between one block and another, they articulated with each other, and this enabled them to consolidate a structure and to consult their actions. But the BACRIM do not have that unity, and have no way of unifying actions. This means that there are conflicts within their organizations, and that it is impossible to create a more complex structure[8] .

[6] "Dynamics of bands associated with drug-trafficking after the demobilization of the paramilitaries, 2005-mid-2008".

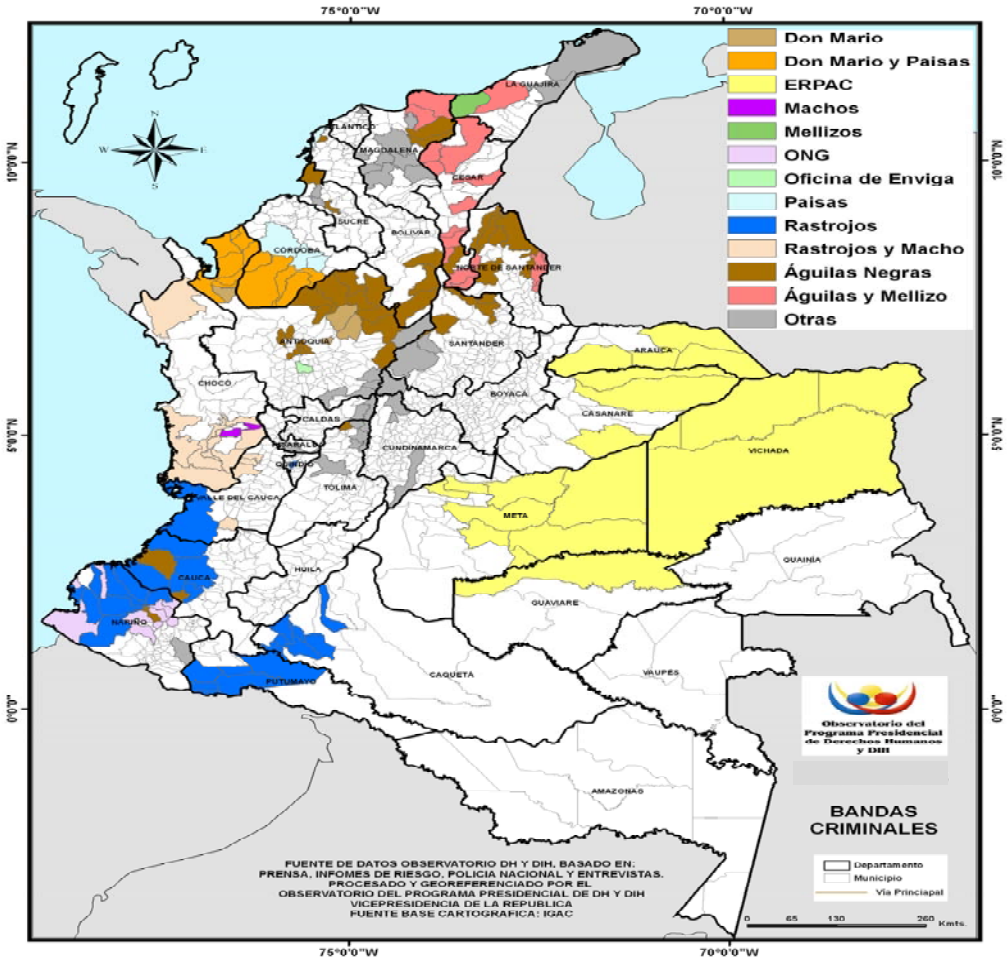
[7] The groups have a presence in at least 199 municipalities.

[8] The common characteristic of the BACRIM has been internal strife, mainly disputing strategic places for drug-trafficking or the extraction of illegal income. The murder rate in the municipalities affected by the BACRIM has been higher than the national average for the last five years and the projection for 2010 is 38 per thousand population, well above the national average of under 35. This has raised

- Unlike the paramilitaries, the BACRIM have no ambitions to mount political negotiations. They are a long way from forming any political movement, and even further from being politically recognized by the State.

A comparison was made of the recent distribution of the BACRIM with an exercise undertaken in 2008, and in essence the conclusion was that the spaces covered are the same, and they are strategic for the drug traffickers. The information on the spatial coverage of the BACRIM appears at one and two, with a synthesis on the most important spaces for drug-trafficking, which is shown in Map number three[9].

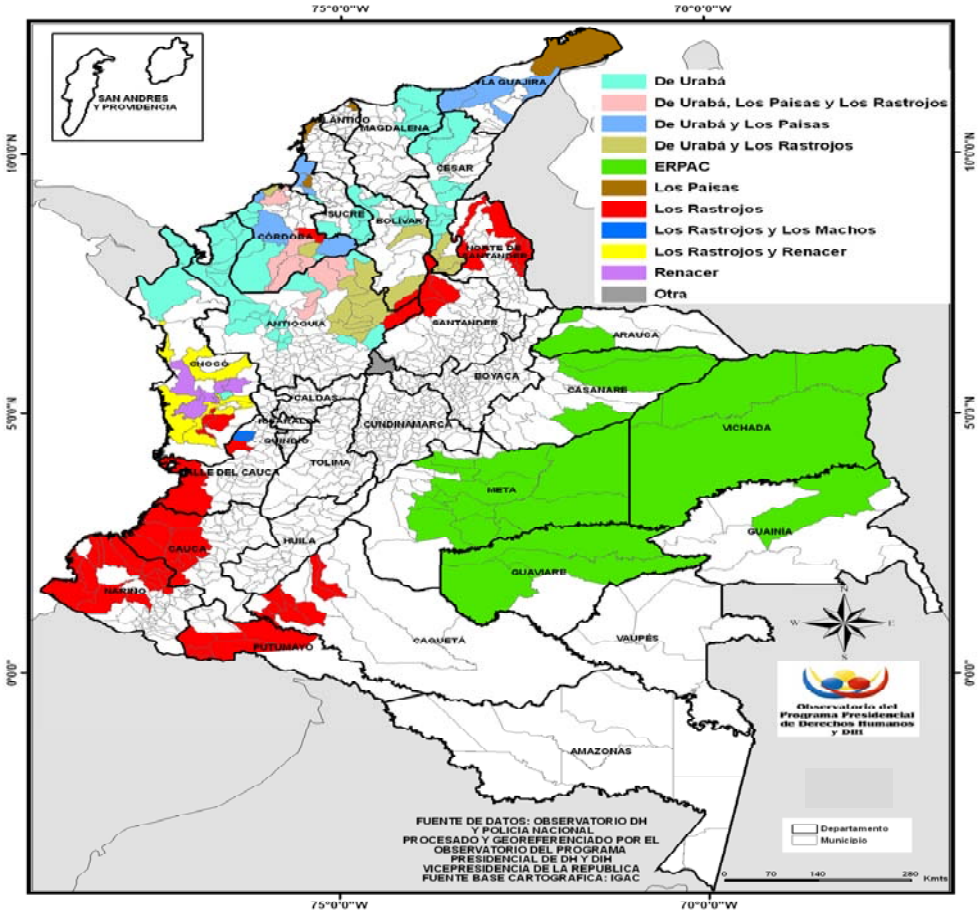
Map 1 Locations of the BACRIM in 2008



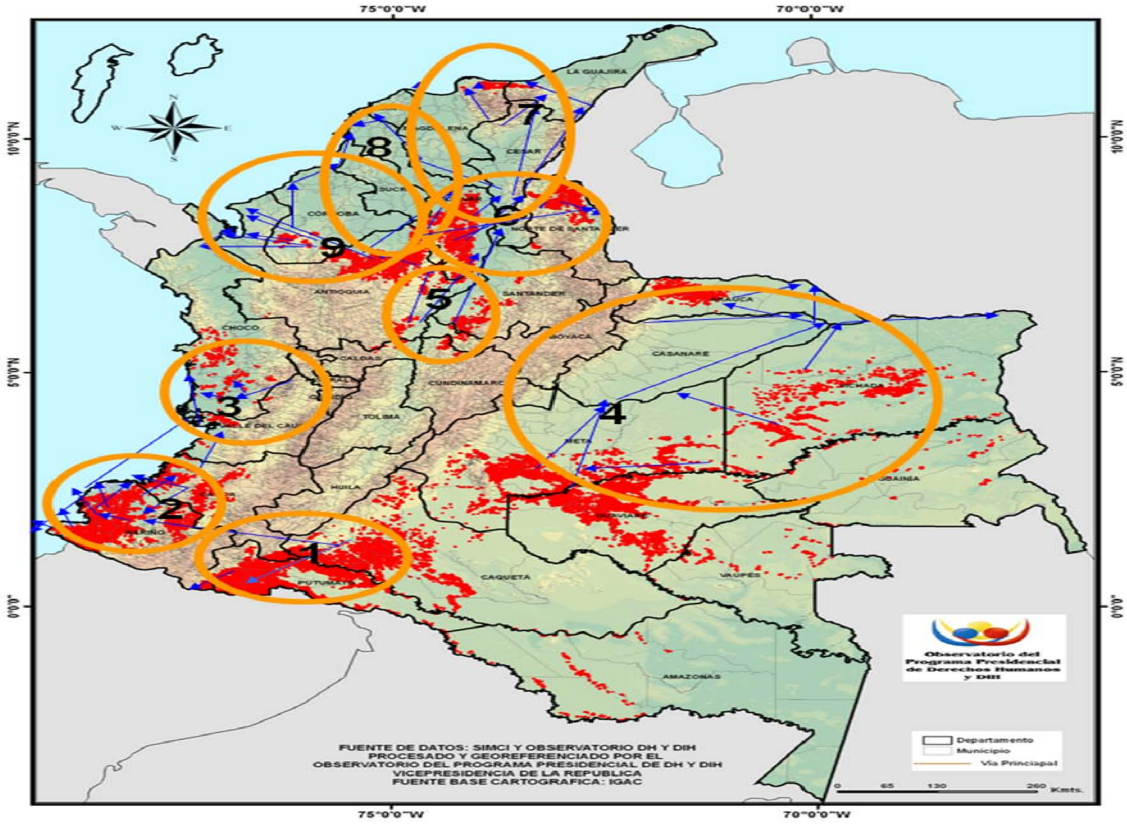
the indicators in several municipalities. Human Rights and International Humanitarian Law Observatory.

[9] Office of the Vice-President, Human Rights and International Humanitarian Law Observatory, January 2011

Map 2. Location of BACRIM in 2010



Map 3. Scenarios associated with drug-trafficking



Paragraph 36

This paragraph states that "In committing this violence, the groups have on occasions enjoyed the acquiescence, tolerance or even connivance - whether by corruption or threats - of some members of the forces of law and order, including the police, as can be seen in cases observed in Antioquia, Córdoba and Urabá".

On this point, it must be noted that Division VII has constantly used its various radio programmes, conducted with its Organic Units, to reinforce the obligation to combat all illegal armed groups which commit crimes in their jurisdiction, without exception. Likewise, there have been circulars and bulletins issued giving clear and precise orders on the unavoidable commitment to neutralize the criminal activities of the so-called BACRIM, who commit crimes in the region.

As a result of this effort, during 2010 there were some important operational successes, in particular, amongst others, the capture, bringing to justice and neutralization of 387 criminals, put at the disposal of the competent authorities.

In the same vein, Circular 007617/MDN-CGFM-CE-CCON1-DIV07-CJM-DH-13.1 of May 29, 2010, related to instructions on "*Zero tolerance with illegal armed groups*", the units of the Division VII were given the following orders:

- To strengthen the instruction of personnel, emphasizing performance of their mission, and the criminal and disciplinary consequences, and damage to the legitimacy of the institution, which any conduct contrary to this mandate would imply.

- To mount campaigns designed to avoid any kind of links between personnel under its command with organized illegal armed organizations.
- To increase controls within the units in order to detect cases of links between army personnel and illegal armed organizations.
- To take immediate measures as necessary to secure the pursuit of criminal action and disciplinary action against those who engaged in conduct contrary to the Constitution and the law. For this, it is imperative that the personnel implicated should be placed at the disposal of the competent judicial authority.
- Events involving army personnel with illegal armed organizations should be reported to the Commanding Officer of Division VII.

In addition to the terms of this Circular, Decree 2374/2010 has been implemented, with the creation of the Interinstitutional Commission against criminal Bands and Networks, which has been circularized to units of Division VII.

5. Transitional justice

Paragraph 38

Based on the understanding, held from the outset, of the formation of the National Prosecution Unit for Justice and Peace, that the focus is on the victims, strategies were designed to locate the victims and invite them to guarantee their access to justice, and thus, to truth and reparation. Therefore, in the first place, an edict was designed to summon the candidates, and the report form was designed for actions due to *"organized armed groups acting outside the law"*. At the same time, the activity known as *"Victims' Care Sessions"* were set up, in regions where the criminal organizations had influence, and these sessions were supported by wide publicizing of the victims' rights through the media, and on flyers and posters, distributed across the country.

These general Sessions to attend to victims were held in order to receive the information on the event that affected them directly, and to explain the legal route established for them by Law 975/2005, and the rights which it recognizes for them, so that they can then proceed to register on the Unit's database: and this has been highly effective. At December 31, 2010, 561 sessions had been held in different parts of the country, and they were attended by 113,695 victims.

The Unit also designed specialized sessions for attention to the relatives of disappeared persons, and 165 sessions of this kind have been held, attended by 35,632 individuals. This scenario has also been an opportunity to display the findings of exhumation proceedings, amongst other things, for obtaining information which helps to identify and determine circumstances of time, place and manner in which an event was produced; the taking of biological samples as a reference for the relatives of the disappeared (to date, 14,978 relatives have had samples taken), to build up genetic profiles; to achieve identification by comparisons with the anonymous remains exhumed, and the consolidation of a project for a genetic bank, led by the Prosecution Service.

These strategies are intended to locate and attend to victims, and have generated confidence and credibility in the institution, as can be seen from the fact that at December 31, 2010, the records list 323,765 alleged victims of the illegal armed groups. The reports on events that harmed them have the object of investigation, in order to establish not only the circumstances of the crimes, but also their authors or participants, and the damage inflicted, amongst other relevant information. If it is shown that the proceedings of a case do not correspond to the Unit, either because those allegedly responsible have not taken recourse to Law 975/2005, or as a consequence of the date on which the crime was committed, the

matter is sent to the ordinary judicial authorities competent to bring the matter to court, or to push forward or reactivate the investigation.

On the understanding that the guarantees of the victims are a cornerstone of the special process of Justice and Peace, in relation to the right to truth and justice, the Unit has been particularly careful to design its procedures in order to ensure that it intervenes in all the various stages of process. With regard to the procedure for the making of *'free statements'*, it has designed a methodology to develop those statements, an interview room for them, and the rooms for the victims; and the model infrastructure for real-time transmission to different parts of the country, in order to promote and facilitate victim participation. In this way, the victim communicates from the Victim's Room to request clarifications, denounce assets of the candidate for Justice and Peace treatment for purposes of reparations, leave matters on the record, present evidence, or make relevant questions designed to clarify the truth in relation to the candidate's conduct.

At December 2010, 59,050 victims had attended the *'free statement'* sessions, and 24,426 of them had put a total of 30,544 questions to candidates. With regard to transmissions, this Unit has carried the signal of the *'free statement'* sessions to 401 municipalities where victims are located, across the country, for a total of 1,370 days of transmission.

The foregoing shows that there are several mechanisms designed and at work in the hands of the Prosecution Service to guarantee the rights of the victims, and hard work is being done to locate them, attend to them, bring them into the Justice and Peace process, and secure their participation in it. However, account should be taken of the magnitude of the criminal activities which are being investigated, and the considerable number of victims registered in the process.

Paragraph 39

It should be noted that the Prosecution Service's National Justice and Peace Unit does not investigate any isolated or independent criminal act: it engages in an investigation of each of the criminal organizations as a whole, in order to determine the regions in which it committed its crimes, how it expanded, who its members are, its sources of finance, and other variables which will allow the magnitude of the damage caused to be established, and to configure patterns of a general and systematic nature.

For the Prosecution Service, the guarantee of the right to truth has not been *"modest"*, but on the contrary, a considerable number of events which had previously been in total impunity, have been clarified. This includes forced disappearances, and forced displacement, murders, massacres, and others. Likewise, copies of case-files have been requested from the ordinary courts to investigate politicians at all levels of the national order.

Indeed, the truth cannot be perceived only through the statements of candidates for Justice and Peace treatment, and much less will those statements allow us to appreciate the diversity or context of acts committed by the paramilitaries. Therefore, the Prosecutors work with teams, and before they listen to a candidate, they conduct some investigations to establish the truth about what happened (such as the reports of victims, reports of the Judicial Police, and others), in order to compare this information with the statements made by the candidates.

Another matter that needs clarification is that the Prosecution Service has proceeded as required to convict the candidates for the Justice and Peace process. At December 2010, the Prosecution Service National Justice and Peace Unit had sent requests for indictment to the Guarantees Control judges for 369 candidates. Indictments were being prepared for 134 of them, and have been completed in 91 cases: 73 of the 91 are awaiting a hearing to legalize charges – the step prior to final judgment – and 18 candidates have had that final hearing.

This allows the observation that there is a considerable number of candidates close to conviction in the Justice and Peace process, although it remains important that the time taken to bring them to hearings with the Guarantees Control Courts and Court of Cognizance should be shortened.

Paragraph 40

With regard to the various issues mentioned here, leading to a request from the High Commissioner's Office to review and reform the Law of Justice and Peace, the following points should be clarified:

(a) Time limits on the taking of *'free statements'*

The Prosecution Service's Justice and Peace Unit is competent to apply the procedures of Law 975/2005 for those who have demobilized from illegal organized groups, and who are proposed by the Government for treatment under that procedure. The process of collective and individual demobilization is conducted by the Office of the High Commissioner for Peace, and the Operating Committee for the Laying Down of Arms (CODA).

When the Prosecution Service Justice and Peace Unit receives a proposal from the Ministry of interior and justice for the application of Law 975/2005 to demobilized persons, the Justice and Peace Prosecutors assigned to it, working with the Judicial Police team, must undertake certain investigations prior to the starting prior to taking the *'free statement'*, like:

- Full identity of the candidate.
- Areas of influence of the candidate and the block.
- Personal information and family information of the candidate.
- The background of each candidate.
- List of events and activities attributable to the candidate, and to the illegal armed group to which he belonged.
- Investigation of each event which the candidate(s) wish(es) to confess (joint statements), which would allow the Prosecutor to locate and call in the victims, and establish motives, authors and participants.
- Alleged victims of the candidate and the group.
- Summoning of the victims.
- List of assets of the block, the candidate, and any alleged front men.

Due to the nature of the Justice and Peace process, the Unit's Prosecutors hear statements from candidates in the proceeding for *'free statements'*. This takes place in three phases, in each of which there are as many sessions as needed. In the introduction of the formal proceedings, the candidate is advised of his rights and obligations, the nature of the same which is his opportunity to confess truthfully his engagement to the group, and conduct during and on the occasion of belonging to it.

In the first phase, the candidate is asked about his engagement with the illegal armed group, on matters such as the length of time he was a member of it, the places where he was located, the command structure, weapons, recruitment, instructions received for military education, finances, drug trafficking, relationships with other armed organizations, influence of the armed group in regional and national policy politics, influence on the destination of the budget of the regional government agencies, influence on contracts, seizure of land, purchase of land, policies of the aggression against victims and activities of

the organization, amongst other matters. And the requirements of eligibility specified in Articles 10 and 11 of Law 975/2005 (as the case may be), are verified, with a list of the actions which the candidate wishes to confess.

The list of deeds to be confessed is an act which closes the first phase of the proceedings, and its only purpose is to establish the identity of the victim, the date and place of occurrence of the actions that he states he will confess. This strategy is designed to ensure that the Prosecutor, if at this point in the investigation the action has not been located, or the victim has not been located, or the matter has not been inspected by the ordinary courts, may proceed to perform these activities, to gain greater depth of knowledge of the situation, and then deploy questions which would allow him to establish the truth of events, locate, and receive a deposition from, the victim. After this, a date is set for the second part of the *'free statement'* process, in which the victim is summoned to take part in this instance.

As a general rule, the procedure is as stated above. However, in order to push some cases forward, instructions were given to the Justice and Peace Prosecutors (See Memorandum 049/2007 and 031/2008), so that prior to starting the free statement process, they would interview the candidate in the presence of his attorney, also inviting the Office of the Inspector General, to gain knowledge of the actions which are due to be confessed, and establish that these actions affect regions where they were committed, and subsequently perform the work of location, identification, registration, accreditation and judicial representation of the victims, summoning them with their attorneys to the preliminary hearing, and then, in the same proceedings, receive the confession of the actions.

In the second session, the candidate expresses the truth about actions that he had said he would confess in the first phase. The Prosecutor asks the candidate about each of the matters which would allow him to clarify the truth, such as authors, participants and determinators of conduct, circumstances surrounding the planning of the action, date of occurrence, place, motive and victims. In order to place the candidate in context, and obtain a complete and truthful confession, questions are asked about each of the actions or events, and the confession of a new action or event does not start until the previous confession has been completed. Therefore when the Prosecutor comes to an end of his questions about a specific act or event, he hands questioning over to the Inspector General's representative and the victims and their representatives, for them to interrogate him or request explanations they require from the candidate, in order to construct the truth, as indicated in Memorandum 067/2009.

Within this process, once the confession stage has been completed, the third phase begins, in which the Prosecutor asks about acts or threats in which the candidate might have intervened, based on the information which has come to the knowledge of the Prosecutor due to accusations made by victims, information compiled from readings of cases in the ordinary courts (active and inactive), from the investigations made by the Judicial Police, or due to the area of influence and period of time during which the group to which he belonged operated. In this phase, the same method is applied for the victims and for questioning the candidate.

This method has brought some excellent results, and has enabled victims to be located for each event, for them to be present with their attorneys at the time the candidate is making his confession, so that they may intervene in the *'free statement'* process, asking questions and requesting explanations directly from the candidate, or through the Prosecutor.

With regard to the methodology of the *'free statement'* process, it should be noted that in order to speed up the confession of criminal acts which have occurred in a given region, Memorandum 059/2009 gave a directive that the candidate should be interviewed in order to establish the municipalities in which the crimes to be confessed were committed, and the date on which they were committed, in order that subsequently a joint statement can be

made (with the same methodology given above), in which all candidates who took part in the same act or event declare and confess it in a single session, at which the group of victims of that action or event are present with their representatives.

With regard to the text of the report that "(...) to establish a time limit for the taking of free statements (...)", and "(…) might also include the consolidation of phases of process, collective indictments, and the obligation to investigate and punish only serious crimes", the Prosecution Service states that the persons who are candidates for treatment under the Justice and Peace process and who are engaged in the 'free statement' process, play different roles in the criminal organizations: some were commanders of structures, or of blocks, or of fronts, or squads, and some are subordinate to others.

Now, due to the experience acquired in the Justice and Peace process, the senior commanders of the paramilitaries do not remember all of the criminal acts committed by the men who were under their command, the authors and participants in conduct, the circumstances which surrounded the planning of an action, the date of occurrence, the place, motive or the victims; therefore, it is important to pursue the Law 975/2005 process with the subordinates who are also candidates, and received orders and consummated the actions, in order to arrive at the truth about what happened in each event. Likewise, the information supplied by the victims is of the greatest importance in the interrogation of the candidate and in bringing back his memory of the event, so that it can be confessed in the Justice and Peace process.

It should be remembered that the Justice and Peace process (Law 975/2005) is designed to investigate one specific candidate, and the total number of those who formed the illegal armed group, in respect of all crimes attributable to them at the time and on the occasion of their belonging to that illegal armed group.

This is a particular feature which reflects the interests of the law in the reconstruction, in a judicial scenario, of the truth links to episodes of a criminal nature committed by illegal armed groups during the entire time of their existence, which in most cases is not a question of days or months, but of years or even decades of criminal action.

(b) Facilitate mechanisms of exclusion

Articles 10 and 11 of Law 975/2005 set requirements of eligibility and these are an essential requirement for candidates to have access to the benefits of alternative justice. If a candidate fails to meet any of the requirements, the Prosecutors in the Justice and Peace Unit request the judge of cognizance to hold a hearing for his exclusion from the Justice and Peace process. Once the judge has taken this decision, investigations will continue only in the ordinary courts.

The matter of exclusions is regulated, and the decisions of the Supreme Court of Justice Criminal Cassation Division have discussed the issue.

Article 3 of Regulatory Decree 4760/2005, regulates the administrative procedure to be followed by the Government in preparing the list of candidates for the Justice and Peace process. The decision as to whether to grant the benefits or not, and verification of eligibility, is a matter for the judicial authorities.

Specifically, the subsections say:

> "In no case will the candidacy prepared by the Government imply an automatic grant of the benefits of Law 975/2005, or any endorsement of compliance with the requirements contained there.
>
> *The verification of compliance with eligibility requirements will be a matter for the judicial authorities, who will have the collaboration of other State agencies, in the*

sphere of their functions. At all events, the Appeal Court mentioned in Law 975/2005 is the competent authority for granting benefits contained in that law, solely to those satisfied the requirements of Articles 1, 3, 10, 11, 24, 29, 42 and 44 and others contained there". (Emphasis added)

The exclusion of candidates from the Justice and Peace process when they do not meet requirements of eligibility, and the principles of truth, justice, reparation and guarantees of non-repetition, is provided for in Law 975/2005, and refers more to objective than subjective situations.

As mentioned above, the Supreme Court of Justice Criminal Cassation Division has debated the causes of exclusion of candidates from the Justice and Peace process with clarity, as follows:

- Voluntary waiver of the candidate to the special transitional process. If it is the candidate who waives the procedure established in Law 975/2005, it is the duty of the Prosecutor to take the related decision: in other words, it does not require a pronouncement from the Justice and Peace courts to order the termination of process and to send the case to the ordinary courts, since the alternative penalty is a right, and its beneficiary may dispose of that right without his decision impairing rights of society and the victims, since the crimes committed and their authors will be investigated by the ordinary courts. Therefore, the Prosecutors must issue a decision in the form of an order, complying with the formalities of Articles 161 and 162 of Law 906/2004, putting an end to proceedings, and ordering the case to be sent to the ordinary or permanent courts with jurisdiction.

- Exclusion at the request of participants other than the candidate. If it is theProsecutor or another interested party who believes that any one of the requirements for the candidate to be the beneficiary of alternative justice is absent; the decision to exclude will deny him the enjoyment of the right to this form of justice. Therefore, in these cases, the competent instance to decide on exclusion is the Justice and Peace Division of the District Appeal Court, at any stage of process, and the same decision must be adopted if it is shown *ex officio* that any of the requirements of Articles 10 and 11 of the Justice and Peace Law is absent. The decisions to be adopted, *ex officio* or a petition of a party, due to the absence of any of the requirements of process to apply alternative justice will be a made on the basis of the terms of Article 19, paragraph 1, and Article 21 of Law 975/2005, and this decision may be appealed before the Supreme Court Criminal Cassation Division, in observance of Article 26 of the Law. This decision prevents the candidate from having future access to the process and its eventual benefits on any future occasion. Here, the Supreme Court of Justice Criminal Cassation Division issued a decision of the second instance on August 27, 2007, case 27873, Julio Enrique Socha-Salamanca presiding; case 28492, of October 26, 2007, Yesid Ramirez-Bastidas presiding, case 31162, Order of March 11, 2009, Julio Enrique Socha-Salamanca presiding.

- Candidates who continue to commit crimes after demobilization. Here, the court has discussed the exclusion of a candidate who continues to commit crimes after demobilizing. The decision is of a judicial nature, and is the exclusive preserve of the judges of the Justice and Peace Divisions of the appeal courts, and of the Criminal Cassation Division of the Supreme Court of Justice in the first and second instance respectively. In order to establish whether a person is committing illegal acts – i.e. criminal acts - reference must be made to Article 29 of the Constitution, which establishes the principle of the presumption of innocence which is complemented by a set of provisions drawn from the so-called international law of human rights, which by mandate of the Constitution becomes part of Colombian

law, as part of the *"block of constitutionality"*. Therefore, a person who claims exclusion for this reason will have to demonstrate the criminal responsibility of the candidate as author or participant, in an enforceable judicial decision. This is so, because it is not possible to cause adverse consequences to any person by presuming his criminal responsibility, as would be the case if he were held to be the author or participant in an action or event which is apparently the subject of enquiry or investigation. It is the business of the State to demonstrate that the candidate is responsible the crime attributed to him (Supreme Court of Justice, Criminal Cassation Division, case 29472, Order of April 10, 2008, Yesid Ramirez-Bastidas presiding).

- Refusal of the candidate to present himself to the Justice and Peace process. The court has studied the situation of a candidate who refuses to appear to provide ratification of his will to form part of the transitional justice process of Law 975/2005, and therefore, to make a free statement and confession. The Prosecution Service, based on evidence on file of the summons and publication of orders to attend, concludes that he has abandoned the process, in other words, that there is a tacit manifestation of exclusion. In such circumstances, there are subjective grounds, arising from the inference made that up to that point in the process, due to the importance of the decision (exclusion) in relation to the rights of those of the demobilized person, which requires the Justice and Peace Division of the Court to verify whether, in procedural and objective terms, there has been an and unjustified omission on the part of the candidate in failing to present himself to make his free statement and confession, and on this basis, it is concluded that he has abandoned the Justice and Peace process. The consequence of this is that the decision of exclusion will leave the candidate out of the process and out of the alternative justice system for having unjustifiably refused to appear, and he must therefore face the ordinary courts in different cases for the acts he committed during his militancy in the illegal armed group, with no possibility of becoming a candidate for the Justice and Peace process again. In conclusion, in order to maintain a candidate within the special Justice and Peace process, it is essential that he be aware of the special procedures, and act diligently in reflecting of a genuine intention of submitting to justice (cf. Supreme Court Justice Criminal Cassation Division, case 31181, order of April 15, 2009, Maria Del Rosario Gonzalez de Lemos presiding).

In all the decisions cited, the Court has said that exclusion is not a pronouncement of substance with regard to the crimes confessed by the candidate in his free statement in the Justice and Peace process; it means merely that the investigation and judgment will eventually be the business of the ordinary or permanent courts. Likewise, if the candidate fails to perform his obligations (for example, if he continues to commit crimes from a place of confinement, or when judgment has been handed down and the alternative punishment becomes effective, but it can be shown that the beneficiary was engaged in criminal activities, or was in breach of obligations established in the law, or the terms of the judgment give him the benefit of the law, or it can be shown in a court judgment that he committed a crime which he concealed in his free statement and which was directly related to his membership of the illegal armed group), as established in Article 12 of Decree 3391/2006 *"(...) The alternative punishment will be revoked, and instead the ordinary court's principal and accessory penalties, as initially determined, will be enforced…"*.

(c) Consolidation of phases of process

The Head of the Prosecution Service Justice and Peace Unit has requested the Superior Council of the Judicature to study the possibility of combining one or two of the three hearings (an indictment, charges and legalization) into one or two sessions before the court, thus avoiding the holding of similar hearings which cause congestion in the Justice and

Peace process, with the unnecessary extra work caused to the judicial apparatus, also affecting the participation of victims who have to attend two hearings at different points in time, with similar content and development.

(d) Collective indictment

The Justice and Peace Unit has implemented the strategy of approaching events by regions, as indicated in the Directive given in Memorandum 059/2009. This has speeded up confessions by candidates who committed their crimes in certain areas and certain regions, and took part in the same events, with proceedings for joint *'free statements'*, in which two or more candidates reconstruct the events, that took place in those regions, and then make confession of them. This has helped to determine a universe of events committed by each criminal organization, and then brought candidates before the Guarantees Control courts for joint indictment for the actions admitted by them, by regions. On this point, it is considered that no substantial modifications would be required to the law, since as such, the Head of the Unit has issued directives for the development of this working strategy, and it has brought some excellent results, such as the those of Offices 2 and 8 delegated to the Court, amongst other things, they have arrived at that instance with the joint indictment of 35 and 32 candidates respectively, with the usual benefits to guarantee the rights of the victims, bringing agility and dynamism to the process which the process requires, and contributing effectively to the reconstruction of the truth by regions.

(e) Obligation for reparations from the outset in 'free statement' processes

Today, candidates, in respect of reparations, and before making their *'free statements'*, perform acts designed to satisfy this obligation, delivering information on mass graves and assets, asking forgiveness of the victims, expressing their repentance, promising not to repeat their punishable conduct, restoring assets and other acts which are performed before and during the proceedings.

Therefore, it is considered that there is no need to reform the law so that reparations to the victims should be done from the beginning of the free statement process, since the reform would be that acts of reparation should be performed only at the completion of the process.

So, at December 31, 2010, 59,050 victims had taken part in the confessions made by candidates in the free statement processes, to establish the truth surrounding the events which affected them, motives, authors and participants. Of these, 24,426 victims have asked questions referring to the events of which they were the victims.

Further, 669 candidates have asked forgiveness of their victims, 525 have publicly expressed their repentance, and 577 have promised not to repeat their punishable conduct.

Also, it must not be forgotten that there have been reparations for victims with the delivery of the remains of their disappeared relatives, and at December 2010, 1,295 deliveries of this type had been made to the same number of families.

(f) Pursuit of the assets of candidates

The Justice and Peace Unit has formed an internal specialist group to discover assets not offered by candidates, but which are owned by them, or appear in the name of third parties, in order to claim extinction of the ownership before the special unit of the Prosecution Service in this area, through an expeditious procedure, so that once the proceedings are completed, the assets will pass to the Victim's Reparation Fund, as required by Law 975/2005.

As a result of the investigations of the Justice and Peace Unit, 27 investigations for extinction of ownership have been successfully processed.

6. Parapolitics

Paragraph 45

With regard to the statement contained in the report in relation to "*(...) the influence of the so-called "parapoliticians" has not disappeared in the new Congress. Of 267 Congressmen, 13 who have been re-elected are under criminal investigation by the Supreme Court*". It must be noted that this is somewhat exaggerated, since while in some cases connections have been shown to exist between politicians and paramilitary groups, strong judicial measures had been taken against them. At present 13 congressmen are being investigated, this is less than 5% of the total number in the legislature, and the fact that they are under investigation in a criminal process is not in itself a statement of their guilt, because this could only be understood in the context of a court judgment declaring this to be so, thus respecting the principle of the presumption of innocence which is widely applied throughout the Colombian legal order.

7. The judiciary

Paragraph 50

The information regarding the number of justices in the plenary Supreme Court of Justice who were the beneficiaries of precautionary measures requested by the inter-American Commission for Human Rights is incorrect.

The Supreme Court of Justice in plenary session has 23 justices.

- Jaime Alberto Arrubla Paucar
- Ruth Marina Díaz Rueda
- Pedro Octavio Munar Cadena
- William Namén Vargas
- Arturo Solarte Rodriguez
- Edgardo Villamil Portilla
- Elsy del Pilar Cuello Calderón
- Gustavo José Gnecco Mendoza
- Francisco Javier Ricaurte Gómez
- Camilo Humberto Tarquino Gallego
- José Leonidas Bustos Martínez
- Sigifredo de Jesús Espinosa Pérez
- Alfredo Gómez Quintero
- Maria del Rosario González Lemos
- Augusto J. Ibáñez Guzmán
- Jorge Luis Quintero Milanés
- Julio Enrique Socha Salamanca
- Javier de Jesús Zapata Ortiz
- Fernando Giraldo Gutiérrez
- Jorge Mauricio Burgos Ruíz

- Luis Gabriel Miranda Buelvas
- Carlos Ernesto Molina Monsalve
- Fernando Alberto Castro Caballero

Of those justices, only two are the beneficiaries of precautionary measures requested by the Inter-American Commission for Human Rights: 1. Maria del Rosario González-Lemos and 2. Sigifredo de Jesús Espinosa-Pérez.

Iván Velásquez is not a Justice of the Plenary Court, but an Auxiliary Justice in the Criminal Division. Likewise, Cesar Julio Valencia Copete and Yesid Ramirez are no longer Justices of the Supreme Court.

8. Forced disappearance

Paragraph 53

The Justice and Peace Unit has started calling special sessions to attend to the relatives of disappeared persons. These sessions are an appropriate scenario for receiving denunciations regarding the disappeared, commenting on denunciations already made, receiving the form providing ante-mortem information for purposes of identification of disappeared persons; the exhibition of exhumation findings; obtaining information assisting in identifications and the determinations of circumstances of time and place and manner of an event; the taking of DNA samples for identification of corpses found, and the consolidation of the project for a genetic bank led by the Prosecution Service, amongst other results.

The purpose of the sessions is:

- To guarantee the access of relatives of disappeared persons in Colombia to justice.
- To establish the number of persons disappeared, by regions.
- To receive criminal denunciations from those who have not reported the facts of a crime of forced disappearance to the justice system, or to expand and update data or complement information with regard to circumstances of time, place and manner in which an act was committed, its possible authors, and the location of graves.
- The holding of interviews to obtain information related to disappeared persons.
- The completion or updating of the form for searches for disappeared persons, to obtain ante-mortem data.
- To provide psychosocial and legal advice of attention with the support of other State agencies and specialized NGOs.
- To exhibit the clothing and objects recovered from graves, for recognition by relatives of the disappeared persons
- The taking of biological samples from relatives of disappeared persons, in order to obtain a genetic profile designed to identify remains exhumed.

Likewise, measures have been taken to speed up the process of identification of corpses, as follows:

- Since 2008 there has been a bank of biological samples of the survivors of the crime of forced disappearance.
- With the individuated characteristics of disappeared persons provided to the Subunits, the Prosecutor and the Judicial Police Representative match the information with unidentified corpses.

- With the information obtained from the four basic items of information (age, gender, race, stature), clothing, objects, belongings and other individual other individuated characteristics of bones, there are matches of the database information on corpses recovered in exhumations with those on the records of disappeared persons.
- Requests for laboratories to identify graphic reconstructions of unidentified skulls, in order to obtain an image of the face which would be useful in the process of searching for the identity.
- Exhibition of clothing, objects and belongings at the sessions arranged for the relatives of disappeared persons, in order to identify unidentified corpses.
- Circulation of data in the magazine *Rostros* (two firm identifications have been achieved by this, and there are 12 more in process), and through the free national helpline.
- The promotion of the profiling of biological samples (bones and relatives), to be entered on to the CODIS system, where there are continuous matchings (there is now one record of identification through CODIS, and other connections are in process at present)
- Recording and updating of information found during the exhumation proceedings, on the Prosecution Service website (photographs of clothing and objects found, the four basic items of information, etc).
- Publication of the dates on which the candidate will be making his 'free statement' on an event of disappearance, so that relatives or judicial representatives may exercise their right to justice and truth with regard to the circumstances of time, place and manner of the disappearance.
- Publication of the directory of Justice and Peace Prosecutors across the country, so that relatives may have facilities for communication with them, make approaches to elevate consultations, provide information, and ascertain the current status of cases, in local or national terms.
- A project is being mounted with UNDP, for which 23 consultants have been contracted, to match information between the records of disappeared persons and corpses recovered in exhumation processes, within the competency of the Justice and Peace Unit, to look for similarities of cases and identify them.

As noted, there are several strategies which have been implemented to identify those remains that have been found. However, account must be taken of the fact that process of identification has several stages and requirements which must be completed in order to guarantee the victims' families that the remains found, identified and delivered are indeed those of their relative.

Paragraph 54

A number of measures have been adopted to prevent impunity in human rights violations. The Prosecutor General's Office has been working to reactivate and push forward cases of forced disappearance, the murder of members of indigenous communities, sexual violence in armed conflict, threats against human rights defenders, journalists and others, in order to move forward in obtaining truth, justice and reparation for the victims of these crimes.

With regard to the statement that "*It is necessary that the remaining cases pending for the events of the Palace [of Justice] continue to move forward in a climate of security and independence for judicial operators, without repeating the interference of the Executive which took place in June*", and at the footnote of page 28 of the Report, it should be clarified that in consideration of the material protective measures taken to cover Justice

Maria Estella Jara, a meeting was held on November 18, 2010, for follow-up consultation prior to the arrival of the Justice Jara in Colombia. It was established that that the scheme of protection initially supplied for her would be restored as soon as she arrived.

Effectively, the scheme was successfully implemented by the Superior Council of the Judicature and the National Police, in their respective competences. Today, there is an armored vehicle, an ordinary vehicle, and nine police officers distributed among the mobile scheme of protection and her residence, and two motorcycles. As soon as the technical study on risk levels has been analyzed, as requested in a communication to Brig. Gen. Nicolas Ramses-Muñoz of the National Police, and evaluation will be made of the suitability of these measures, taking account of the results and analysis of the risk level study.

In the case of Dr Ángela María Buitrago-Ruíz, as one of the cases known in the last year in relation to the Palace of Justice Case, Dr Buitrago was one of the 11 Prosecutors delegated to the Court who voluntarily resigned her post, in order to leave her nominator free to adopt measures designed to obtain better performance indicators for the Unit, and not because the nominator had requested the resignations individually or collectively. Since four resignations from Prosecutors assigned to the Supreme Court of Justice were accepted, including that of Dr Ángela María Buitrago-Ruíz, the decision was motivated on criteria looking for improvements to the service, which had been heavily overloaded with work, with no decisions taken, and to encourage improvements in performance levels by the Prosecution Unit with the highest employment status and highest-paid in the State. This explains that the replacement of four Prosecutors assigned to the Court correspond to Alvaro Osorio Chacón, Carlos Arturo Torres-Poveda, Nestor Armando Novoa and Luís Enrique Bustos-Bustos, all with distinguished professional and intellectual careers, who were successful in the contest of merit held by the Prosecution Service and the Judiciary, with their wide experience and distinguished performance in the judiciary, as can be seen from their curricula vitae.

For the reasons given, the acceptance of those resignations was in no way motivated by the investigations for which these public servants were responsible, or because, in the particular case of Buitrago-Ruíz, she had summoned for questioning "*(...) three retired Colombian generals...*", or for "*negligence*" in her performance.

The dismissal of the Prosecutor was not a step backwards in reference to the cases which continue against the former director of DAS, Jorge Noguera, former Vice President Francisco Santos, and former Presidential Adviser José Obdulio Gaviria, since, as can be easily verified, in the first place, the matter has reached the trial stage in the Supreme Court of Justice, with the assistance of Prosecutor Alvaro Osorio-Chacón, who replaced Dr Buitrago Ruíz, with no request for postponement by the Prosecution Service. The actions against Francisco Santos and José Obdulio Gavria for crimes of slander and defamation, now before the courts, have already held an indictment hearing, and the formal indictment was programmed for December 28, 2010. The hearings were promoted by Prosecutor Fabio David Bernal, who was responsible for the proceedings.

Further, in accordance with Letter 10238 of September 8, 2010, from the Protection and Assistance Office of the Prosecution Service, since November 14, 2008 Ángela María Buitrago-Ruíz has had a personal security detail of four armed bodyguards and two Toyota Jeeps. Although she no longer belongs to the Service, the security detail remains, and there has been no order to have it removed or reduced.

Further, in September, in official letters 02301, 02300 and 02299, a request was made to the National Police, the CTI, and the Office for Protection and Assistance, to provide security for Dr Buitrago-Ruíz, and provide special recommendations for security and protection which she and her immediate family should adopt.

Finally, Prosecutor Álvaro Osorio Chacón, who replaced Buitrago-Ruiz, has pushed forward more than 80 enquiries which were previously inactive. At the same time, a number of mechanisms were adopted to decongest the workload, such as the identification of similar cases in order to resolve the rejection of unfounded denunciations, the filing of cases due to objective lack of matching with specific types of crime, extra working days, support from a Prosecutor and an assistant among other measures. As a result of this, at November 15, 2010 the number of matters within the competence of Prosecutor 4 had fallen, having dealt with 166 of the 184 cases received by Osorio-Chacón.

At all events, Osorio-Chacón continues to intervene in the two trials related to events at the Palace of Justice, pursued against retired army officers (Ivan Ramirez-Quintero, Edilberto Sánchez Rubiano, and others, before Bogota Criminal Circuit Court 51. These cases have not suffered any adverse effects with the withdrawal of Buitrago-Ruíz. The same is true of the other trials, within the competency of Prosecutor Osorio-Chacón, amongst others, the case pursued against the former Regional Director of the Prosecution Service in Medellín, Guillermo León Valencia-Cossio.

Paragraph 55

In response to a request made by the Justice and Peace Unit, UNDP acted through *Fondo Canasta* to hire an attorney and a psychologist to establish the procedure to be followed in the delivery of human remains, and this is now being prepared. However, once the procedure has been formalized, it will be open to debate and study by the National Commission for the Search for Disappeared Persons, the body made responsible by law 1408/2010 (Section 7.3), for preparing procedures for the delivery of a remains in consultation with victims.

The delivery of identified remains to the relatives is in no way a judicial procedure. It is in essence a humanitarian act, in the context of respect for victims, with psychological advice and accompaniment, and using a design provided by expert NGOs.

9. Sexual violence

Paragraphs 56 and 57

The Colombian State has initiated efforts to standardize and unify the ways of measuring violence against women, a work carried out with the entities producing information and users of indicators for the issues of gender-based violence. Equally, in the context of review and follow-up of the objectives of the Millennium Development Goals, in particular Objective 3 (the promotion of equality of the sexes and autonomy of women), a decision was taken to create the National Violence Observatory, for which the Ministry of Social Protection would be responsible, with an emphasis on gender-based violence, and on the construction of a baseline for following up and monitoring gender, family and sexual violence.

In this area, an intersectorial committee will be created to continue with the process of standardization of ways of measuring gender-based violence, which will contribute to the strengthening of the national information system on this topic, and allow regular measurements to be made. The process will be developed in coordination with the Gender Affairs Observatory of the Presidential Adviser for Equity for Woman, in order to form institutional alliances designed to channel efforts towards the effective implementation of the National Violence Observatory. As part of this process, the intensification of institutional effort will be promoted, with coordination, to overcome current challenges in relation to sexual violence in the context of armed confrontation.

With regard to the work of the Prosecutor General's Office, the charts attached show the progress made in investigations of sexual violence currently of the hands of the Human Rights Unit **(see Annex 2)**.

With regard to cases pursued in the context of Law 975/2005, the Justice and Peace Unit has wished to give a gender perspective focus to work being done in documentation and verification of events. Therefore, it is not the event in itself that is investigated, but the magnitude of the damage caused by the criminal organization, in order to establish whether sexual violence and violence against women was used as a war strategy by the illegal armed groups which demobilized.

For this purpose, a number of strategies and guidelines have been issued by the senior officers of the Prosecution Service, and other officers of the Justice and Peace Unit, so that the victims of gender violence would obtain this differential treatment from it.

As a first measure, these officers have been given seminars, workshops and courses on the subject (seminar on gender-gender violence-the prosecution of gender violence), in order to specialize them in the attention to victims of that crime. Training has also been given by the agency GIZ-PROFIS, to some 150 public servants. At present, the gender seminar is being gradually introduced to all officers of the Justice and Peace Unit.

Likewise, the Coordinator of the Unit has given serious instructions to its members on the way to respect differential treatment of gender victims. For example, Memorandum 47/2008 indicates the duties of personnel, specifying that the victim is entitled, amongst other things, "*To receive attention appropriate to needs, in the case of adults, the elderly or the disabled, children and adolescents, and women victims of sexual violence...*"

Based on matters related to the rights of victims, the Head of the Justice and Peace Unit has given instructions (Memorandum 030/2009 and 067/2009) to members of the Unit on the attention to be provided to victims from the moment they are approached, and activities which should be undertaken to guarantee their right to truth, justice and reparation. There is an emphasis on immediate instructions to other local, departmental or national entities to provide legal aid, psychological, social or specialized assistance to the victim, depending on needs expressed or observed.

In Memorandum 073/2008, the members of the Justice and Peace Unit were requested to receive, without exception, records of actions attributable to the illegal armed groups, or other types of information reporting actions which represent sexual violence and related crimes, including forms for completion in which the victim does not wish her identity to be known.

Another strategy contained in Memorandum 075/2009 was to locate specialized NGOs with knowledge of approaches to gender violence caused by the illegal armed groups, and which could in particular deal with the areas of influence of the illegal armed groups documented by each Office in the Unit, in order to make an approach to these particular organizations and to their victims.

The Justice and Peace Unit, in actions focused on applying Colombian and international rules for the prosecution of sex related crimes correctly, acted together with the Office of the United Nations High Commissioner for Human Rights and the Human Rights Unit, to prepare a document based on the argument that gender violence against women is used as a war strategy by the actors of violence in Colombia, in their struggle to control territory and communities across the country. Colombian and international norms and jurisprudence that regulate the matter were compiled, and applied to specific cases, and to approaches to these victims.

The document was issued by the National Directorate of the Prosecution Service with Memorandum 117/2008, and circulated to all staff and members of the Unit, in accordance

with the mandate of 001/2009 of the Prosecutor General, in order to safeguard the fundamental values of liberty and human dignity, and to apply the provisions of the Colombian legal order in relation to the protection of human liberty and the protection of women.

As can be seen, this has been the course taken by strategies designed to investigate the magnitude of the damage caused by the illegal armed groups to women. The objective has been focalized by the Justice and Peace Unit from the beginning of its activities, as can be seen by Memorandum 08 of May 22, 2006, in which there was a requirement to give priority treatment to activities, procedures and the collection of information in relation to a number of variables, including gender crimes. Here, precise instructions were given to consult all databases related to each issue, to review active or inactive case-files, to document events that have not been brought before the courts, and to order the initiation of related enquiries; to review the files of demobilized persons and the *'free statements'* of those taking part in collective demobilization; this work made it evident that there is a considerable number of victims of gender violence.

Therefore, the Justice and Peace Unit has adopted a strategy to approach matters of serious violations of human rights as special items in the *'free statements'* made by members, representatives and former commanders of the illegal armed groups, in addition to specific interrogation given to all candidates, based on the results of several months of investigation and verification which have included, amongst other things, a review of active and inactive case-files, interviews of various sources of information, and readings of the statements made at the time of demobilization. This has enabled circumstances of time, place and manner of events to be established, and has been helpful to the ordinary courts in pursuing their investigations.

Paragraph 59

On August 31, 2005, the project "*Health, sexual and reproductive rights and gender equity in the armed forces in the forces of law and order*" (COL4R/304) was signed by the Ministry of Defense, the representative of the Presidential Agency for Social Action and International Cooperation, and the representative of the United Nations Population Fund - UNFPA.

As a result of this process, the forces of law and order have programmes which develop policies and actions for sexual and reproductive health in the following areas: education, health services, community integration and the media. There are also sexual and reproductive health services, strengthened in terms of quality and coverage in health facilities of the armed forces and the police. Likewise, social development and community support processes had been integrated wherever the forces are present, in matters of sexual and reproductive health. Further, there are Information systems and follow-up, actions in sexual and reproductive health, and gender equity, which help to support their programmes.

The Programme's Action Plan has contributed to the construction of a culture of the promotion of sexual and reproductive health, sexual and reproductive rights, and gender equity within the forces of law and order. In the phase which began in 2008, the main emphasis has been directed at the strengthening of issues of sexual and reproductive health and rights in the field of formation and education of service personnel, in the prevention of sexual violence, mass media, and community action.

During 2008, the units for attention to family, gender and sexual violence were reactivated in the National Police, and units of this nature were created in the armed forces, such that there has been appropriate and comprehensive integration to attend to this public health problem.

The initiative has contributed to the following results:

- Encouragement for the demand for reproductive rights and for sexual and reproductive health; integration of the basic sexual and reproductive health programme, in particular basic to reproductive health products and human hygiene resources, in public policy for humanitarian and development contexts, with a stronger capacity for follow up.
- Increased demand and use of quality services in the areas of prevention of HIV and STDs, and access to them, in particular by women, the young and other vulnerable groups, including groups who will need more humanitarian assistance.
- The component "*Prevention and attention to family, gender and gender violence*" is part of the third of three priority spheres of the UNFPA strategic plan. Gender equality, in which the objective refers to *"Promotion of equality of gender and empowerment of women and adolescent girls to exercise their human rights, particularly reproductive rights, and not to be the object of discrimination or violence"*.
- The objective of gender equality coincides with the MDGs and the CIPD. Progress in a matter of gender equality and empowerment of women is an objective in itself, and is also fundamental to the achievement of other development objectives. In this context, the issue of gender violence, particularly against women, is one of the greatest challenges in Colombia related to the scope of MDGs in its Target number 3. The project helps to encourage national capacity in the task of constructing gender equality, and preventing and eradicating gender-based violence.
- Special scope for the treatment of sexual violence and gender-based violence, within the armed forces and the police.

Achievements include the work of dissemination and a transversalization of the gender focus on rights within the Armed Forces (through training strategies and technical assistance), in the construction and full validity of the principle of equality, and to serve as the guarantor of rights which is the duty of the armed forces to secure - in particular, sexual and reproductive rights- strengthening capacity to perform the functions of supervision, policy formulation, legislation and the application of justice with a gender perspective, and to produce information on gender violence, and offer a comprehensive response to it.

The Work Plan is designed to achieve the following objectives in the period 2008-2012:

- To establish, promote and guarantee within the armed forces the application of the national public health plan, the national sexual and reproductive health policy (as revised), current Colombian law in relation to family, sexual and gender violence, with instances and mechanisms for intersectorial management within the forces themselves.
- To promote the knowledge and exercise of sexual and reproductive rights contained in the policy and in Colombian law among the armed forces and police, in relation to attention to family, sexual and gender violence.
- To promote and supervise the application of technical regulations and guidelines for comprehensive quality attention in sexual and reproductive health, in particular in contraceptive methods, gender-based violence, reproductive tract cancer in men, AIDS/HIV and STD prevention, STD and attention to adolescents and the young.
- To order the adoption and allocation of models of comprehensive attention in sexual and reproductive health and attention to family, sexual and gender-based violence with its programmes, starting with Bogota and spreading to the regions.

- To adapt and apply systems for information, monitoring and evaluation of holistic sexual and reproductive health care, and attention to family, sexual and gender-based violence.

Likewise, and as part of the strategies and activities of the Ministry of Defense in the area of sexual violence, a policy has been issued for "*Sexual and reproductive rights, equity and gender-based violence and sexual and reproductive health*", in August 2010. The policy has the following objectives:

- To strengthen the promotion and guarantees of sexual and reproductive rights of members of the forces of law and order, through strategies in formation, community participation and access to comprehensive care services in sexual and reproductive health.
- To strengthen gender equity within the Armed Forces and the National Police, promoting relations, conditions and opportunities with dignity and equality between men and women, both in uniform and civilians, who form part of them.
- To promote the respect and application of regulations in relation to gender-based violent crimes, through the implementation of strategies to prevent impunity or tolerance of this type of offence.
- To develop measures which will forestall and control actions which impair women's rights within the forces of law and order, and the rights of women who belong to communities where the forces are present, encouraging conditions for women to be able to exercise their rights and to enjoy a violence-free life.

Likewise, the Ministry of Defense issued Directive 11 of July 21, whose objective is to reiterate that Armed Forces personnel must observe the obligation to prevent, as part of their duties, all forms of violence against women and girls, particular acts of sexual violence, adopting the recommendations of international organizations on this topic.

The Ministry of Defense is developing the following action lines to implement these policies:

- The inclusion of a single pedagogical model in human rights, for guidelines on the prevention of sexual violence, with particular development in the context of armed conflict, and vulnerable communities.
- The holding of diploma courses for the formation of teachers on matters of sexual and reproductive health, social and reproductive rights, gender equity and a gender-based violence, for instructors and for human rights and international humanitarian law teachers in the Armed Forces and Police training schools, barracks, and instruction centers, and training and retraining facilities. In 2008, the first diploma course was held, and four of them are planned for 2011.
- The Ministry of Defense's health sector is developing a project for comprehensive prevention and attention, development of communications strategies, a reduction in re-victimization, guarantees of the rights of victims, and the process of restitution for them.
- Training has been contracted for the forensic approach to sexual violence for 350 health personnel in the Armed Forces and National Police, that were held in June, July and August, 2010[10].

[10] Workshops were held in Pereira, Neiva and Cali, and five more workshops will be held, one each in Bucaramanga, Medellin and Villavicencio, and two in Barranquilla.

- Within the harmonized information system for sexual and reproductive health, an application was adapted in the first six months of 2010, with 10 variables and a gender focus in the issues of violence.
- The formulation of pedagogical modules for sexual and reproductive health for instructors, with a focus on gender rights and equity. Modules were also prepared on interactive CDs for the formation of them (one for each of the Armed Forces).
- Implementation of the information system with a gender perspective within the area of sexual and reproductive health in the national police. This is in the process of implementation in the Armed Forces' health subsystem.
- Activities in prevention and attention to gender-based violence, and the construction of new forms of masculine expression.
- Development of a pedagogical guide on issues of sexual violence in the context of armed confrontation, for teachers giving extracurricular training.
- Design and production of an institutional video on gender-based violence.

In the area of instruction, between 2008 and 2010 215,406 officers, junior officers, troops and civilians have been trained in the context of this system, in Armed Forces schools and training and instruction centers.

In the same vein, and as a means of strengthening instruction and training in regional scenarios, the Army has created 25 Instruction and Training Battalions (BITER), across the country, to provide the troops with better tools to deal with cases where there are risks of violations of human rights or international humanitarian law. This has included special training in tactics, techniques and procedures for operations to secure the correct application of the rules of engagement.

In addition, diploma courses are being held for the formation of instructors, referring to the implementation of a single restructured model for teachers, instructors and multipliers in the forces of law and order. At the same time, the Army is running a graduate course for specialists in University Teaching, under an interinstitutional agreement with the Piloto University of Colombia.

As a complement to the mandatory courses which are part of the formation of Service academies, the Ministry of Defense and the Joint Chiefs of Staff have given extracurricular training in human rights and international humanitarian law. Between 2006 and 2010, the specific training offered to servicemen increased by more than 200%[11]. That is to say, between 2003 and 2010 training has been given to a total of 392,991 servicemen and civilians in the Armed Forces, on specific issues important to their mission.

The charts below summarize the activities undertaken in the training of the armed forces and police.

Extracurricular training in Human Rights/International Humanitarian Law for the armed forces - 2003 to March 2010

	All forces (Army, Navy, Airforce)					
Year	*Officers*	*Under-officers*	*Troops*	*Students*	*Civilians*	*Total*
2003	566	1979	6609		573	9727
2004	927	1150	9658	233	250	12218

[11] Source: Joint Chiefs of Staff of the Armed Forces

2005	1267	1677	13321	329	232	16826
2006	3289	9185	27095	3512	630	43711
2007	4371	20192	41831	3109	1348	70851
2008	7763	18166	51288	3050	2110	82377
2009	8272	26245	78973	6585	2432	122507
2010 Jan - Mar	1730	5734	25573	666	1071	34774
Total	**28185**	**84328**	**254348**	**17484**	**8646**	**392991**

		Participants					
Year	*Activity*	*Officers*	*Under Officers*	*NE*	*PT &AG*	*AUX*	*Total*
2009	819 seminars with DINAE mobile training teams 14 Virtual seminars DINAE 5 Diploma courses “Pedagogy for the teaching of Human Rights” Talks and workshops led by Heads of Human Rights	3.835	24.807	107.433	20.045	8.426	164.546
2010	12 Lectures 211 Talks 18 Workshops	332	1.005	2.319	11.334	4.318	19.308

In addition to these measures, the Army has issued Directive 15/2010, focused on zero tolerance of sexual violence.

Law 1015/2006 and Law 836/2003 (Disciplinary Codes for the National Police and the Armed Forces, respectively), specify punishable conduct contained in the Colombian Criminal Code, and in international treaties ratified by Colombia, related to all kinds of violence against women. Likewise, Law 1015/2006, article 34, section 18 and Article 35, section 2, points to the specific conduct of physical violence against women.

While there may have been some cases of violence attributable to Armed Forces personnel, this is not a matter of institutional policy. They are isolated cases which have earned the total rejection of the Government. In this sense, measures have been taken and all forms of support have been offered to the judicial authorities to punish those responsible. The mention of members of the forces of law and order and of the illegal armed groups as authors of murder in the same context minimizes the impact which the illegal armed groups have had in violence against women, particularly since they are responsible for most of these acts.

The army has thus concentrated efforts on the provision of special protection to women in its operations, and has issued directives contained in Standing Circular 630134 of May 7, 2009, *"Policy for the observance of respect for the human rights of women"* that has the following highlights:

- To respect and protect women's rights, with no type of discrimination due to social class, race or ethnic group, income levels, culture, education, age, religion or any other factor.
- To avoid any instances of discrimination against female personnel in the force.
- Where possible, female personnel should interview women demobilized from illegal armed groups.
- A record will be kept of acts of sexual violence in Colombia perpetrated by the illegal armed groups, in order to demonstrate the use of sexual violence as a war crime to the local and international community.
- There should be investigation and exemplary punishment for harassment, insults, abuses or acts of physical or psychological violence against women, especially humiliating or degrading treatment, rape, forced prostitution, or any form of attack on their honor and dignity.
- Criminal denunciations should be made against illegal armed groups for committing crimes against women.

The National Police, following Government policy to combat and reduce criminality in all its manifestations, has mounted a special campaign against sexual crimes by the creation of Sexual Crimes Elite Groups (GEDES), which will be working everywhere in Colombia in the near future.

The GEDES are interdisciplinary groups formed by SIJIN and CTI investigators, all of them with a deep knowledge of criminalistics, working with a single woman Prosecutor, so that there will be special follow-up to all cases and data may be compiled in order to establish when cases are related to a single aggressor in different denunciations.

The Colombian navy issued Circular No. 1281IGAR-DDEHU-725 of October 18, 2006, with the following instructions.

- Training campaigns designed to publicize the provisions of international law promulgated for the protection of gender and women's rights
- Prevention campaigns mounted for behavior and treatment of children and women, in order to avoid gentle
- Support will be given to the activities of competent authorities designed to avoid and prevent the trafficking of women, girls and boys.
- There will be participation in programmes proposed by departmental and civilian authorities, to ensure that these scenarios become an opportunity for dissemination and application of provisions of law in the area of gender protection and the protection of women's rights.

In the face of violence against children, the Ministry of Defense and the Joint Chiefs of Staff have been following up and verifying the observance and implementation of the following prevention strategies.

In Circular 151758 of September 7, 2004, the Commander in Chief of the Armed Forces ordered full force chiefs to give orders and instructions to relevant levels of command regard to the application and strict observance of regulations and provisions regarding the treatment and handling of children and adolescents disengaged from the illegal armed groups, either at their voluntary decision, or because they had been captured.

In particular, the commander-in-chief recalled the obligation to observe and enforce Article 44 the constitution, the Convention on children's rights, the Protocol of that convention in

relation to the participation of children in armed conflict, and Additional Protocol II to the Geneva Conventions.

Likewise, with standing directive at 502/2005, the Commander in Chief of the Armed Forces gave orders and instructions to the deputy commander and chief of staff of the army, to the joint integral action command, to the joint intelligence and counterintelligence command, and to subordinate army, navy and air force units, to engage in activities which would help to put an end to the forced recruitment by illegal armed groups in Colombia.

Further, the disengagement of children is a priority for the government, in observance of the law, jurisprudence and international treaties. Therefore, the programme for humanitarian assistance to the demobilized is a genuine alternative for children to find a way of escaping from these groups, and being attended to by ICBF.

The Ministry of Defense has also issued a Directive 15/2007 to ensure that children disengaged from the illegal armed groups in no case take part in military operations. Likewise, the Commander in Chief of the Armed Forces issued permanent directive 137 in December 2007, on *"Integral handling management for the protection of the rights of minors involved in illegal armed groups"*.

The following instructions were given in relation to the protection of minors victims of violence (the prevention of the recruitment of minors, and the treatment of demobilized minors):

- In the pursuance of Ministerial Directive 21/2004, minors rescued and demobilized are placed at the disposal of ICBF, within the terms stipulated by the Law.
- Law 418/1997, renewed by law 548/1999, amended by law 642/2001, states that those under the age of 18 will not be enlisted into the ranks for military service. Grade 11 students, minors, who in accordance with law 48/1993, are selected for military service, will have their service postponed until they reach the age of 18.
- Circular 151758 of September 7, 2004 from the commander-in-chief of the armed forces, in relation to the treatment to be given to miners disengaged from illegal armed groups.
- Directive 22/2010, instructions to strengthen the policy of prevalence, guarantees and respect of the rights of children and adolescents.
- Standing Directive 500-2 of May 2, 2005 from the commander-in-chief of the armed forces, giving instructions to prevent the forced recruitment of minors.
- Letter 30743 of March 6, 2007, in which the commander-in-chief of the armed of the armed forces issues instructions for commanders to strengthen the policy for the protection of minors.
- Circular number 629974 of April 15, 2009, related to the policy for consolidation of respect the human rights of children and adolescents
- Standing Directive 137 of December 12, 2007, in which the commander in chief of the armed forces imparts instructions on the integral management of the protection of the rights of minors involved with the illegal armed groups.
- Standing Directive number 048 of February 28, 2008, which seeks to guarantee the rights of all children and adolescents, including those disengaged from illegal armed groups or captured while they belong to them, with missions such as:
    - Giving orders to all members of the armed forces, designed to prohibit any activity of intelligence with children or adolescents, including those disengaged from illegal armed groups or captured while they belong to them,

in particular, interviews, operations, or requests for any kind of collaboration or information.

- To repeat observance on regulations relating to prohibitions against using children and adolescents, including those disengaged or captured while they belong to the illegal armed groups, in intelligence activities and other chores related to operations, patrols, or similar actions of the armed forces taking account of the fact that breach of these regulations will be punished with dismissal from the from the force, without prejudice of any penal action which may be applicable.
- To order all members of the armed forces to put the minors disengaged from the illegal armed groups or who are captured at the disposal of ICBF within 36 hours of disengagement, or in the shortest possible term.
- To give instructions to all members of the armed forces to give guarantees of security to protect the life and physical integrity of minors, during the process of disengagement from the illegal armed groups, or during the time when they are captured.
- Creation of a commission for the supervision and monitoring of treatment received by minors disengaged or captured by the members of the armed forces.

Paragraph 60

With regard to the case of the children of Arauca, it should be noted that as soon as he became aware of the situation, the Commander in Chief of the Armed Forces ordered an inspector's commission to be sent to Arauca on October 19, 2010, to engage in all activities destined to the verification of the events of October 14. Likewise, all means were made available to the relevant authorities to collect documentary and evidential material considered relevant and important to the disciplinary and criminal investigation initiated.

Once the guarantees control judge had ordered the capture of mister Raúl Muñoz Linares, Brigade 18 immediately placed him at the disposal of the Prosecutor General's Office, for the authorities to continue the investigation, and to take such measures as may be appropriate. It is important to note that in the investigations undertaken in this case, it was established that it is a totally isolated act from any institutional policy, since it is a criminal conduct of an individual which is not part of the mission of the institution, nor the activities proper to the Armed Forces.

Likewise, ICBF immediately intervened with its mobile unit for attention to the victims of violence, performing the following actions: psychosocial help for the family; registration of the family group in the Registry of Beneficiaries in the municipality of Tame; thanks to the SNBF the family was able to accede benefits from Acción Social, humanitarian and emergency aid, receiving 40 days of rations; one boy of the family was put in school while another received medical attention; the Torres Rodriguez family was constituted as a *"hogar gestor"*; the intervention of children and families of the community of Temblador and the coordination with Minuto de Diós to help the family buy a social interest house.

In the case of the girl victim of sexual violence, the following actions were taken: the administrative process for the restoration of rights of the girl was started, and she, at present, is in a substitute home; there was an interview with the girl, arrangements were made for the application of the responsible household for orphaned children or children orphaned by violence, and the family continues in the process of intervention and follow-up.

Likewise, meetings have been held, training has been given and orders have been imparted to the operational groups and tactical units for operational control and prevention of violations of human rights and international humanitarian law.

Likewise, the army has provided support and collaboration required by the ICBF with activities for the tending and psychosocial attention of the victims.

Paragraph 62

The initiatives, and institutional efforts on the part of the Prosecution Service cannot be ignored in the fight against sexual crimes against women and girls in the context of violence in Colombia, since a wide range of measures have been taken to make progress in the investigation of events referred to it by the Constitutional Court in order of 92/2008, and in other processes which have this type of problem, working exhaustively and impartially in regard to the perpetrators of the crimes, whether civilians, members of the armed forces, or members of illegal armed groups. An important number of cases were concentrated in the National Human Rights and International Humanitarian Law Unit.

Indeed, prior to the issuing of the Constitutional Court order, the Prosecution Service had already been making progress in decisive implementation of action plans designed to guarantee the rights of women and their access to justice, creating mechanisms such as the CAIVAS and the CAVIF, which are models for institutional and interdisciplinary action, designed to protect and assist the victims, through the articulation of competences which are ordered by the Constitution and the law to be carried out by different agencies, to generate simplified processes and actions, optimize both human and economic resources, prevent institutional abuse or double victimization, in particular referring to children, adolescents and women victims of these crimes.[12]

The creation of these models of special attention and investigation have also generated a number of strategies designed to improve practices in the attention provided by the justice service, such as the creation of special interview rooms, in which Gessell cameras are installed to impede contact between victim and the aggressor, to avoid double victimization, and suffering, principally for the children who are victims of these crimes, in order to secure respect for their highest interest and dignity. This mechanism, at the same time it reduces the damage done to the victim of abuse, serves as evidence in criminal investigations, since the camera in the chamber has an audio and video recording system which can be used as evidence in the new accusatory system in the criminal courts.[13]

To date, the Centers of Attention for Victims, CAIVAS and CAVIF, have been implemented in 25 cities like Armenia, Barranquilla, Bogotá, Bucaramanga, Cartago, Cali,

[12] The intention is that the Centers of Comprehensive Attention and Investigation from the Victims of Sexual Violence (CAIVAS) will provide a prompt and efficient service to those involved in crimes against freedom, integrity and sexual formation, and the trafficking persons, in a context of respect and human dignity, through institutional work with state agencies such as ICBF, the National Police, the Forensic Medicine Service, Municipal Mayors' Offices, etc. The course to be followed is to offer victims and all their family group, especially children, adolescents and women, suitable and prompt attention in psychological, social, legal, medical and investigative areas, such that their recovery will be promoted, and mechanisms for crime prevention will be generated.

[13] Strategic alliances with agencies such as ICBF have also enabled human, logistical and technical resources to be obtained for the development of a better working dynamic. The intention is to continue to join forces to unite efforts and wage a systematic struggle against this form of violence, in which women, children and adolescents have a high degree of vulnerability from in front of their aggressors, and to work untiringly in obtaining the resources which will enable a comprehensive state policy to be implemented for the assistance and protection of victims.

Palmira, Cartagena, Cúcuta, Fusagasuga, Leticia, Florencia, Ibagué, Manizales, Medellín, Montería, Neiva, Pasto, Pereira, Popayan, Quibdó, Santa Marta, Sincelejo, Tunja and Villavicencio The objective is to give continuity to these models, and in 2010 progress has been made in implementing them in the cities of Riohacha, Valledupar, Arauca, Soacha and San Andres Islands.

In addition to these models of attention and special investigation for the victims of sexual offences, the Prosecution Service has deployed another series of strategies designed to make progress in guarantees of appropriate access to the justice system for women victims of these crimes, and in the struggle against impunity of a conduct which harms their dignity and life, through clarification of events, individuation and effective punishment of those responsible for these actions.

The following are among the most important measures adopted: characterization of victims and strengthening of the agency's Information Systems with differential recording of cases; control measures, follow-up and the promotion of investigations through technical- legal committees; continuous training of judicial operators; the creation of a Gender committee within the Prosecution Service, as an instance of coordination and generation of institutional policy in this area. The committee was created by resolution 03788 of July 21, 2009, with the purpose that it would be used for approaches in the formulation of investigative strategies and to assist victims of crimes related to gender violence.

The results obtained in 2010 in furtherance of this action plan have been evident in all of its assets. In the process of recording the cases and characterizing victims, the Prosecution Service has been working on the definitive identification of investigations through specific categories, with the intention of strengthening statistical information systems related to the diverse manifestations of criminal violence based on gender.

In the same vein, work continues in the technical-legal committees, as spaces for analysis and self-evaluation, designed to ensure that Prosecutors and investigators, under the leadership of the regional directorate of the Prosecution Service, and the heads of national units, will have the opportunity to replicate good practices, evaluate obstacles which have affected investigations, and to work out the solutions required for ensuring that they are moved forward. In these scenarios, a number of inactive cases have been reopened and cases have been reassigned to the National Human Rights Unit. As a measure to reinforce the strategy during 2010, special supervisory visits were made by the advisers of the National Directorate of the Prosecution Service.

Further, and there has been steady and continuous training of Prosecutors and investigators in this type of cases, and a number of workshops have been held under the leadership of international experts, on strategies for the investigation of crimes of sexual violence. Likewise, the School for Criminal Investigations and Studies of the Prosecution Service has incorporated modules into its training plans which are specifically addressed to approach sexual abuse as a weapon of war, amongst other matters related to the problem of sexual violence in the context of violence.[14]

The materialization of values of justice for women is an objective which brooks no hindrance. The Prosecution Service has created a gender committee, designed solely to guide and coordinate measures required to make progress towards effective guarantees of

[14] This strategy not only attempts to provide judicial operators with conceptual tools for an appropriate approach to cases, but, from the point of your sensitization, to improve their attitudes and practices, considering that the materialization and guarantee of women's rights implies a change of cultural patterns which are reinforced by violence, and which impede their access to justice, in accordance with the recommendations of the Inter-American Commission for Human Rights.

the fundamental rights of women, and in the construction of a dignified, efficient and prompt gender justice system.

The Human Rights Unit has developed judicial groups, formed by Prosecutors, which discuss and expand situations related to the trial experience, and the unified adoption of criteria on some issues.

Paragraph 63

Paragraph 63 of the report refers to sexual violence in the context of armed conflict, and states that the interventions of the Procurator General´s Office in the course of its function of supervision of these cases, is weak.

The Procurator General has informed the Office of the High Commissioner of Human Rights in Colombia that in addition to the sanction which the report mentions, two disciplinary processes have been opened this year in order to determine the responsibility which public servants may have, and that the agents of the Procurator General's Office have been instructed to supervise the criminal proceedings in which this type of conduct is being investigated.

10. Discrimination

Paragraph 66

In the area of protection and guarantees of the rights of the LGBT population, it should be noted that although the Constitutional Court declared that it was inhibited to decide in the case of same-sex marriages, some progress has been made in recent years, in recognizing the matrimonial rights of that population:

- **Decision C-811 of 2007, Justice Marco Gerardo Monroy Cabra presiding:** *"The right of affiliation of a partner of the same sex as a beneficiary"*, declares the constitutionality of Article 163 of Law 100/1993, in the sense that the regime of protection it contains also applies to same-sex couples; this makes it possible to affiliate as beneficiaries the permanent partners of those who contribute to the national social security service an receive in turn health aid without consideration of the sex of the beneficiary.
- **Decision C-075 of 2007, Justice Rodrigo Escobar Gil presiding:** The Constitutional Court guaranteed the patrimonial rights of same sex couples. Based on this decision, the patrimony of the couple will be held to include assets acquired during the time of their living together if it can be shown that said time is longer than two years. The court found that it is contrary to the Constitution to provide a legal regime to protect solely heterosexual couples, and therefore it declares the constitutionality of Law 54/1990, amended by law 979/2005, on the understanding that the protection scheme established there will also apply for same sex or couples.
- **Decision C-336 of 2008, Justice Clara Inés Vargas Hernández presiding:** This decision establishes the *"Right to a survivor's pension for same sex couples"*. In accordance with its own jurisprudence, the Constitutional Court considered that if a lesbian, gay, bisexual or transgendered pensioner or affiliate to the social security regime dies, the partner will receive the pension with priority over the parents, as it happens with heterosexual couples when one partner dies.
- **Decision C-798 of 2008, Justice Jaime Cordoba Triviño presiding:** *"The right to owe alimony to same sex couples"*. In this decision, the Court counters a law which confers differential treatment in the matter of patrimonial rights and duties to members of a heterosexual couple, in contrast to same sex couples. The differential

treatment represents, as already mentioned, a notable deficit in protection in the area of guarantees for compliance with alimony obligations.

- **Decision C-029 of 2009, Justice Rodrigo Escobar Gil presiding:** In the same line of jurisprudence, the Constitutional Court has issued an interpretation integrating a group of provisions of law which had been denounced, making the rights of same sex couples equivalent if they comply with the conditions established in the law for de facto marital consortiums, as applied to heterosexual couples. This decision concedes matrimonial rights of succession, social security, health, civil rights concerning ownership, nationality, and protection of the law in cases of domestic violence, amongst other recognized rights.

Likewise, the court made pronouncement on 42 provisions of law which were alleged to have violated the principle of equality of treatment for same-sex couples, and repeated it the man of its jurisprudence according to quit "... According to the constitution, all forms of discrimination on the basis of sexual orientation art proscribed", and it found that all the provisions of law denounced involve partial discrimination against same-sex couples, when the couple enjoys the same rights and benefits and has the same responsibilities, regardless of whether it is a red heterosexual or homosexual couple.

11. Indigenous Peoples and Afro-Colombian Communities

Paragraph 72

In relation to the case cited of a 14-year-old adolescent who was the victim of a sexual crime perpetrated by a marine sergeant in the municipality of Medio Baudó (Puerto Meluk), Department of Chocó, in the process of restoration of rights which is being pursued in favor of the adolescent, she was included both in the education and the health system, and therapeutic attention continues via the Center of Integral Attention for Victims of Sexual Violence (CAIVAS), and the mother has received orientation and advice in handling the situation when she visited the CAIVAS. For a period of two months, the minor was relocated in a substitute home in Medellin for her safety. Today, she is in the city of Quibdó under protection, located in a substitute home.

Further, and following the guidelines of Directive number 07/2007 "*Sector policy for recognition, prevention and protection of black, afro colombian, raizal and palenquera communities"*, the Ministry of Defense has taken a series of actions and participated in processes which were intended to benefit these communities during 2010.

On February 1 and 12, 2010, the Colombian state received a visit of the Independent Expert for Ethnic minorities of the United Nations, who during her visit gave priority to afro-descendant community issues. This delegation interviewed a number of state officials, and visited several cities and regions such as Cartagena, Apartadó, Quibdó and Cali, amongst others. These activities were followed up and accompanied by the Human Rights Division of the Ministry of Defense, principally at a meeting with the Vice Minister for International Policy and Affairs, and a visit to the municipality of Apartadó.

Also, the Commander in Chief of the Armed Forces has been working on a manual for indigenous and afro colombian communities, which has been socialized to the Ministry of Defense, and is in a process of analysis and correction in order to obtain a joint and final version for printing in the second half of 2010. Chapter 7 of the manual sets the objective of establishing criteria and giving instructions to the armed forces personnel in the matter of afro colombian, raizal and palenquera communities.

Further, and as an effort of the State to organize and direct public policy in favor of afro colombian communities, the National Planning Department (DNP) played a leading part in the design and preparation of the CONPES document No. of May 10, 2010: *"Policy to*

promote equality of opportunities for the black, afro colombian, palenquera and raizal population". With regard to the Armed Forces, the CONPES document states that as of 2010, the army and police academies must take action designed to strengthen their scholarship programmes and discounts in fees, so that a policy of diversity within these institutions will achieve greater depth. For the Police Cadet School, the coverage of scholarships will be as high as 65% of the fees, and in the Army Cadet School, the student regulations must be modified to make it easier for students in the service who belong to ethnic groups to have a discount of 30% in the fees. For the Air Force School "Marco Fidel Suarez" and the Naval Cadet School "Almirante Padilla", a scholarship and/or discounts programme for the fees must be defined within six months, to be adopted for the benefit of ethnic groups.

In addition, and following the orders of the honorable Constitutional Court in the Auto 005/2009, Decision T-025 of 2004, the Ministry of Defense sends reports every two months to the People's Defender about the specific security measures taken in the communities of Jiguamiandó y Curvaradó. Here, the Constitutional Court issued a new Auto on May 18, 2010, ordering the Government to give priority to the attention and protection of the communities that are located in the Jiguamiandó and Curvaradó river basins. The Ministry of Defense presented a report the 18 of June, 2010, to the Constitutional Court, in coordination with the Presidential Agency for Social Action and the Ministry of the Interior and Justice. These reports are to be sent every two months to the Constitutional Court, with information pertaining to the measures adopted in relation to the protection and guarantee of the rights of the communities in the region.

Also, the Ministry of Defense participates permanently in the Institutional Table created to provide a response to the 10 orders of the Constitutional Court, giving priority to the preparation of Specific Plans for Protection and Attention and the Comprehensive Plan for Prevention, Protection and Attention of the Afro Colombian Population.

Finally, the Human Rights Division of the Ministry of Defense intends to construct a collective policy for the defense sector geared towards the black, afro colombian, raizal and palenquera communities. It is expected that this policy will be negotiated and agreed during 2011 with the Legal Sub commission of Human Rights of the High Level Consultative Commission of the Afro Colombian Communities.

Paragraph 73

In relation to the massacre committed against the members of the Awá tribe on August 26, 2009, in the Gran Rosario Reservation in the department of Nariño, it should be noted that the ICBF took the following actions: intervention during the crisis by social workers who are professionals in psychology, nutrition and sociology in the Camawari and Unipa Reservations. It was known that among the casualties there were seven minors who were assassinated by masked men who broke into their home in the Gran Rosario Reservation. This event also left a wounded child, who was sent to the San Andres Hospital in Tumaco, and subsequently, due to the gravity of his wounds, was sent to the Children's Hospital in Pasto, where he received medical attention and is currently under observation.

The case was attended to by the mobile unit for attention of victims of the ICBF, which took the following actions: it contacted indigenous Leaders and Governors of the Awá Community in the municipality of Ricaurte, to coordinate psychosocial and nutritional attention to the families of the victims and to provide accompaniment to the Awá community in the burial of the bodies; basic needs were identified in the areas of accommodation, food, and health of the victims' families, and of children, pregnant women and nursing mothers present in the concentration of the indigenous community in the Camawari house; a community kitchen was set up to feed the Awá community, preparing food for approximately some 700 to 800 people. As part of the intervention in nutrition

matters, ICBF made recommendations taking account the differential focus in matters such as the distribution of food portions, the handling and disposing of solid residues, and good practices in the manufacture and proper storage of food.

ICBF arranged and delivered 150 food rations (type 1) to families of the victims and the local inhabitants of the Gran Rosario Indigenous Reservation. Recommendations were made with regard to cleanliness in the kitchen and common areas to avoid any focus of infection or reproduction of vectors. The Awá community, after the accompaniment of the funeral rites, the celebration of a meeting and the signing of agreements, proceeded to return to the reservation that same August 29, 2009, in the evening. Only the families of the victims lodged in the Camawari house and the families located in kilometer 80 and 83 of the Guayacana sector remained.

The team of the mobile unit, with prior permission from the indigenous leaders, met with the victims' families, and performed the following actions: identification and registration (application of the RUB format); psychosocial intervention and crisis accompaniment for the victims' families; the obtaining of records and identification of the relatives of the deceased victims and the injured; the obtaining of a preliminary diagnosis of the condition of the families and survivors in order to channel the institutional services offered for the attention of these families.

At the same time, it was diagnosed that it is prudent to start with the process of attention to children, adolescents and orphans, according to the following criteria for identification: children orphaned solely by the effect of violence , under 18 years (depending on life cycle, lack of documentation is not important), they should have a guardian (father, mother, uncle, grandfather, teacher...), and psychosocial attention should be reviewed in the context of health, for which purposes the General System of Social Security is the competent entity , because the ICBF only provides actions of accompaniment.

Thus, the regional office of the ICBF in Nariño has developed an interdisciplinary professional accompaniment close to the Awá families and N.N.A. affected by the violence, starting with the immediate crisis attention, through the humanitarian emergency attention, the accompaniment for processes of grief, to the referral and inclusion of fundamental rights services such as health and education of the N.N.A. and families that were affected.

It must also be stated that community work has been performed with the Mobile Units for Attention to the Displaced Population, through a current process of restoration of rights in the context of a concerted strategy for the functioning of the Hogar Gestor mode in these communities, in consultation with traditional authorities and associations of professional authorities which have been legitimately incorporated. Likewise, work has been done with these authorities to update the census of the N.N.A. affected by violence, giving priority to those who have been orphaned.

Two additional teams have been created in the Special Support Units of the regional ICBF office in Nariño, (integrated by professionals in the areas of social work, psychology, and an indigenous family promoter), to support the communities which belong to each one of the Indigenous Authority Associations mentioned, to provide permanent support in processes of consultation and articulation of the differential strategy titled "Attention under the mode of Hogares Gestores for displaced children and adolescents orphaned because of armed violence" , mode under which 71 places have been assigned, four of them for 4 orphaned brothers of the Gran Rosario Reservation.

The work of accompaniment because of circumstances of violations of human rights of the Awá community continues with the teams of the two Regional Support Units and the ICBF Regional Office in Nariño, in articulation with the Subdepartment for the Reestablishment of Rights (Protection Division), the National Technical Team for Ethnic Affairs (Prevention Division) of the National Directorate of the ICBF, under constant talks with the Traditional

Authorities of the Camawari and Unipa Associations, which represent the affected Awá indigenous communities affected by the violence.

Paragraph 74

With regard to this matter, attention should be paid to the following actions pursued by the Division for Black, Afrocolombian, Raizal and Palenquera Communities of the Ministry of Interior and Justice

- The Ministry of Interior and Justice, through its Division for Black, Afrocolombian, Raizal and Palenquera Communities, made a joint presentation of the public quality development unit on forced displacement, of the presidential social action agency the presidential agents of the social action and international cooperation, including the methodological proposal for a concerted construction of specific plans for the Afro Colombian population in the context of order 5/2009.
- The Ministry of the Interior and Justice, via its Division for Black, Afrocolombian, Raizal and Palenquera Community Affairs, presented conjunctly with the Public Policy Development Unit of the Presidential Agency or Social Action and International Cooperation, the methodological proposal for the concerted construction of the specific plans for the afrocolombian population under the framework of Auto 005 of 2009.
- The Division for Black, Afrocolombian, Raizal and Palenquera Community Affairs presented june 1, 2010, the first phase of the characterization for the collective and ancestral territories of the black communities, taking into account secondary data in order to establish the socioeconomic and geographical characteristics of the titled collective territories and in process of being titled. For this analysis information was used such as the adjudication resolutions given by the INCORA (now the INCODER), the 1995 census, documents pertaining to investigations done in this communities, CONPES documents, among others (**see annex number 3)**.
- The Division for Black, Afrocolombian, Raizal and Palenquera Community Affairs has done inter-institutional meetings with the participation of the Ministry of Agriculture, INCODER, the Presidential Program for Human Rights and IHL, Acción Social and the Ministry of Foreign Relations, that have given as a product an inventory of the judicial orders that befall over the communities living in the Jiguamiandó and Curvaradó river basins. This has been done in order to establish the degree of compliance of the orders emanated from the competent institutions and the elaboration of a chronogram for the realization of the Census, Characterization and Assembly of the Curvaradó Community Council.

Paragraph 75

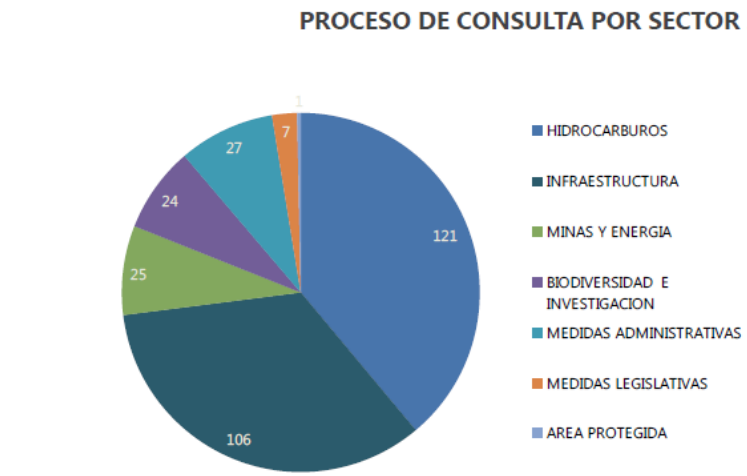
In reference to Prior Consultation, centered on mining prospection and exploitation, it must be stated that article 15 of Law 21 of 1991 which approves Convention 169 of the ILO, states literally that:

“Article 15

1. The rights of ownership and possession of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting ***any programmes for the exploration or exploitation of such resources pertaining to their lands****. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as result of such activities". (Emphasis added)*

Likewise, during the period 2003 to 2006, 51 prior consultation processes were done centered on road, energetic, mining, hydrocarbon and natural resources projects, among others. In 2007, there was coordination for the realization and accompaniment of 58 prior consultation processes and in 2008 51 processes were performed. In 2009 110 processes were done. Between January and May of 2010, 41 processes were coordinated, as the following graphic shows:



Fuente: Ministerio del Interior y de Justicia

In reference to the different dialogue forums between the Indigenous Communities and the National Government, the following can be identified, although they can participate in other ambits that affect them:

- **The Permanent Concertation Table:** Decree 1397 of 1996. It is the maximum instance for concertation between the Indigenous Communities, represented bye the Indian organizations, and the State, where all administrative and legislative decisions are mutually agreed for the benefit of the Indigenous Communities of Colombia.

  This dialogue space has been constructed with the Indian Organizations with the following objectives: **i)** Building up the participation of the Indian Organizations of all the regions of the country and the reestablishment of their trust towards the National Government. **ii)** The construction of the Public Policy of the Indigenous Communities, and; **iii)** The consolidation of the working mechanisms for the creation of a Program for the Guarantee and Safeguard Plans for the Rights of the Displaced Indian Population – Auto 004 of 2009, and the Prior Consultation for de National Development Plan for 2010 which continues on for the present year.

  The Table held sessions on October 3, 4, 5 and 6 of 2010. The central issues debated were: The prior consultation for law projects, and the prior consultation of the National Development Plan (PND). Of these, meetings were held with the macro-regional associations, and the final result gave way to the elaboration of an autonomous forum for the proposals of the representatives and indigenous authorities, on the following dates:

  - October 25 of 2010: In the city of Bogotá, with the participation of the authorities and indian representatives of the Amazon and the central-oriental region.
  - October 26 and 27 of 2010: In Medellín, with the participation of representatives of the occidental macro.
  - October 27 of 2010: Simultaneously in Barranquilla, Caribbean Region.
  - October 28 and 29 of 2010: In Bogotá with the Orinoco Region.

  On the 1st, 2nd and 3rd of November of 2010, an autonomous session was done with the Permanent Table and the indian organizations; a preliminary document about the

structure and body of the National Development Plan's chapter about Indigenous Communities denominated *"Integral Plan for the Permanence and Survival of the Indigenous Communities"* that takes into consideration the proposal for the urban cabildos.

On December 9 and 10 there was a meeting of the Table in order to formalize the Prior Consultation process done by the Table.

- **National Human Rights Commission – CNDDHH (Decree 1396 of 1996):** It is the instance that's in charge of looking out for the protection and promotion of the human rights of the Indigenous Communities, most specially their right to live, personal integrity and liberty.

  On the 14th of June of 2009 a session of the CNDDHH was done in the city of Bogotá D.C. with the indian organizations where an agreement was reached over certain human rights issues from the perspective and vision of the Indigenous Communities. It must be stated that the Commission didn´t celebrate sessions as far back as 2006 because the indians declared a permanent absence because the Government didn´t adopt the United Nations Declaration on the Rights Indigenous Peoples. This situation was surpassed thanks to the declaration of the Viceminister of the Ministry of Foreign Relations, Adriana Mejía, speaking on behalf of the Government of Colombia during the Durban Conference about racism, xenophobia and other forms of intolerance and discrimination which was celebrated the 21st of April of 2009.

  The Indian Organizations acceded to participate on said forum because of the constant and determined work that the Ministry of the Interior and Justice has been doing in coordination with them in the different dialogue forums. The only organization that did not participate was the ONIC.

  In order to advance in the CNDDHH, the Operative Secretariat, with the participation of the Delegated Inspector for Indians and Ethnic Minorities, a representative of the Division for Indian, Minority and Rom Affairs and a representative of the Indigenous Communities before the CNDDHH, met with the objective of proposing an agenda for the next CNDDHH meeting. As a result, the following was achieved for the next agenda:

  - Construction of a human rights Public Policy for the Indigenous Communities.
  - Presentation by the indian organizations of a proposal to create a National Forum under the framework of the United Nations Declaration on the Rights Indigenous Peoples, with the goal of achieving alternate mechanisms oriented towards giving an answer to conflict issues in the indigenous territories.
  - ¨Presentation of the indian organization's answer to the Proposal for Differential Protection of Indian Leaders and Activists with a differential focus.
  - Presentation of the representative of the Indigenous Communities in relation to the implementation of Directive 016 bye the National Ministry of Defense and the social and cultural impact of the construction of Battalions in the indian territories.
  - Presentation of the General Report of the Commissioner of the ETNO-CRER before the CNDDHH.

  It must be pointed out that the Operative Secretariat of the CNDDHH, during the year 2009 and 2010, has met on different occasions (27th of November of 2009 and

10th of February, 29th of July, 4th and 23rd of August of 2010) with the purpose of analyzing the issues exposed by each one of the organizations and to propose a possible agenda for the next session.

- **Regional Amazon Table (Decree 3012 of 2005):** A dialogue space created to recommend to the different governmental levels the formulation, promulgation and execution of public policies of sustainable development for the Indigenous Communities living in the Amazon Region and to participate in the evaluation and follow up of them, without sidestepping the mandates of the Estate.

  During the year 2010, it had sessions on July 12, 13 and 14 where the issues of health, education, the advances in the formulation of the Public Policy of the Colombian Amazon Region and the advances of Auto 004 for the region. On the other side, a session of the Table was broadened, in the framework of Auto 004, as a Macro-regional meeting of the Guarantees Program, on the 16th, 17th and 18th of December of 2010.

- **Minga:** A forum for dialogue designed to evaluate one by one the accords on issues like land, health and education, leaded by CRIC, with each one of the Government's institutions and to examine the compromises and the level of fulfillment for each one.

12. International humanitarian law

Paragraph 81

In respect to the asseveration that this paragraph makes, expressing that: "The indiscriminate effects of anti-personnel mines continues to cause great harm to the civilian population. Despite this, the Presidential Programme on Human Rights and International Humanitarian Law recorded a decrease of 51 per cent in the number of anti-personnel mine related incidents and accidents, in comparison to 2009", it is important to point out the following:

- According to sections 6, 7 and 8 of article 2 of Decree 2150 of 2007, the official source of information about the situation, and in general, about the issue of antipersonnel mines, is the *Presidential Programme for Integral Action Against Antipersonnel Mines* (PAICMA), hence it should be quoted as a source.

- The correct language must be used. In the thematic of antipersonnel mines, an *"event"* is the addition of incidents and accidents caused by these artifacts. Because of this, it is recommended to change the term *"incidents"* for the term *"events"*.

Clarity must be made in the sense that between January and October of 2010, 399 victims were registered as mine victims, of these: 130 (33%) were civilians and 269 (69%) were military personnel. Of the civilian victims: 102 were grown men, 10 were grown women, 16 boys and 2 girls. Likewise, if a comparison is made between the period of January-October of 2010 with the same period for 2009, there was a reduction of 40% in the number of victims and of 52% in the number of events.

Paragraph 84

In relationship with the events mentioned in this paragraph of the Report, it was known that in the month of May of 2010, in Ituango (Antioquia), before the Family Commissar of said municipality, a mother of some children manifested that the FARC had been performing obligatory meetings and making a census, presumably to determine the age of the minors in order to start forceful recruitment. As a result, three mothers who are residents of the Santa Rita, La Granja and Santa Lucia towns of said municipality solicited the protection of their

children who were in imminent danger of being recruited. The Family Commissar, in coordination with the ICBF, took actions for the immediate protection of 10 girls, boys and adolescents.

From the issuance of Decree No. 4690 of December 3 of 2007, which creates the Inter-sectorial Commission for the Prevention of Recruitment and the Usage of Boys, Girls and Adolescents by Illegal Armed Groups, the inter-sectorial policy for the prevention of recruitment is approved, defining seven (7) strategic lines of action. 106 municipalities were focalized and 5 localities of Bogotá identified as high risk places.

As a result of the conjunct work done by the entities of the State that have a commitment with the Prevention of Recruitment and the Usage of Boys, Girls and Adolescents by Illegal Armed Groups, the CONPES document No. 3673, "*Policy for the Prevention of Recruitment and the Usage of Boys, Girls and Adolescents by Illegal Armed Groups and the Criminal Organized Groups"* is approved.

Under this framework, the ICBF implemented in October of 2010 the Strategy of Promotion of the Rights of Boys, Girls and Adolescents and Prevention of their Victimization by Illegal Armed Groups in the following 18 municipalities: Puerto Asís y San Miguel de Putumayo Puerto Meluk , Medio Baudó de Chocó, el Charco, Policarpa, Tumaco y Barbacoas de Nariño; Apartado, Ituango y Medellín de Antioquia; Cartagena de Bolívar; Tame de Arauca; Florencia de Caquetá; Buenaventura del Valle; Chaparral y Rioblanco de Tolima; Mitú de Vaupés; and San José del Guaviare del Guaviare.

Specifically, in Ituango, this strategy benefits 450 boys, girls and adolescents and their families (190), located in the neighborhoods of Santa Barbará, San José, Chapinero, El Carmelo, Partidas, Peque and Los Baños.

Paragraph 85

In Colombia, the boys, girls and adolescents that are not members anymore of the illegal armed groups, and in accordance to the international laws and in systematic relationship with the Infancy and Adolescence Code, are considered victims of the crime of illegal recruitment and also one of the worst forms of childhood work. As a consequence, they are the title holders of all the rights consecrated in the Colombian constitutional and legal provisions and are subjects of additional judicial protection, which is guaranteed via processes for the reestablishment of rights and also for social and economic reintegration with reparations.

Paragraph 86

In terms of the application of International Humanitarian Law by the Armed Forces, it must be clarified that all of the Units, when performing tactical missions of Control and Registry of Areas, try to prevent any actions committed by illegal armed groups that try to go against the civilian population, including the usage of schools.

Paragraphs 87 and 88

In reference to the presumed infractions of IHL signaled on these two paragraphs, it must be pointed out that the Public Forces, via its Human Rights and IHL Integral Policy and the Institutional Policies contained in the Planning Guide of the Commander In Chief of the Army for the Campaign Plan for 2011-2012, are taking all the necessary steps and actions necessary to prevent IHL infractions.

Specifically, the Campaign Plan contains orders that stress the importance of integral formation in Human Rights and International Humanitarian Law of all military personnel, prioritizing those troops that are in the first line of combat with the view of strengthening a

culture of respect of the civil population, having in mind, for its fulfillment, the differential defense and protection of those groups that are specially vulnerable.

Also, the ICBF and the National Army subscribed the Inter-administrative Pact of Collaboration number 059 of 2009 that has as its prime objective the formation of the Armed Forces personnel in the protection and assistance for children, having in mind several aspects of education and prevention, evaluation and follow-up and the fortifying of the institution. Approximately 2.500 members of the Armed Forces have been trained in the framework of this Pact.

One of the prime themes developed in these workshops is related to the judicial route applicable to boys, girls and adolescents that are demobilized from the illegal armed groups, handing them to the respective authorities within the next 36 hours of their demobilization and the prohibition of conducting any interviews or usage of minors in intelligence activities and the sanctions established in article 176 of the Infant and Adolescence Code (Law 1098 of 2006).

Paragraph 89

The National Justice and Peace Unit of the National Prosecutor's Office has done various inspections at La Macarena cemetery, recovering a considerable number of bodies in order to do the necessary tests and verify their identification. To do so, various strategies have been implemented in order to contact the families of the victims, like the publication on web of the photographs of the persons identified via fingerprint matching and who do not have any report from known relatives. Likewise, the divulging of a booklet with these photographs so that family members can identify them is in the process of being elaborated.

On the other hand, it is important to mention that in the last three years the National Justice and Peace Unit has been performing various inspections in different cemeteries of the country in order to establish the number of unidentified persons buried in them and, concomitantly, putting into practice the identification strategy and the handing of the bodies to the family members.

13. Torture

Paragraph 92

The Procurator General's Office does not consider accurate the appreciation contained in the High Commissioner's Report where it expresses that said entity *"(…) When the Procurator General´s Office assumes the investigation of this type of cases, only rarely are proceedings completed or those responsible punished"*.

The Procurator's Office has informed the Colombian Office of the High Commissioner that this year 15 judicial decisions were taken in relation to the conduct of torture, of which six ended with the destitution of a public servant. It must be noted that in one of these decisions, ten (10) public servants, amongst those officers, sub-officers and one professional soldier, suffered destitution and were banned of holding public office for 10, 15 and 20 years because of their actions involving torture. Likewise, 13 other public functionaries have been indicted of having incurred in this conduct.

The Procurator General´s Office made it known to the Office of the High Commissioner that in 2010 it imposed disciplinary sanctions to various public servants for the criminal actions of the DAS, among those, to three of its former directors, the ex-Secretary General of Presidency and to its ex-Directors of Intelligence and Counter-Intelligence, with destitution and inability for up to 18 years. It also informed that in the name of the defense, protection and guarantee of human rights, during 2010, 34 decisions were adopted centered on grave violations against human rights and IHL, 46 people were charged for presumably

having committed extrajudicial executions and that 12 members of the Armed Forces were removed from their positions for having incurred in said conduct.

Finally, the Procurator General's Office has expressed that it feels very sorry that the Report fails to mention the disciplinary actions it has put into practice in relation to the investigations centered in the cases of *"parapolitics"* and *"farcpolitics"*.

At December 31 of 2010, candidates for the benefits of the Justice and Peace Law, and in pursuance of the free statement processes, have initiated the confession of 564 cases of torture, of which 434 have been confessed. However, at the same date, the Justice and Peace Prosecutors have laid formal charges against the candidates who face the Guarantee Control Judges in respect to 2.801 cases of torture, 1.599 are in the stage of formalizing indictments, of which 1.428 have been imparted legality before a Court of Cognizance.

The above stated obeys to the fact that there exists a wrong conviction among those eligible for the benefits of Law 975 of 2005 that the crime of torture is only committed and confessed when serious physical pain or suffering is inflicted on a person, forgetting the psychological aspect, the intimidation, coercion or discrimination of the victims. These aspects are taken into account by the Justice and Peace Prosecutor, and in their judicial reasoning, fit the actions to the crime when laying charges in front of the corresponding Magistrate.

14. Forced displacement

Paragraph 94

In relation to the issue of displacement mentioned in the Report, it must be clarified, for this paragraph, that the process of evaluation is not done by functionaries of the regional office (with the exception of the department of Amazonas), but by an internal work group that functions in Bogotá, dedicated exclusively to the evaluation of the declarations of forced displacement and who must fulfill a series of procedures in order to perform their duties. Hence, it cannot be affirmed that there is a resistance by the functionaries of Arauca to register, from Social Acton, the displaced population.

It must be augmented that in virtue of Auto 011 of 2009 (displacement and habeas data), that orders Social Action to direct its efforts towards tackling sub-registry, the Area of Registry of said entity has put into practice several measures and strategies in order to counter act this phenomenon, an aspect which should be noted in the Report.

On the other hand, the ICBF has a Single Beneficiary Registry (RUB), that is filled out by the mobile attention units for displaced population, regardless cognizance by the Single Registry for Displaced Population (RUPD), where attention and psychosocial accompaniment is performed from the same moment that displacement is evidenced. Likewise, the families with boys, girls and adolescents that present themselves to the zonal centers of ICBF, in order to solicit orientation and/or affiliation to the regular services, are registered as displaced population in the Civil Attention Information System (SIAC).

Paragraph 96

In regards to this paragraph, it cannot be affirmed that there is a general tendency in the country that evidences an increment of intra-urban displacement in 2010. Between 2009 and 2010 there is a reduction of 21%, going from 5.562 displaced persons in 2009 to 4.370 in 2010. There is a high concern for the case of Medellín where there really was an increase of intra-urban displacement, going from 2.455 people displaced in 2009 to 3.437 in 2010. Lastly, concerning the case of Córdoba, there has been a high number of displaced people; but, in 2010, this number decreased, going from 7.879 individuals in 2009 to 5.128 in 2010. It must be clarified that Córdoba is not a zone that generates intra-urban displacement.

15. Poverty and economic, social and cultural rights

Paragraph 99

In accordance to what is mentioned in the report which says that *"Moreover, the International Labor Organization has expressed concern regarding certain violations of labor rights, such as legislation allowing salary gaps between men and women, in violation of the principle of equal remuneration for work of equal value, and discrimination in access to employment based on race, color and social background"*, it must be pointed out that the international framework for this issue brings guarantees to the equality of men and women, specially, those related to labor rights. The Colombian State has ratified the Equal Remuneration Convention (C-100) and Convention 111 (about Discrimination – employment and occupation) of the ILO.

The Colombian Constitution in article 13 establishes equality as a fundamental right in the following terms: *"Everyone is born free and equal in front of the law, they shall receive the same protection and treatment from the authorities and will enjoy the same rights, liberties and opportunities without any discrimination due to sex, race, national or family origin, language, religion, political or philosophical opinion. The Estate shall promote all the conditions so that equality is real and effective and will adopt measures in favor of those groups that are discriminated or marginalized"*.

On the other hand, article 43 commands that *"Women and men have the same rights and opportunities. Women will not be submitted to any kind of discrimination. During pregnancy and after giving birth she will receive special assistance and protection of the State and will receive from it a food subsidy if she were unemployed or unprotected. The State shall specially help women who are household heads"*.

In turn, the Substantive Work Code of Colombia establishes the following dispositions regarding this issue:

- Equality for workers (article 10).
- Establishes that any work regulation shall take into special consideration those jobs that cannot be done by women (article 108).
- It reaffirms that there can be no differences in wages due to gender (article 143).
- It protects the resting periods that must be conceded to women while lactating, during the first six (6) months of age and it consecrates the obligation to establish a nearby place or room so that children can be close at hand (article 238).
- It establishes de reinforced stability of women during pregnancy, the presumption of being fired due to pregnancy or during lactating period when done during the three (3) months after giving birth and a special compensation due to unauthorized firing, without prejudice of posterior re-hiring (articles 239, 240 and 241).
- It consecrates prohibited jobs for women because of their gender condition; especially dangerous ones (article 242).
- Imposes a *"sanction pension"* due to firing when close to the age of retirement and it establishes a preferential age treatment for women in relation to pension (article 267).

Regulatory Decree 47 of 2000 indicates the remuneration that working women have a right to in terms of social security, during her gestation period, and Regulatory Decree 1398 of 1990 consecrates a no discrimination labor policy for women.

Also, Law 1257 of 2008, "By which norms are dictated to raise awareness, prevention and sanction of forms of violence and discrimination against women, the criminal and the

criminal process codes are amended, Law 294 of 1996 and other dispositions", constructs a normative framework of great legislative advancement for the protection of the rights of women in the Colombian Estate, and defines in an ample manner the concept of violence, including several forms in which this violence is manifested in labor relationships (article 2).

- **Article 2.** ***Definition of violence against women:*** Violence against women must be understood as any action or omission, that causes death, hurt or physical suffering, sexual, psychological, economic or patrimonial because of her gender condition, and also any threats of performing the above mentioned acts, coercion or arbitrary detainment, may it happen in both the public or private ambits.

  For the effects of said law, and in conformity to what is stipulated in the Action Plans of the Vienna, Cairo and Beijing Conferences, economic violence is understood as any action or omission oriented towards economic abuse, the abusive control of finances, monetary prizes or punishments towards women due to their social, economic or political condition. This form of violence can happen in conjugal, family, or in working and economic relationships.

- **Article 12. Labor measures:** The Ministry of Social Protection, apart from those signaled en other laws, has the following functions: **1.** It shall promote the social and economic acknowledgment of the work of women and it will implement mechanisms to make effective the right for equal salary. **2.** It will develop campaigns to eradicate any discriminatory act or of violence against women in the workplace. **3.** It shall promote the access of women in productive spaces that are not traditional working ambits for them. **Paragraph.** The Professional Risks Administering Companies (ARP), the employers and/or contracting parties, concerning each one of them, will adopt the adequate and effective procedures in order to: **1.** Make effective the right to equal remuneration for women. 2. Give due process to complaints regarding sexual harassment and other forms of violence against women contemplated in this law. These norms will apply also to associated work cooperatives and other organizations that have a similar objective. **3.** The Ministry of Social Protection will look after the Professional Risks Administering Companies (ARP) and the Directive Boards of the Companies so that they fulfill what is mandated in this paragraph.

  This law also includes sexual harassment as a criminal act; one of its modalities under which it is typified is the abuse that someone applies in the workplace for his/her own benefit or for a third party with the intent of harassing, persecuting, bothering or assailing physically or verbally, with sexual objectives that have not been consented, another person.

Having in mind the above, the affirmation that national *"legislation allowing salary gaps between men and women"* is not in accordance with reality. As was evidenced, there is no law or judicial decision that *"allows"* this situation; on the contrary, it is there to reduce the gap.

Conclusion

The Government of Colombia wishes to reiterate its most firm respect for Human Rights and its indeclinable compromise to continue conducting al the necessary efforts to overcome the challenges that still persist, originated by the different manifestations of violence caused by drug trafficking and the actions of the illegal armed groups.

With this in mind, and in a framework of profound respect with the Universal System of Human Rights, the National Government has put forth the preceding observations and

hopes that they are taken into account by the High Commissioner for Human Rights with the only objective that they offer a balanced and objective view of our complex Human Rights reality.

UNIDAD NACIONAL DE DERECHOS HUMANO Y DERECHO INTERNACIONAL HUMANITARIO

VIOLENCIA SEXUAL – NOVIEMBRE DE 2010

CASOS	CASOS ASIGNADOS	**82**
	CASOS LEY 600	**67**
	CASOS LEY 906	**15**
	CASOS EN PRELIMINAR	**48**
	CASOS EN INSTRUCCIÓN	**4**
	CASOS CON RESOLUCION DE ACUSACION	**4**
	CASOS CON PRECLUSION	**7**
	CASOS EN JUICIO	**3**
	CASOS CON SENTENCIA CONDENATORIA	**3**
	CASOS CON SENTENCIA ABSOLUTORIA	**2**
	CASOS EN INHIBITORIO	**18**
	CASOS CON FORMULACION DE CARGOS PARA S.A.	**2**
VICTIMAS IDENTIFICADAS A LA FECHA		**133**

LEY 600 DE 2000

DECISIONES	APERTURAS DE INSTRUCCIÓN	**15**
	MEDIDAS DE ASEGURAMIENTO CON DETENCION PREVENTIVA	**22**
	ABSTENCIÓN DE MEDIDA DE ASEGUAMRIENTO	**5**
	RESOLUCION DE ACUSACION	**9**
	SUSCRIBCION DE ACTA FORMULACION DE CARGOS S.A.	**3**
	RESOLUCIONES DE PRECLUSION	**7**
	SENTENCIAS CONDENATORIA	**8**
	SENTENCIAS ABSOLUTORIAS	**2**

PERSONAS AFECTADAS	PERSONAS VINCULADAS	**76**
	PERSONAS PRIVADAS DE LA LIBERTAD ACTUALMENTE	**9**
	PERSONAS AFECTADAS CON MEDIDA DE ASEGURAMIETNTO	**50**
	PERSONAS CON ABSTENCION DE MEDIDA DE ASEGURAMIENTO	**14**
	PERSONAS ACUSADAS	**34**
	PERSONAS A QUIENES SE PRECLUYO	**19**
	PERSONAS CON FORMULACION DE CARGOS PARA S.A.	**4**
	PERSONAS AFECTADAS CON SENTENCIA CONDENATORIA	**26**
	PERSONAS CONDENADAS QUE ACEPTARON CARGOS PARA SENTENCIA ANTICIPADA	**3**
	PERSONAS CON SENTENCIA ABSOLUTORIA	**8**

LEY 906 DE 2004

C A	CASOS EN INDAGACION	**12**
	CASOS EN INVESTIGACION	**0**

	CASOS CON FORMULACION DE ACUSACION	**3**
	CASOS EN AUDIENCIAS DE JUICIO ORAL	**2**
	CASOS CON SENTENCIA CONDENATORIA	**5**
	CASOS CON SENTENCIA ABSOLUTORIA	**0**

AUDIENCIAS	AUDIENCIA DE FORMULACION DE IMPUTACION	**5**
	AUDIENCIA DE LEGALIZACION DE CAPTURA	**5**
	AUDIENCIAS DE MEDIDA DE ASEGURAMIENTO	**5**
	PRESENTACION DE ESCRITO DE ACUSACION	**3**
	AUDIENCIA DE FORMULACION DE ACUSACION	**4**
	AUDIENCIAS DE JUICIO ORAL	**3**
	AUDIENCIA DE FALLO	**8**

PERSONAS AFECTADAS	PERSONAS IMPUTADAS	**6**
	PERSONAS CAPTURADAS	**8**
	PERSONAS CON MEDIDA DE ASEGURAMIENTO	**6**
	PERSONAS CON ESCRITO DE ACUSACION	**4**
	PERSONAS ACUSADAS	**5**
	PERSONAS CONDENADAS	**8**