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人权委员会  
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会议工作的安排

人权事务高级专员关于哥伦比亚境内  
人权状况的报告 \*

\* 本报告附件仅以提交语文分发。

## 内 容 提 要

联合国人权事务高级专员关于哥伦比亚境内人权状况的这份报告所涉期间为2004年，是应人权委员会第六十届会议的要求编写的。本报告分五章，内容概述如下。报告还有四份附件，涉及下列主题：驻哥伦比亚办事处的活动；侵犯人权和违反国际人道主义法的典型事例；特别脆弱群体的状况；关于统计数字的说明。

### 国家状况和国内武装冲突的事态发展

2004年期间，公众的注意力主要集中在关于总统的重新当选、与准军事集团的谈判以及试图商定政府与哥伦比亚革命武装力量——人民军的人道主义交换等问题的辩论上。对司法系统的改革和与社会议程有关的倡议，也进行了公开辩论。2004年初，政府与美洲国家组织就建立支持哥伦比亚和平进程特派团达成了协议。政府优先考虑的是遣散非法武装团伙成员，并与构成哥伦比亚联合自卫军(联合自卫军)的准军事集团谈判，尽管仍然缺乏一个适宜的法律框架，按照国际规范来保障受害者了解真相、伸张正义和获得赔偿的权利。2004年末，着手遣散了联合自卫军的大约3,000成员。政府与革命武装力量——人民军和哥伦比亚民族解放军(民族解放军)分别进行的和平谈判没有取得显著进展。联合国秘书长继续进行斡旋。其他国家也提供了服务。

显然，准军事集团尽管公开宣称停止敌对行动，其传统领导人卡洛斯·卡斯塔诺也消失不见，却仍在继续扩张和集结，包括加强对当地和区域一级的社会和机构控制，并与贩毒活动保持密切联系。

国内武装冲突的事态发展，主要表现为巩固了保安部队在都市中心的存在，以及革命武装力量——人民军和民族解放军撤离这些中心。2004年4月，所谓的“爱国者计划”在该国南部开始实施，这是现代哥伦比亚历史上最大的一次军事行动。据称，其主要目标是打击革命武装力量——人民军的后卫部队，抓获其首要领导人。保安部队对准军事集团展开行动，但与打击革命武装力量——人民军的行动相比，规模较小。2004年期间，革命武装力量——人民军和民族解放军对平民进行了一系列攻击，包括革命武装力量——人民军若干次屠杀平民和绑架。革命武装力量——人民军和民族解放军偶尔会联合行动。政府高层官员一再声明，否认存在国内武装冲

突，坚称只存在对哥伦比亚社会的恐怖主义威胁。政府和司法部长办公室继续在缺乏足够证据的情况下，全面和大规模地进行搜捕，根据的往往是遣散人员和融入社会的非法武装团伙的前成员的报告和军事情报档案。

2004 年与 2003 年相比，全国范围内重要的暴力指标，例如一般凶杀案、屠杀和绑架继续下降。然而，有关数字仍然很高。关于因暴力而流离失所的人口，据指出，尽管与 2003 年相比，新增的国内流离失所者的人数减少了，但该国国内流离失所者的总人数实际上增加了。

为解救革命武装力量——人民军绑架的许多平民、军事人员和警察，就人道主义交换问题提出了一系列建议。但这些建议没有取得任何具体成果。

### 公共政策和有关建议的执行

在人权和国际人道主义法领域，可以看到一些成绩和进展。然而，同时也存在困难和矛盾。相对于 2003 年，2004 年后半年期间，各种国家实体对高级专员的建议显示了更大的兴趣。开放性增加了，政府与民间社会和国际社会代表之间的对话也加强了。与此同时，执行进程却不尽如人意，力度不够。这是由于问题仍然很严重，同时，鉴于 2004 年提出的建议与 2003 年和此前历年提出的建议相类似，其执行程度也有限。2004 年底，政府执行有关建议的整体情况很复杂，有好有坏，这方面还受到人权和国际人道主义法状况的影响。非法武装团伙拒不履行其人道主义义务，继续无视高级专员的建议。

政府在推行其治安政策时，目标和手法不一致，对某些平民阶层的影响也不尽相同。在预防和保护问题上取得了进展，包括加强了社区保卫机制和预警系统，内政部的保护脆弱群体方案也有所加强。政府应对警报以及减少脆弱群体面临的风险因素的工作始终很薄弱。政府采取了积极措施，销毁储存的杀伤人员地雷。武装部队开展的军事行动，有时没有遵守人道主义原则。

宪法法院宣布所谓的《反恐怖主义法》无效，因其在制定过程中存在程序性缺陷。高级专员早些时候警告说，该法不符合国际规范。调查侵犯人权和违反国际人道主义法行为特别委员会在消除有罪无罚现象的斗争中采取了一些积极行动，然而，仍然需要拿出重大措施并显示更大决心，并长期坚持下去。打击准军事活动，

包括保安部队成员和其他政府官员与这些集团之间的联系的政策，就其结构而言，很不稳定。显然，需要针对与联合自卫军的谈判制定适当的法律框架。

政府的经济和社会政策并没有促成必要的进展，推动减少不平等，消除极端贫困，降低文盲率和失业率，扩大获得保健和住房服务的机会。配合国家的人权和国际人道主义法行动计划，开展了一些活动。联合国人权事务高级专员驻哥伦比亚办事处继续就有关建议的执行向政府和整个社会提供咨询意见。希望该办事处提供的合作和咨询意见将得到更妥善的利用。

### 人权和国际人道主义法状况

生命权、人格完整权、自由与安全权、适当程序和私密权，以及迁徙自由、居住自由、见解自由和表达自由等继续受到侵犯。在经济、社会和文化权利领域，没有看到明显进步。还没有一个官方系统，搜集关于侵犯人权和违反国际人道主义法事件的统计数字。

人权状况仍然很严峻。指称保安部队成员和其他政府官员进行法外处决的报告增加了。酷刑和强迫失踪的严重程度没有变化。不断有报告说，军人和司法部长办公室在没有法律依据的情况下进行逮捕和大规模搜查。收买证据和证人的情况时有发生。从各种关于国家负有作为或不作为责任的指控中，可以明显看出政府官员与非法武装团伙，尤其是准军事集团之间存在联系。经济、社会和文化权利仍然处在朝不保夕状态，该国最脆弱的群体和地区的情况尤其如此，特别是在利用、获得、维持和享有就业、教育、保健和住房权方面。

表明违反国际人道主义法的各种指标继续下降，尤其是在多重凶杀和劫持人质方面，但其发生率仍然很高。准军事集团没有停止敌对行动。非法武装团伙，尤其是革命武装力量——人民军和准军事集团，继续大规模严重违反有关协议，例如攻击平民，滥杀滥伤，凶杀，屠杀，劫持人质，恐怖主义行动，强迫流离失所，使用杀伤人员地雷，招募未成年人，奴役，在性暴力行为中侵犯妇女和女童的人格完整和尊严。还有些指称是针对保安部队尤其是军队成员的，例如凶杀，滥杀滥伤，强迫流离失所，以及侵犯妇女的人格完整和尊严。

## 特别脆弱群体的状况

政府高层官员有时质疑人权捍卫者及其组织的工作的合法性，他们的公开谈话削弱了在保护和预防领域的各项积极措施。人权捍卫者，包括工会活动分子、妇女组织和其他社会活动领导人的地位仍然很脆弱，因为他们面临非法武装团伙，尤其是准军事集团的威胁和行动。新近流离失所者的人数仍在继续减少。与此同时，国内流离失所者的总人数却增加了。土著居民和非裔哥伦比亚社区继续受到非法武装团伙的威胁。其他脆弱群体包括妇女、儿童、新闻工作者和舆论工作者、政府雇员，比如司法人员、市长、同时还有爱国者联盟成员和共产党党员，以及因其性取向而受到歧视的人，比如男女同性恋者、双性恋者和跨性别者。

## 建 议

高级专员提出了 27 项优先考虑的具体建议，涉及政府三个部门的国家当局和负责保护和促进人权的监督机构，民间社会的代表性部门，国际社会以及非法武装团伙。这些建议是在系统和批判性观察以及国家当局与民间社会组织对话的基础上进行分析后得出的切实和前瞻性的结论。

高级专员坚信，如果将这些建议作为 2005 年一个协调和全面的进程的一部分加以适用，人权和国际人道主义法状况将会大为改观。如同前两年一样，并为了强调执行即意味着长期坚持和统筹兼顾，已将这些建议按下列六个标题作了分类：预防和保护；国内武装冲突；法治和有罪无罚；经济和社会政策；促进人权文化；高级专员驻哥伦比亚办事处提供的咨询服务和技术合作。

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## 导 言

1. 过去一些年中，人权委员会始终关注着哥伦比亚的人权状况，这一点反映在委员会主席连续几次的声明之中。1996年，人权委员会要求联合国人权高级专员根据哥伦比亚政府的邀请在哥伦比亚设立办事处。1996年11月26日，按照哥伦比亚政府同联合国人权事务高级专员办事处签署的协议，联合国人权事务高级专员驻哥伦比亚办事处成立。根据协议的规定，高级专员驻哥伦比亚办事处的任务是观察哥伦比亚的人权和国际人道主义法的状况，以便在影响该国的暴力和国内武装冲突的情况下，就制定和适用有关政策、方案和措施，促进和保护人权向哥伦比亚当局提出建议。这将有助于高级专员向人权委员会提出分析性报告。经乌里维总统的提议，该协议的有效期延长四年，直至2006年10月。

2. 在人权委员会第六十届会议上，主席声明重申，高级专员驻哥伦比亚办事处“在处理侵犯人权和违反国际人道主义法方面发挥了重大作用”，并要求高级专员提出一份载有该办事处对哥伦比亚人权状况的分析的“详尽报告”。驻哥伦比亚办事处继续执行了其在观察、建议、技术合作、推动和传播方面的任务。本报告所涉时间为2004年1月至12月，有四份附件。第一份附件涉及高级专员驻哥伦比亚办事处的观察、咨询服务、技术合作和促进活动；第二份涉及侵犯人权和违反国际人道主义法事件；第三份着重描述了脆弱群体的状况；第四份对统计数字作了说明。

### 一、国家背景和国内武装冲突的事态发展

3. 在政治上，2004年有三个主要问题。第一个问题是就修改宪法以允许总统直接重新当选一事进行的公共辩论。第二个问题是政府与组成哥伦比亚联合自卫军(联合自卫军)的准军事集团之间的谈判。第三个问题是政府与哥伦比亚革命武装力量——人民军(革命武装力量——人民军)和哥伦比亚民族解放军(民族解放军)之间的谈判缺乏明显进展。

4. 关于涉及直接重新当选可能性的第一个问题，3月份在乌里维总统政府的提议下，提出了一份法律草案，根据这一草案，将修订《哥伦比亚宪法》的某些条款。该法律草案于12月在议会中获最终批准。激烈的辩论全年都吸引了公众舆论

和议会的极大注意，清楚表明在就行政部门的结构进行宪法改革时，意见存在分歧。辩论还导致其他重大议题降到次要地位。

5. 第二，政府与构成联合自卫军的准军事集团进行了谈判。谈判过程缺乏一个平行的适当法律框架，保障受害者的了解真相、伸张正义权和获得赔偿的权利，并确保犯有反人类罪和战争罪者不至逃脱法网。整个 2004 年，驻哥伦比亚办事处都在向政府和议会议员提供建议，以按照国际标准制订一个框架。

6. 2004 年初，政府与美洲国家组织达成协议，建立了支持哥伦比亚和平进程特派团，其主要任务根据“其成员国充分遵守人权和国际人道主义法的义务”，核查政府与非法武装团伙之间就停火、遣散和重返社会问题达成的最终协议。<sup>1</sup>

7. 与联合自卫军的谈判是为了按照政府的公开要求，遣散这些准军事集团，尽管它们继续违反停止敌对行动的协议。显然，乌里维总统提出的这项绝对的先决条件并没有向人们预期的那样得到实现。据监察员办公室和其他观察员的认定，联合自卫军不遵守停止敌对行动的情况是严重的和广泛的，但对此没有采取任何具体行动。

8. 监察员办公室在其后续报告中称，联合自卫军应对 342 宗违反停止敌对行动协议的事件负责。这些事件包括据说将遣散人员重新编入其武装、屠杀、强迫流离失所、有选择和有计划性的凶杀、绑架、强奸、制造失踪、威胁、恫吓和抢劫。这些事件发生在 11 个省份，目标是平民，很多时候是针对土著社区。11 月，开始在该国不同地区遣散 3,000 名联合自卫军成员，尽管仍然没有适当界定的法律框架。

9. 伴随与联合自卫军的谈判进程，准军事集团在该国不同地区的扩张和集结日益广为人知。有报告说，这些准军事集团从事了与贩运毒品和走私军火有关的非法活动，并控制了不同地区福利卫生局的局长。另据报告，准军事集团领导人与北桑坦德省的政治人物以及保安部门和总检察长办公室的成员有联系。非法集团与贩运毒品之间的联系越来越明显，尤其反映在准军事集团之间的争端与冲突中。<sup>2</sup> 在此情况下，4 月份失踪的联合自卫军领导人卡洛斯·卡斯塔诺的命运仍然有待确定。

10. 第三个问题是政府分别与革命武装力量——人民军和民族解放军进行的和平谈判缺乏进展。据目前所知，政府与革命武装力量——人民军领导层之间没有直接接触。民族解放军的发言人、政府的代表和同意派出特使充当调解人的墨西哥政府的代表相互进行了接触。联合国秘书长继续进行斡旋，但决定这些不是优先考虑

的事情，联合国对哥伦比亚的支持应重点放在人道主义和人权问题上。其他国家也进行了斡旋。4 月份，欧洲联盟将民族解放军增列在其恐怖主义组织名单上，该名单已经列入革命武装力量——人民军和联合自卫军。

11. 除了这三个新的因素外，政府继续推行其保安政策。这方面的措施包括扩军和增加警力。采取了措施，提高保安部队的调动和反应能力。宪法法院宣布修改《宪法》，允许军人进行逮捕、搜查和窃听，因程序性缺陷而违宪。按照政府的数字，情报网络的情报人员数字大大增加，农民军的人数也是如此。当局继续在没有足够证据的情况下大规模肆意搜查和逮捕。政府高级官员若干次发表公开声明，批评国内和国际非政府人权组织的工作，引起人们注意到政府与这些组织之间的紧张关系，也加剧了这一紧张关系。此外，据披露，一个与卡里公用事业公司有联系的私人公司针对工会活动分子，人权维护者，议员和一名省长采取了大规模的监视和搜集情报行动(巨龙行动)。一名现役高级军官参与了这项情报工作。保安政策框架内的某些行动违反了高级专员以往提出的建议。

12. 国内武装冲突事态发展的特点是，保安部队巩固了其在都市中心的存在，而革命武装力量——人民军和民族解放军则撤离了这些中心。截至 2004 年 4 月，在该国南部执行了所谓的“爱国者计划”，这是哥伦比亚现代史上一次最大的军事行动，所宣称的目标是打击爱国武装力量——人民军的后卫部队，抓捕其主要领导人。面对保安部队日益加强的存在，爱国武装力量——民军撤离到边远地区，改变了国内武装冲突的态势。“爱国者计划”的执行情况表明，保安部队与政府机构在国家与当地各级之间缺乏协调，而且，在这些地区，没有民事国家实体，这也对平民产生了影响。武装部队继续对民族解放军施加压力。准军事集团也继续对民族解放军采取行动。在 2004 年期间，革命武装力量——人民军和民族解放军对平民进行了一系列攻击，包括革命武装力量——人民军屠杀和绑架平民。革命武装力量——人民军和民族解放军偶尔会联合行动。保安部队对准军事集团展开了攻击，但规模要小于对革命武装力量——人民军的攻击。

13. 政府高层官员不断发表声明，否认存在国内武装冲突，只承认存在对哥伦比亚社会的恐怖主义威胁。对一个困扰了该国几十年的问题的这一新的定义可能在一系列领域导致混乱和麻烦，从统计数据到公共政策，包括国际人道主义法的严格

适用都将受影响。另一个危险是，非法武装团伙不认为应对以平民为目标的违反行为负责，因此可能削弱这些国际文书为没有直接参与敌对行动者提供保护的效力。

14. 相对于 2003 年，2004 年期间，在国家一级，一些重要的暴力指标，例如一般凶杀案，屠杀和绑架仍在继续下降。绑架和屠杀在 2001 年开始减少。一般凶杀案下降的趋势始于 2002 年，人们希望这些积极的趋势将能维持下去，因为上述暴力指标，尽管有所下降，但仍然是很高的。关于因暴力而流离失所的人口，据指出，尽管与 2003 年相比，2004 年新增的国内流离失所者的数目略有减少，但 2004 年在哥伦比亚，国内流离失所者的总人数增加了。

15. 政府和国家议程上的其他主题涉及改革司法系统，包括着手执行起诉式制度，公开声明提到了有关倡议，这些倡议的目的是限制公共监护行动的实施(对宪法权利遭受侵犯给予直接救济的法律行动)，以限制对行政部门行为的宪法控制，同时不适当地加强对司法组织和司法行动的影响力。政治辩论还涉及社会议程上的主题，例如税务改革、贫穷、公共卫生、平等享受教育、失业和住宅短缺，以及引渡问题。还开始与美利坚合众国进行自由贸易协定谈判，这就引起了赞同和反对两方面的示威和辩论。

16. 人们在 2004 年关注的一个问题仍然是政府与革命武装力量——人民军应当达成协议，释放被非法武装团伙剥夺了自由的人。天主教会和民间社会组织就政府与革命武装力量——人民军通过谈判达成协议，释放非法武装团伙扣押的人质和其他人员，并释放被关押的游击队员提出了倡议。驻该国的一些外交代表也提供了支持。政府和革命武装力量——人民军提出的任何建议，都还未在这一领域取得进展。

17. 高级专员一再要求，非法武装团伙应停止其“不可接受的绑架做法”，并“立即和无条件地释放他们扣押为人质的所有人”(E/CN.4/2004/13, 第 112 和 113 段)。2004 年 11 月，高级专员驻哥伦比亚办事处就这一问题发表了一份新闻稿，载有 10 点意见。其中，它特别回顾了国际文书在这一领域提供的可能性，同时，鉴于非法武装团伙，包括革命武装力量——人民军遗憾地拒绝无条件释放其非法拘禁的人员，以及革命武装力量——人民军所扣押军事人员和警察的非人道状况，哥伦比亚始终有义务设法在稳妥的安全条件下解救这些人质。12 月，政府赦免了革命武装力量——人民军 23 名因政治罪而遭囚禁的人员。

18. 2004 年下半年，爆发了社会各阶层踊跃参加的一系列和平示威。意义最重大的一次是 9 月份该国西南部的大规模和平进军，至少有 50,000 土著人参加，活动持续了将近一个星期，特别要求尊重他们的人权，承认土著社区的地位和自治权。

19. 2004 年 8 月，众议院选出了新的监察员，任期四年。在选举前，高级专员驻哥伦比亚办事处强调监察员办公室的工作应符合独立和公正的原则，这样，该机构才能继续享有公众的信任，有效履行其积极施加影响和调停的职责。

20. 国际社会继续与哥伦比亚合作，推动有关 2003 年 7 月伦敦会议上所作承诺以及人权委员会第六十届会议主席声明的后续行动。11 月和 12 月，政府和人权组织之间第一次举行了一系列会议，讨论高级专员建议的执行进程。高级专员驻哥伦比亚办事处和签署《伦敦宣言》的各国代表(24 国集团)参加了这些会议。作为该宣言后续进程的一部分，哥伦比亚政府邀请 2005 年 2 月在卡塔赫纳召开一次国际会议。

21. 2004 年 5 月，主管人权事务的联合国副秘书长访问了该国，要求对人权危机作出更有效的反应。土著人民人权和基本自由状况问题特别报告员和促进和保护意见和言论自由权问题特别报告员也访问了该国。

## 二、公共政策和有关建议的执行

22. 高级专员 2004 年的建议被视为哥伦比亚政府对国际社会的承诺，它体现在人权委员会第六十届会议的主席声明中。在该声明中，委员会提醒哥伦比亚政府曾经承诺“要考虑并执行主席声明中载明的建议”。声明还呼吁“有关各方立即执行为 2004 年提出的具体的优先建议”。委员会并欢迎“哥伦比亚政府的承诺，即要本着建设性精神与人权事务高级专员驻哥伦比亚办事处共同开展工作，审查上述各项建议的执行和评估情况”，并认为“定于 2004 年 11 月在波哥大举行的国际支助组会议将是评估这方面进展，以及《伦敦宣言》执行情况的一个适当机会”(声明第 37 段)。

23. 高级专员坚信，如果协调和持续地执行这些建议，人权和国际人道主义法状况将得到显著改善。高级专员还始终强调，执行是一个需要花费时间的进程，必须确保采取切实的后续行动并提供持续的支持。

24. 2004 年期间，该国不同实体作出了努力，这番努力始于副总统办公室，总统授权该办公室发挥主导作用，落实各项建议。采取了或正准备采取措施，以在一系列领域推动执行进程。与 2003 年相比，2004 年下半年，国家实体对这些建议显示了更大的兴趣，与此同时，执行过程的连贯性却并不尽如人意，这是由于问题仍然很严重，同时，鉴于 2004 年提出的建议与 2003 年和此前历年提出的建议相类似，其执行程度也有限。执行进程还表现为进展缓慢，抓不住机会。有一些措施和做法本身就与建议相抵触，对人权和国际人道主义法状况产生了不利影响。

25. 在这一方面，必须强调，非法武装团伙(革命武装力量——人民军、民族解放军、联合自卫军和其他准军事集团)完全无视对它们提出的建议。这些非法团伙继续严重违反国际人道主义法，完全不尊重人权。

26. 2004 年底，国家执行有关建议的整体情况很复杂，有好有坏，这方面还受到人权和国际人道主义法状况的影响(见下文第 3 节)。高级专员希望，政府和国家将在 2005 年尽早开始整体执行有关建议，以取得连贯和可持续的结果。

27. 为履行观察和采取后续行动的任务，推动执行进程，对与高级专员 2004 年 27 项建议有关的公共政策的影响进行了分析。分析涉及这些建议所归入的六个领域：预防和保护；国内武装冲突；法治和有罪无罚；经济和社会政策；促进人权文化；高级专员驻哥伦比亚办事处的咨询服务和技术合作。

#### A. 预防和保护

28. 国家在其领土上加强了军事部署，使之能够在都市中心针对平民人口采取更有效的预防和保护措施。然而，在一些农村地区，保安部队的力量却很薄弱，在一些情况下，加剧了平民人口的脆弱性。要求在军事和治安领域取得成果的压力，管制机构和司法部长办公室的虚弱和不协调，以及军人拥有的不合理的拘留和搜查权，特别影响到弱势人口群体，他们要求加强保护。同时，仅仅出于怀疑，或依据重返社会的非法武装团伙前成员的证词或不正规的情报机构的报告即进行大规模或个别逮捕的做法，也使问题更加严重。

29. 高级专员注意到政府作出了积极努力，通过加强机构间预警委员会继续组织其预防性反应。然而，该制度并没产生预期的影响。2003 年，针对 84 项风险报告(即案件的 38%)发布了 32 项预警。到 2004 年 11 月，只针对 54 项风险报告(即案

件的 24%)发布了 13 项预警。尽管发布了预警,发案数量仍在增加。2003 年,在 84 次预警中,有 37 宗案件确实发生(44%)。到 2004 年 8 月,在 54 次预警中,有 27 宗案件发生(50%)。这就表明机构间预警委员会的预防和保护能力在下降。

30. 一些风险报告没有用于机构间预警委员会的预警,但事件确实发生了,这类报告的数量始终很高。2003 年,在未曾用于预警的 32 项风险报告中,发生了 10 宗案件(31%)。到 2004 年 8 月,在 13 项此类报告中,发生了 6 宗案件(46%)。这一引人注目的比例要求对机构间预警委员会评估风险报告的内部机制进行审查。还应注意的是,尽管正在与准军事集团进行对话,这些集团与 92%的涉及风险报告的案件都有关联。

31. 尽管如上所述,机构间预警委员会仍然是处理复杂局面的重要手段。必须继续加强该机构,为此,应为其制订法律依据,提供开展后续工作和评估的机制,并在国民预算中作出资金保障。还应指出的是,预警系统的有关能力薄弱,因此难以查明妇女面临的风险、威胁和脆弱性,进而对武装冲突背景下针对性别的暴力的特点作出考虑。<sup>3</sup>

32. 在预防领域,按照人权委员会的建议,应当强调指出,由于国际社会的支持,监察员办公室中社区保护者的人数已由 7 名增加到 17 名。然而,在军人占主导地位的地区,以及土著居民、非裔哥伦比亚人和流离失所人口比例很高的地区,总检察长和监察员办公室无力扩大其活动,确保有效存在。

33. 保护领域的国家政策主要是由内政部负责,通过脆弱群体保护方案来推行的。<sup>4</sup> 政府采取了各种措施,经与受影响群体磋商,加强这些方案,尽管还不能解决某些困难,例如与雇用可以信赖的贴身警卫有关的那些问题。工会活动分子、爱国者联盟成员和共产党党员、新闻工作者和前市长越来越多地要求该方案提供保护。非政府组织和目前在职的政府官员(市长、市政官员、议员和市监察员)的要求则减少了。高级专员驻哥伦比亚办事处收到了有关信息,表明风险管理和评估委员会内部可能有人泄露机密情报,同时,与该方案有关联的凶杀受害者的人数也增加了。

34. 减少风险因素的行动仍然存在薄弱之处。建议不仅要召开区域会议,促进地方当局、保安部队、人权维护者、工会活动分子和其他社会团体领导人之间的理解和接触,还要向公务员发出明确指示,使他们在纪律制裁的威胁下,不敢去质疑

这些公民的合法工作。如此一来，他们将遵守哥伦比亚对人权委员会的承诺，以确保“不发表任何一般性的公开声明，危及参与维护人权活动或工会活动的人的权利”，并“与民间社会开展更深入的对话”（主席声明第 32 段）。

35. 政府对其促进流离失所者重返家园的政策给予了优先考虑。然而，政府并没有始终适当考虑，重返应当是自愿的，并应在有尊严的和安全的条件下进行。政府也没有充分考虑 2004 年 1 月 22 日的 T 025 号判决，宪法法院在该判决中，命令国家因暴力而流离失所者综合援助委员会至迟在同一年 3 月 31 日，查明列入综合名册的流离失所人口的状况，并采取必要措施，落实用于向他们提供援助的资源。该判决还命令在公布决定的一年之内，各国家实体应作出一切必要努力，确保达到他们援助流离失所人口的预算指标。2004 年 9 月，宪法法院敦促政府提交执行上述决定的行动方案和时间表。12 月，宪法法院再次要求政府提供信息，说明为执行该判决而采取的行动。

36. 联合国系统加入了政府和民间社会组织的努力，以制定 2005 年人道主义行动计划，力争以一种符合国际规范和原则的方式，更有效地共同处理哥伦比亚的人道主义危机。在本报告定稿时，仍未就该计划达成协议。

37. 在 2004 年最后几个月，据报告，土著领导人的遇害数目增加了，其中一些人是美洲人权委员会确定的预防性措施的主体，尤其是在 **Embera Chami** 和 **Kankuama** 社区，美洲人权法院已经命令采取临时措施。在后一个例子中，绑架 **Embera Katios** 的案件数目也在增加。2003 年以来，政府始终未能就拟议的土著人民行动计划达成一致意见。

38. 一个积极步骤是风险管理和评估委员会专门就土著人民状况举行了会议。还应针对其他群体，例如遭受威胁和攻击的妇女群体在预防和保护领域的特殊需要作出反应。

39. 高级专员注意到，国防部遵照总统的命令，已下令从档案中销毁影响人权维护者、工会活动分子和其他社会团体领导人隐私和安全的情报。高级专员还注意到，总检察长的一封信函表明，他希望通过与国防部共同商定的程序来完成这项任务。在本报告定稿时，还没看到总检察长办公室这项重要工作的程序。高级专员认为，推动澄清军事情报档案内容的工作取得进展是一项当务之急，如此才能防止继

续滥用这类报告，驻哥伦比亚代表处收到的控诉和信息都表明了这类滥用行为，有关方面仅仅依据这些报告，就进行大规模逮捕和搜查，支持起诉。

40. 对在其谈话、行为或不行为中贬低或危及人权维护者工作的公务员，高级专员不清楚在履行对其实施纪律制裁的义务方面是否取得了任何进展。

41. 关于开展独立研究，以推动对保安部队成员进行全面的人权和国际人道主义法培训的建议，高级专员办事处 2003 年建议的一个合作项目仍未得到国防部的积极回应。

## B. 国内武装冲突

42. 非法武装团伙革命武装力量——人民军、民族解放军和联合自卫军的指挥员和战斗员仍然拒不履行其国际人道主义法领域的义务。所有这些团伙仍在继续严重违反国际人道主义法，伤害平民，包括恐怖主义行为、杀害受保护者，劫持人质、使用杀伤人员地雷、招募儿童、性暴力和实施食品或药品封锁(见附件三)。鉴于这一时期所发生事件的严重性，高级专员办事处几度建议政府考虑是否可能撤消其对《罗马规约》的保留，因为这一保留限制了国际刑事法院对长达 7 年的时间内在哥伦比亚犯下的战争罪的审判权。

43. 高级专员欢迎政府采取措施，按照《关于禁止使用、储存、生产和转让杀伤人员地雷及销毁此种地雷的公约》(渥太华公约)，销毁所储存的杀伤人员地雷。这一努力必须继续下去，以预防和遏制地雷继续给平民，尤其是国内流离失所者和重返家园者带来危险。

44. 在军事行动方面，为恢复对领土的控制，打击非法武装团伙(包括“爱国者计划”)，针对有时未能遵守在平民的限制、区分、比例性和保护问题上的人道主义原则。这有时会妨碍对受影响人口的人道主义救援。平民指控说，他们受到了所谓的“农民军”的虐待。在尊重人权问题上缺乏适当培训，可能是出现这些虐待和侵犯行为的原因之一。

45. 政府关于各项军事行动的说法含混不清，指挥官草率地将责任推给平民或武装部队成员，将构成严重侵犯人权或战争罪的行为交由军事刑事司法系统来审理(在于 Guaitarilla Cajamarca and Arauca 事件有关的审讯中)，仍然是国家在尊重和保障人权和遵守国际人道主义法方面面临的挑战。除此之外，还存在严重的内部腐败，

在实施“爱国者计划”时滥杀滥伤，并有消息称，保安部队成员与准军事集团之间仍有联系。

46. 政府继续推动遣散非法武装团伙成员。为此，政府在4月份提出了关于“正义与真相”的新版法律框架，该框架最初称为“替代制裁”，是2003年提出的，当时，并没有与高级专员办事处磋商，或请它发表评论意见。在起草第二稿时，政府考虑了高级专员办事处的一些意见，显示了某种进步。

47. 然而，仍须对该文件作进一步修订，使之符合国际规范。另一方面，在本报告定稿时，政府尚未向议会提交任何议案，推动在尊重受害者了解真相、伸张正义和获得赔偿的权利的基础上，制订谈判和遣散进程的法律框架。不过，一些议会议员在立法会议结束前提出了一系列草案和法案。由一个议员小组制订的一份法案应当受到重视，因为它符合这一领域的国际规范。高级专员希望，将尽快制订一个尊重受害人了解真相、伸张正义和获得赔偿的权利的法律框架。这一框架应符合国际准则，从而积极推动谈判进程。

### C. 法治和有罪无罚

48. 2004年，提出了各种法案草案，其中如果能考虑到国际人权和国际人道主义法准则就更妥当了。尽管一些法案草案已获得通过，但一些草案的目的是强调军事权力，限制或减少作为法治一个重要因素的对公民的司法保障。

49. 8月30日，宪法法院宣布2003年第2号法令违宪，该法令违反国际条约，赋予军事人员以司法警察的权力，允许他们在没有法庭命令的情况下，拘留、查抄、搜查和窃听。因此，这份意在制约这些权力的成文法形式的法案草案失去了法律依据。

50. 哥伦比亚批准了《打击跨国有组织犯罪公约》(马勒莫公约)及其《关于预防、禁止和惩治贩运人口特别是妇女和儿童行为的补充议定书》，以及《消除对残疾人一切形式歧视的美洲公约》。议会批准了《美洲反恐怖主义公约》，并就批准《消除对妇女一切形式歧视公约的附加议定书》的一项法案草案进行了辩论。向议会提交了一份议案，以按照国际规范修订贩运人口的犯罪分类。

51. 议会批准了2004年第906号法，该法颁布了新的《刑事诉讼法》，并将于2005年1月逐步生效。《刑事诉讼法》在宪法法院受到质疑，因为它违反了获

得平等、正当程序和司法保障的权利。2004 年第 2636 号令还修订了《感化和监狱法》，因为该法不适当地赋予了国家感化和监狱总署署长、区域主管和监狱典狱长司法警察的权力，允许他们调查囚犯所犯的罪行。

52. 按照儿童权利委员会的建议修订《未成年人法》的工作没有出现明显进展。《美洲强迫失踪人士公约》和劳工组织 1999 年《最有害的童工形式公约》(第 182 号公约)尚未得到批准。没有采取步骤，承认条约机构的准司法管辖权。

53. 高级专员意识到，有某些建议，意在削弱宪法法院权力。虽然这些建议没有实行，但他希望强调，在法治国家，保证控制职能的行使是至关重要的，只有这样，才能加强政府自身的安全政策并赋予其合法性。高级专员还希望强调宪法法院工作的重要性，它是国家面对非法武装团伙以一种与法治国家相适应的方式来捍卫自己的手段。

54. 政府采取了某些行动，促进将性别观点纳入政治、经济、社会和文化领域。尤其是，2004 年 5 月，两性问题观察站开始调查、纪录、整理、分析和传播哥伦比亚的妇女和两性平等状况。在其他公共政策中，例如关于家庭暴力、性暴力、关注流离失所人口以及重返社会和遣散方案的公共政策中，仍然存在差距和薄弱环节。

55. 关于消除有罪无罚的政策，总统办公室开展的活动及其消除有罪无罚方案，以及促进调查侵犯人权和违反国际人道主义法行为特别委员会的工作，导致各类案件的调查取得了进展，主要是经由司法程序进行逮捕和起诉。人们希望这将很快导致进入最终的审讯程序。

56. 11 月，最高法院刑事厅作出了一项判决，宣布卡洛斯·卡斯塔诺(联合自卫军失踪领导人)无罪，他被指控主使在 1994 年杀害参议员 Manuel Cepeda。这一决定凸显了该国的有罪无罚问题。在另一宗案件中，一名军人被判处徒刑，他的罪名是蓄意谋杀当时的工会活动分子和现在的议会议员 Wilson Borja，后者被指称“逃狱”。

57. 值得注意的是司法部长办公室设立了四个新的区域人权办公室，同时作为对高级专员建议的后续行动，设立了人权和国际人道主义法机构的中央分机构，负责协助调查公务员与非法武装团伙之间的联系。<sup>5</sup> 整个 2004 年，明显需要在司法部长办公室尽快建立职业发展制度，以加强对检察官独立性的保障。2004 年期间，由于司法部长的斟酌处置决定，数名检察官失去了其职位，没有试用任何纪律程序。

在司法部长办公室就高级专员建议的后续行动签署的谅解备忘录的框架内，该办公室就制订和执行检察官的职业发展制度提出了看法和建议。高级专员认为，这些看法和建议有助于应付与司法独立性和消除有罪无罚有关的挑战。

58. 高级专员注意到，法庭程序削弱了，这是由于经常以不正规方式利用重返入社会的非法武装团伙的遣散人员或前成员的证词，或军事情报档案。到目前为止，高级专员办事处尚未看到国家采取了哪些有效措施，制裁与这类程序性混乱有关联的公务员。在这类审讯中，人权组织和工会成员受到起诉。

59. 监狱的状况仍然很严重。总检察长就该国监狱中侵犯人权的危险提出了警告，这方面的问题源于监狱过度拥挤、恶劣的卫生条件和单独囚禁。为改变这种状况，内政和司法部和国家感化和监狱总署需要继续采取措施，制订和执行一项更符合国际规范的监狱和监禁政策。

60. 高级专员不清楚国防部是否采取了任何行动，作为严重侵犯人权案件中的预防措施，将一些人解职。然而，她知道对保安部队一些成员的腐败、组织和伤害案使用了此类措施，甚至将他们开除。

61. 高级专员注意到，需要加强政府打击准军事活动，尤其是公务员与准军事集团之间联系的政策。这些集团在省和地方各级行政部门，以及社会层面上的渗透和影响非常明显。国家政策尚无力在国家或地区各级解决这一问题。这种情况继续威胁到对法治的遵守。

62. 关于遣散准军事人员，尚未澄清每一个人的法律状态，包括那些可能犯有构成战争罪或反人类罪等严重罪行的人。对被遣散人员卷入贩毒活动如何处置，情况也不明朗。缺乏明朗性可能会导致有罪无罚。

63. 一项意义重大的任务仍然是如何在各地、行政部门和机构制止、打击和消除准军事活动的巨大影响。这项任务在一定程度上意味着采取更为具体和适宜的步骤，切断公务员与准军事集团之间的联系。国家官员还必须避免发表谈话，表示对准军事活动的赞赏或理解。

#### D. 经济和社会政策

64. 政府采取的经济和社会政策并没有导致在缩小不平等差距、缓解极端贫困、降低文盲和失业率和增加保健和住房机会方面取得必要进展。官方数字显示可

用于初级教育的场所增加了。尽管如此，仍然有 3 万多名小学学龄男女儿童目前不能上学。在免费开展小学教育方面没有取得进展。

65. 贫困线指标表明，人口的 64% 生活在贫困状态中。按照总审计长办公室的数字，31% 的哥伦比亚人是贫困的。<sup>6</sup> 除了高贫困率外，贫富差距继续加大。按照联合国开发计划署(开发计划署)的标准，最贫穷的 20% 的人口仅占国内生产总值的 2.7%，而最富裕的 20% 的人口则占了国内生产总值的将近 62%。<sup>7</sup> 就基尼系数而言，世界银行将哥伦比亚列为美洲的第三个最不平等国家。<sup>8</sup>

66. 2004 年，年度增长率为大约 3.6%，但这似乎并没有增加和稳定在正式部门的就业。失业和就业不足仍然很严重。<sup>9</sup> 这种状况也对享有保健、社会福利和住房的权利产生了影响，因为一般的保健制度、养恤金制度和获取银行信贷的条件都为在经济的非正式部门中就业的家庭设置了障碍。2004 年，养恤金制度的问题表现得更为明显。

67. 保健制度的涵盖率仍然很低。<sup>10</sup> 将近 40% 的人口仍然被排除在外，在这一年中，特别是由于资源和服务短缺，公立医院的状况恶化了。

68. 住房建设扩大了。然而，主要是社会最高阶层从中受益。<sup>11</sup>

69. 应当注意到，已将性别观点纳入国家统计署的统计分析中。人们希望，统计署新的领导层计划的变革将不会影响这一旨在促进评估公共政策差别性影响的重要倡议。上一任领导层曾用几年的时间，为即将进行的普查制定方法、指标和社会经济变数，人们也希望，2005 年普查的这些准备工作将对该机构有所帮助。需要进行一次普查，以妥善收集和提供有关数据，用于制定协调的社会和经济政策，以推动在就业、保健、教育和住房权等经济和社会权利方面取得进展。

## E. 促进人权文化

70. 政府开展了活动，以与行政部门各机构达成共识，制定全国的人权行动计划。高级专员相信，将扩大其他国家机构的参与程度，确保民间社会组织的参与，进而在所有各方之间达成协商一致。高级专员还相信，公共政策将纳入有关人权和国际人道主义法的国际建议，同时具有全面的性别观点。只有具备这一观点，才能消除目前对妇女的歧视和文化上的陈规陋习。必须指出，2004 年 12 月，副总统办

公室和高级专员驻哥伦比亚办事处签署了一项协议，涉及在这个问题上的技术合作和咨询服务。

71. 应当承认制定全国人权教育计划工作的重要性，它是由监察员办公室和教育部发起，并得到了行政部门其他部分和民间社会代表的支持。高级专员相信，迅速完成和传播这一计划将有助于推动必要调整，以尽快着手参与性执行。

#### F. 高级专员驻哥伦比亚办事处提供的咨询服务和技术合作

72. 高级专员通过其办事处的长期存在，继续支持政府和国家制定和执行有关政策和方案，以改善人道主义和人权状况。其办事处向国家当局提供了咨询服务和技术合作，尤其是促进了国际建议的执行。高级专员希望指出，哥伦比亚政府和国家机构应在更大程度上利用该办事处所提供的合作机会。

### 三、人权和国际人道主义法状况

#### A. 基本定义和关于统计资料的意见<sup>12</sup>

73. 影响国际人权条约或一般国际法规范确定的权利的作为和不作为如果由公务员完成，或者在当局的默许下完成，则构成侵犯这些权利的行为。如果未履行保障这些权利的职责，而这种不履行不是故意的，而且没有国家代表参与策划、实施或掩盖侵权行为，则存在不作为的责任。如果国家代表涉及参与行动的策划、实施或掩盖或为犯罪人提供保护，则存在作为的责任。许多侵权行为由于其严重性、规模或系统性而构成反人类罪，因而应受国际刑事法院管辖。

74. 就哥伦比亚武装冲突的背景而言，违反国际人道主义法的行为都属于违反1949年8月12日《日内瓦四公约》共同的第三条及其《第二号附加议定书》、国际刑法和习惯法的作为或不作为行为。参加战斗行动的所有各方，无论是国家还是非法武装团体(游击队和准军事部队)，都必须遵守国际人道主义法规定的义务。本报告指出的许多违法行为，无论是作为计划或政策的一部分实施的，还是作为大规模犯罪行为的一部分实施的，都构成了战争罪，其中一些违法行为还构成反人类罪。

75. 高级专员依据以下三个来源开展工作和提出意见、评价和建议：对官方数据和统计资料的深入研究；在该国各地进行的直接、系统和分析性的观察；以及根据国际人权文书和国际人道主义法规定的明确定义，对各种投诉的系统处理。

76. 在研究人权和国际人道主义法的状况时，应该指出的是，哥伦比亚没有正式的统计系统，无法按国际文书的要求适当地统计侵权和违法行为。

77. 关于公民权利和政治权利以及经济、社会和文化权利等人权，统计资料很少包括相关的指标。一般来说，既没有使用符合国际人权规范参数，也没有采用处理信息的统一标准。

78. 关于国际人道主义法，官方统计资料几乎只提及非法武装团体成员的行为。此外，这些统计资料并未充分涉及违反国际人道主义法的某些行为，如对平民的酷刑、攻击和威胁、滥杀滥伤、对平民财产和医疗救护队的攻击、性暴力和招募未成年人等行为。

79. 关于侵犯人权和违反国际人道主义法行为的统计资料暴露出单薄、遗漏、缺乏准确性以及自相矛盾的种种弱点。

80. 根据以上情况可以断定，重要的是要避免不经过适当分析也不考虑来龙去脉就作出统计判断，这样做只会导致统计谬误百出，或得出轻率或不准确的结论。为了从人权的角度对国家安全政策进行评论或评价，必须把正确的统计建立在可靠和准确的概念和数据的基础之上。

81. 提出上述意见的目的是鼓励建立正式的统计系统，适当反映人权和人道主义法状况。高级专员就此特别提出了一项新的建议。<sup>13</sup>

## B. 人权状况 <sup>14</sup>

82. 无论在公民权利和政治权利方面，还是在文化、经济和社会权利方面，人权状况仍然十分严重。

83. 尽管努力加强对人权的尊重，但 2004 年还是收到了许多报告，指称生命权、人格完整权、自由权和人身安全权、正当程序、对隐私的尊重，以及迁徙、居留、见解和言论等各项基本自由受到侵犯。本报告附件二列举了反映这一状况的各种案件。

84. 驻哥伦比亚办事处继续收到公务员尤其是保安部队成员的直接行为构成侵犯人权的指控。<sup>15</sup> 其他国家机关如司法部长办公室由于与这些行动有联系或直接参加了行动的实施也负有责任。好几个案件涉及脆弱群体，其中包括人权维护者、工会活动分子、土著社区和非裔哥伦比亚人社区、记者、被剥夺自由的人、妇女、社会活动领导人以及由于性取向而遭受虐待的受害人。在一些案件中，当局的不作为或与非法武装团伙尤其是准军事部队共谋引起了国家责任。

85. 与 2003 年相比，关于法外处决和侵犯正当程序的指控有所增加。所报告的大量指控继续涉及任意拘留，非法搜查，酷刑或残忍、不人道或有辱人格的待遇以及强迫失踪。此外，还出现了在镇压抗议行动的过程中过度使用武力和其他滥用权力的行为，以及侵犯见解和言论自由的行为。还有报告指控通过性暴力活动侵害人格完整和尊严，其中许多报告涉及保安部队成员。

86. 在 4 月发生的涉及卡哈马卡(托利马)五位农民死亡的案件中，当局的反应出奇地迅速，起初试图解释死亡是在战斗中或由于军事错误而发生的。在 3 月发生的另一起有争议的案件中，武装部队士兵杀死了 **Guaitarilla**(纳里尼奥)七名警察和四名平民。还要提请注意的是，在一些法外处决的案件中，军队最初对媒体所作的描述是，死者是在战斗中被打死的游击队员或准军事部队成员。**司法部长办公室**针对 **Revez Pizarro** 营的成员于八月份在阿劳卡处决三名工会活动分子一事展开调查，原因是被起诉的军人和其他政府当局所说的战斗根本就没有发生过，这三名工会活动分子是遭受法外处决。

87. 办事处不断收到报告，而且也在实地作了直接观察，情况表明，准军事集团与保安部队成员和政府雇员即公务员之间仍存在联系。<sup>16</sup> 虽然在库库塔等城市对某些案件提出了起诉，但就大多数案件而言，并没有报告对这类行为进行了适当制裁。在某些案件中，军事或民事当局对指控不经适当的调查就否认曾经发生过任何事件。

88. 司法受到的影响主要涉及司法独立和公正、尊重正当程序和司法保障以及无罪推定等方面。在该国各地，涉及获得公正审判的问题持续存在，侵犯人权和违反国际人道主义法的案件中有罪无罚的比率也居高不下。

89. 办事处还收到侵犯司法独立的报告，其中特别涉及到保安机构属下的检察人员，这种情况侵害了他们的自主权，尤其在办理涉及这些机构的成员的案件以及

他们同处一栋大楼时。这种情况还限制了受害人和证人在免于恐惧或不面临额外危险的情况下作证的能力。其他有关司法独立的指控提出了若干检察官被解职的问题，其中一些人还被迫接受了测谎仪测试。没有进行任何调查确定他们的所作所为是否不合法，虽然这样的调查本可以保证解职决定与他们一直从事的调查没有关联。

90. 办事处还得知，军队刑事司法系统对侵犯人权和违反国际人道主义法的案件尤其是杀害受保护人员的案件进行了不适当的调查。体制机构采取的行动不能协调一致：司法部长办公室有时声称其有管辖权，有时又认为其没有管辖权。此外，在显然涉及侵犯人权或违反国际人道主义法的类似情形中，司法机构高级委员会对管辖权冲突的解决有时有利于普通司法系统，有时又不利于普通司法系统。

91. 然而，值得一提的是，在司法部长办公室对在阿劳卡处决工会活动分子案件展开的调查方面，以及司法机构高级委员会推翻原来的决定转而决定赋予普通司法系统对卡哈马卡案件的管辖权方面，已经取得了一些进展。应当指出，11月，总检察长办公室要求军队刑事司法系统撤销其终结对卷入 **Guaitarilla** 案的 12 名军人进行调查的决定。

92. 总检察长办公室向警方和军队(保安部队分支机构)移交了保安部队成员犯下的各种杀人、强迫失踪、酷刑和任意逮捕指控，以便进行违纪调查。还要提请注意的是，即使在司法体系已经对认为应当承担责任的公职人员给予刑事制裁的案件中，某些纪律惩戒程序也已中止。另一方面，总检察长办公室为 **Bojaya** 案等某些案件取得进展或圆满结案所采取的一些行动值得注意。

93. 司法部长办公室工作人员继续主导或支持依据并不确实的调查和证据、军事情报报告、匿名指控或可疑证词进行大规模逮捕以及个别搜捕。据指称，经常会发生发放空白逮捕证或在起诉后签发逮捕证的现象，而检察官却容忍或者亲自参与了这种行为。许多法庭在审判时经常采用遣散人员或重返社会人员的证词。有报告说一些遣散人员为了金钱或法律上的好处提供伪证。这其中的好几次审判都涉及到人权组织或工会成员。在这方面有必要提到 8 月逮捕一重返社会的原非法团体成员的事件，他曾经在一些案件的审判期间出庭作证，但后来被告发收受钱财提供伪证。办事处曾接到报告，称存在军事情报档案，指控人权组织与游击团体相勾结的报告。<sup>17</sup>

94. 保安部队尤其是军队士兵在未经法院授权的情况下依据上述不可靠的证据进行个别逮捕或大规模搜捕，这种做法继续主要影响游击队出没或控制地区的平民的生活。应该提请注意的是，大多数的逮捕都是在司法系统之外进行的。根据国家警察提供的资料，截止到 2004 年 10 月 10 日进行的 259,400 起逮捕中，仅有 17% 是根据法院的命令进行的，而在余下的 82% 起逮捕中，绝大多数(约 205,300 起)显然是现行逮捕。在各种国家安全机构进行的逮捕中，约有 8% 是持逮捕证逮捕的，2% 属于行政逮捕，其余的显然都属于现行逮捕。应该提请注意的是对现行这一概念的适用是不适当的，因为据报告，50% 以上的逮捕都是因为怀疑属于非法武装团伙。<sup>18</sup>

95. 总检察长和监察员在各种场合提请注意在与大规模逮捕特别相关的诉讼期间发生的过度行为。<sup>19</sup> 以可疑的证据、不合法的程序和贿赂为特征的大规模搜捕的后果不仅影响到无罪推定，而且还由于向媒体和公众披露被逮捕人的姓名有时甚至是照片，造成了名誉损害。这样会给他们带来危险，甚至可能导致死亡事件的发生，如 Alfredo Correa de Andreis 教授经司法部长办公室释放后一个半月就成为一起杀人案的受害者。

96. 有指控称在一些案件中公职人员直接参与收买证人和篡改证据，从而影响了法院的公信力。在关于 Guaitarilla 案的调查报告中，总检察长办公室指出，所有参与这一事件的机构都有不正当行为。还有好几项指控称，武装部队篡改证据，破坏犯罪现场，在程序和行动的过程中还实施了其他不正当行为。高级专员尚不清楚采取了何种措施，处理应对这些不正当行为负责的司法机关的工作人员或保安部队成员。据报告，在某些地区，还有人指控检察官未履行按照司法程序移动尸体的义务，以及保安部队成员妨碍案件调查。

97. 此外，应当注意，一些指控对妇女和少女实行性暴力的案件没有经过适当的调查。相反，受害者往往受到指责，有时甚至对她们展开调查。在一起指控遭受游击队员性暴力的妇女犯有反叛罪的案件中，行政保安部和司法部长办公室雇员被控直接参与了程序不正当行为，法院判决撤销对她的拘留就证明了这一点。没有任何记录表明采取了有效措施，惩治卷入这些不正当活动的公职人员或预防其再度发生。对指控通常都不展开调查。在性暴力指控的调查方面也没有取得任何进展。<sup>20</sup>

98. 该国监狱的人权状况是一个持续存在危机的问题。该国目前囚犯人数的增加超过了以往任何时期。从全国范围来看，监狱的拥挤状况超出了其收容能力的

38%；在里奥阿查、巴耶杜帕尔、阿劳卡、布卡拉曼加、麦德林、卡利和伊塔圭监狱，49,600 个位置挤进了 68,000 名囚犯。卡利和波帕扬女子监狱也出现了类似的情况。极度拥挤的条件等同于酷刑和不人道或有辱人格的待遇。国家感化和监狱总署有大量纪律调查记录在案，其中包括职务犯罪以及构成酷刑、不人道或有辱人格待遇的犯罪的情况。在移交总检察长办公室管辖之后，该机构自己对许多报告进行了调查。

99. 大多数侵犯妇女和女童权利的行为仍然没有受到惩罚，原因是没有进行正式调查、由于耻辱感而投诉数量很少、司法系统缺乏公信力以及在发生死亡或性暴力的情况下报案率低。法庭官员缺乏性别问题培训方案的培训，以及司法系统存在的性别歧视做法，尤其在刑罚方面的做法，也影响了诉诸法庭以及这种犯罪受到处理的方式。2004 年通过的第 882 号法律规定性虐待行为是不属刑事犯罪，理由是性虐待行为属身体虐待，已经因此受到了处罚。该法的通过不符合关于保护妇女和儿童不受到暴力侵害的国际规范，同时也低估了性暴力行为作为一种具体的严重问题的性质，忽视了这种做法存在的系统性，并使这种性侵犯行为引不起人们的注意，从而助长有罪无罚的现象。

100. 妇女尤其是女性户主、农村妇女、土著妇女、非裔哥伦比亚妇女和被迫流离失所妇女的权利继续受性别歧视以及各种形式的性暴力的影响。保护诉讼(宪法权利受到侵害时寻求即时救济的法律诉讼)在某些情况下可以促进保护妇女和女童的权利，尤其是保障她们的基本权利。

101. 社会和经济情况表明，贫困和不平等程度依然很高。就业权、住房权、健康权和受教育权的可利用性、机会、连续性和质量远未达到令人满意的程度。失业和就业不足的数字居高不下。<sup>21</sup> 医院和养恤金的情况进一步恶化，保健制度的覆盖率仍然很低。<sup>22</sup> 关于住房权，虽然可以看到住宅建设出现了回升，但主要有利于第四、五和六社会阶层，而对第一、二和三社会阶层来说，依然存在房屋所有权的数量不足以及获得补贴的机会有限的问题。

102. 关于健康权，一些人利用保护诉讼获得这一基本服务的现象早已众所周知。<sup>23</sup> 这种诉讼主要由某一类别的保险所覆盖的人们提起。

103. 关于受教育权，应该承认，国家为提高覆盖面和质量已经作出了各种努力。<sup>24</sup> 尽管取得了这样的进展，但都还没有实现高级专员关于普及免费初等教育的建议，以及旨在缩小不平等差距的建议。<sup>25</sup>

### C. 国际人道主义法的总体情况<sup>26</sup>

104. 哥伦比亚办事处继续收到关于非法武装团体尤其是哥伦比亚革命武装力量——人民军和准军事集团严重违法情况的报告，尽管许多准军事集团已经宣布停火。这些非法武装团体始终以平民作为主要攻击对象，滥杀滥伤、凶杀、屠杀、劫持人质、实施恐怖主义、<sup>27</sup> 强迫流离失所、使用杀伤人员地雷、招募未成年人以及对妇女和女童实行性奴役和暴力。平民尤其是少数民族群体受到食品、药品和人员运输限制做法的影响，这些做法还包括采取行动，限制或隔离处于围困中的社区。针对教师、市长和前任市长的违法行为也在增加。杀伤人员地雷导致的死亡人数上升了，大多发生在农村地区。

105. 如果利用现有的官方统计数字，不太容易适当确定涉及在国内武装冲突期间受保护人员被杀害的指标。例如，副总统办公室观察站记载2004年前10个月发生了42起屠杀，有234名受害者，安蒂奥基亚、山谷、卡萨纳雷和美塔等省受影响最大。受劫持人质影响的仍然是平民。副总统办公室报告，2004年前10个月总共有1,159名人质被劫持，其中有46%被劫持者释放，26%仍然被关押，20%获得保安部队解救。在非法武装团体中，革命武装力量——人民军仍然是这些罪行的最大责任者。<sup>28</sup> 应该注意的是，尽管承诺停止敌对行动并宣布复员，准军事集团实施绑架的比例有增无减，从占总数的8%上升到11%，高于民族解放军的比例(9%)，但低于革命武装力量——人民军所占的比例(21%)。

106. 继续有报告说，在该国不同地区，非法武装团伙犯下了大量有辱人格和其他形式猥亵妇女和少女的犯罪行为，伴随这些行为的还有劫持人质、酷刑、强迫流离失所、强迫裸体和其他形式的身体、性和心理侵犯。性奴役继续影响妇女和少女甚至是一些12岁少女的权利。性奴役现象一般伴有强迫节育和强迫流产。这种情况还意味着性传播疾病或艾滋病高发的危险。据报告还发生过这样的案件：库库塔省的妇女在被迫与准军事部队成员发生性关系之后被游击队宣布为“军事目标”。

107. 有记载表明，一些违法行为是保安部队成员犯下的，他们不尊重平民享

有的豁免权，大肆杀害受保护人员、滥杀滥伤、强迫流离失所、阻碍向社区提供食品和药品以及对妇女和少女实施性侵犯行为。

#### D. 游击队 <sup>29</sup>

108. 这些非法武装团伙继续违反国际人道主义法及其有限、区别、适度和对平民加以保护的原则。革命武装力量——人民军继续实施严重违法行为，如暗杀受保护人员，实施酷刑和劫持人质，涉及许多平民，包括妇女、返回者、男童和女童以及族裔群体。据报告，两次在Catatumbo(北桑坦德)，一次在圣卡洛斯(安蒂奥基亚)，种植古柯的人遭到屠杀。在其他案件中，受害人属于国内流离失所者，他们刚返回原籍所在地，据称是经过游击队“批准”的，这些案件都发生在安蒂奥基亚省。游击队还应该对一些杀人事件和尤其针对公职人员、教师和土著人民的死亡威胁负责。这其中包括8月杀害里维拉市长(乌伊拉)；4月杀害塔姆市(阿劳卡)的一名教师；以及11月在Sierra Nevada de Santa Marta杀害一名70岁部落长老。

109. 除未能无条件释放所劫持的人质和尊重关于已投降或退出战斗人员的国际规范外，革命武装力量——人民军以及(在较小范围内)民族解放军继续为经济勒索和政治施压的目的劫持人质。已经收到的报告涉及酷刑和杀害人质，如1月在科林图市(考卡省)发生的五个在发现时已死亡的人质案件中，就有遭受酷刑的迹象。8月，一个医疗队参加完一天免疫接种后，有五名成员在阿劳卡省被劫持为人质。招募未成年人的做法仍在继续。革命武装力量——人民军还被指控攻击平民和滥杀滥伤，如在Anza市(安蒂奥基亚)，哥伦比亚革命武装力量——人民军向平民开枪射击，并向公共建筑投掷手榴弹，杀死两人，另有七人受伤。据记载还发生了恐怖主义行为，如5月在塔姆市(阿劳卡)发生汽车炸弹爆炸事件，四名平民死亡，其中包括一个男孩，25人受伤，同时在Apartadó(安蒂奥基亚)还发生了攻击迪斯科舞厅的事件，结果有六名平民死亡，其中包括一个4岁的女孩，22人受伤。革命武装力量——人民军还应对发生在安蒂奥基亚、卡尔达斯、乔科和纳里尼奥各省的强迫流离失所案件负责。

110. 通过设置路障或河流检查站和全面的死亡威胁，限制人员和货物自由流动的做法仍在继续，如4月对Carare河(桑坦德)实行封锁，给农村地区的居民带来了极大的影响。还有报告说有人使用违禁武器并攻击平民财产，如9月在圣米格尔(普图马约)使用高压气瓶，造成两名受保护人员受伤和平民财产的大面积损害。

111. 革命武装力量——人民军和民族解放军继续频繁使用杀伤人员地雷。副总统办公室地雷观察站认为2004年发生的事件有61%应由哥伦比亚革命武装力量——人民军负责，10%由民族解放军负责。受害者当中有男童和女童，尤其是来自土著社区的男童和女童，如4月和6月在科尔多瓦省就有Embera Katío少数民族的儿童受伤。据报告，革命武装力量——人民军还必须负责的事件有：招募女童、强迫使用节育手段和强迫进行大规模的艾滋病毒检测，以及对妇女和女童进行性奴役。他们还被指控对与保安部队或准军事集团成员发生关系的妇女进行非法攻击、杀害和死亡威胁。在这种情况下，10月在Colosó(苏克雷)有四名妇女遇害，其中一人还怀有身孕。

#### E. 准军事部队 <sup>30</sup>

112. 准军事武装继续实施违法行为，同时破坏停火。<sup>31</sup> 已经记录的严重违反行为包括屠杀、凶杀、劫持人质和强迫流离失所。应提请注意的是，违法行为的数量巨大、极为严重而且存在有罪无罚的现象，同时要考虑到这是在已经宣布停止敌对行动的情况下发生的。

113. 应由准军事武装负责的屠杀据报告发生在安蒂奥基亚、阿劳卡、波哥大、科尔多瓦、瓜希拉、北桑坦德、普图马约、托利马和里萨拉尔达。其中一些屠杀影响到土著社区，另外一些屠杀还伴随着劫持人质；强迫流离失所；强迫失踪；残忍的杀人行为，如一个人在里萨拉尔达被用研钵殴打致死；以及对妇女和女童实施性侵犯。记录还表明存在个别和集体的杀人事件，以及威胁事件，据报告，对这些事件负责的应该是军队成员或政府的其他雇员以及准军事集团，因为这些事件的发生要么是出于当局的不作为，要么是出于他们采取的联合或协调行动，而在其中被准军事武装杀害的人后来据军队报告都是在战斗中被杀死的。

114. 强迫失踪继续成为准军事集团采用的一项策略。各种失踪似乎都与准军事集团在波哥大、麦德林和辛塞莱霍等城市的贫穷社区实施的强迫招募有关，其中包括招募未成年人。由于停火遭到破坏，应对Puerto Libertador(科尔多瓦)发生的两个人失踪的案件负责的是哥伦比亚联合自卫军北方集团，该集团在一次行动中劫持了10名人质，其中包括一名前市政委会委员，这些人当中后来有八人遇害。

115. 目前正在参加谈判进程的哥伦比亚联合自卫军Centauros集团与卡萨纳雷

农民自卫队之间的暴力冲突导致数以百计的人被迫流离失所，<sup>32</sup> 无数人被杀害和强迫失踪。政府关于两个团体立即停止敌对行动和复员的呼吁并未取得任何效果。

116. 另外还收到报告说，准军事集团应该对虐待妇女和儿童的行为负责，尤其是他们实施的强奸、威胁、酷刑、有选择地杀人、强制实行行为准则和性奴役的行为。

#### F. 保安部队<sup>33</sup>

117. 哥伦比亚办事处继续收到关于违反国际人道主义法的指控，如应由保安部队成员负责的杀害受保护人员、掠夺和强迫流离失所的行为。所收到的这些报告来自实施重大军事行动的地区，如卡克塔、考卡和普图马约，以及来自保安部队目前存在势力的地区，如安蒂奥基亚，所收到的报告越来越多地涉及该部队第四旅的成员。办事处注意到关于该部队人员实施性暴力的报告数量持续上升。另外还有报告指称农民士兵应对违反人道主义法的行为承担责任。

118. 办事处收到的指控称，该部队成员应对发生在安蒂奥基亚、阿劳卡和博亚卡的屠杀负责。在其中一些案件中，据报告准军事部队参与了共谋。另外还报告违反区别和适度原则的军事行动造成若干平民死亡。应该提请注意的是，办事处继续收到的报告称，在一些案件中，保安部队成员与准军事集团采取了协调的行动，而在另外一些案件中，受害者被准军事部队成员扣押，随后军队便报告这些人已经在战斗中被打死。这其中的一些案件被不适当地移交给了军队司法系统。

#### 四、特别脆弱群体的状况<sup>34</sup>

119. 武装冲突，尤其是忽视区别对待和平民豁免的人道主义原则的非法武装团伙实施的犯罪行为，对各特别脆弱群体的状况产生了影响。这些群体还承受了政府的某些政策以及据称应对针对他们实施的侵犯人权行为负责的某些当局采取的行动所产生的后果。

120. 在这方面，是非法武装团体尤其是准军事部队实施的杀人、威胁和骚扰行为，造成了对人权维护者包括工会活动分子、妇女组织和其他社会团体领导人的这种脆弱状况。政府高级官员所作的某些公开声明不加区别地对人权维护者及其组

织的工作提出质疑，起到了分化作用，促使危险因素增加，从而限制了国家所作的保护努力发挥影响。还收到了特别关于任意逮捕、非法搜查、破坏正当程序和侵犯言论和见解意见自由的指控。

121. 一些社群继续面临危险，尤其是受到攻击或被迫流离失所威胁的社群，以及已经被迫流离失所或生活在封锁或围困之中的社群。国内被迫流离失所的总人数继续上升，尽管被迫流离失所的新案件数在下降，但这一趋势在2004年下半年似乎正在扭转。国家作出了极大的努力关注这些社区，但在寻找持久和可持续的解决方案方面，尤其是在返回政策方面，以及在给予妇女和族裔群体格外关照方面，仍然存在种种不足。

122. 土著和非裔哥伦比亚社区在其领地遭到入侵之后在其民族和文化特性方面受到武装冲突的影响，并且受到继续波及他们的、更为普遍的排斥和歧视行为的影响。首当其冲的社区有咖啡种植区Sierra Nevada de Santa Marta的社区、乔科地区以及正在实施“爱国者计划”的社区。在这方面，应该特别关注尤其由哥伦比亚联合自卫军和革命武装力量——人民军针对土著领导人实施的杀人、威胁和其他攻击行为。保安部队成员还被指控实施了杀人以及大规模逮捕和任意逮捕行为。土著人民人权和基本自由状况问题特别报告员强调了亚马孙特区、普图马约地区、卡克塔州和瓜维亚雷地区的好几个社区面临着消亡的危险。

123. 儿童仍然是武装冲突的受害者，尤其是强迫招募数以千计的男童和女童、劫持人质、强迫流离失所和使用杀伤人员地雷的受害者。性剥削和劳力剥削的现象继续存在，同时还伴随着家庭暴力和儿童享受经济、社会和文化权利方面的不平等。办事处了解到保安部队占据中小学校，这明显违反了国际人道主义法的规定。

124. 妇女和女童的权利继续受到侵犯，原因是存在不平等、歧视和各种暴力行为。由于武装冲突和非法武装团体使用性暴力和社会控制手段，安全状况，尤其是农村土著和非裔哥伦比亚妇女和女童的安全状况，以及那些有组织者、被迫流离失所者、受到限制的人或返回者的安全状况不断恶化。尽管国家作出了各种努力，但在搜集妇女具体状况的信息方面依然存在各种不足；这种情况影响了国家对她们的需要作出适当反应的能力。在处理性暴力案件方面，司法系统仍然表现得软弱无力。

125. 记者和舆论界其他人成为非法武装团体暗杀和威胁的受害者。还有指控

称，保安部队成员过度使用武力，公职人员侵犯言论和见解自由。这种状况总的来说导致了一种间接的指责和恐吓氛围，以及信息的滥用。办事处审查过的一些指控指出，当局施加压力，强制发表关于武装冲突的信息和其他有利于政府的统计数字。

126. 由于绑架现象的持续存在以及非法武装团伙不遵守人道主义义务，人质及其家人尤其容易受到伤害。此外，由于现行立法存在空白，他们在享有民事和经济权利方面遇到种种困难。强迫失踪的受害者也遇到了类似的困境。

127. 当地官员，尤其是市长和前任市长、政务会委员、前政务会委员、公职人员、司法官员、爱国协会成员和共产党党员、医生和商人，也特别容易受到非法武装团伙采取的行动的的伤害。女性同性恋者、男性同性恋者、双性恋者和跨性别者也是虐待和歧视行为，包括由于其性取向进行虐待和“社会清洗”行为的受害者。

## 五、建 议

128. 高级专员针对政府三个分支机构的国家当局、负责保护和促进人权的监督机构、公民社会的代表性部门、国际社会和非法武装团伙提出了27项具体的优先事项建议。

129. 这些建议是在系统和批判性观察以及国家当局与公民社会组织对话的基础上进行分析后得出的切实和前瞻性结论。高级专员坚信，如果这些建议在2005年得到一致和全面的落实，人权和国际人道主义法的状况就会大为改观。

130. 和前两次年度报告一样，为了强调这是一个随时需要进行协调的实施过程，就所有专题而言，按以下六个标题进行了分类：预防和保护；国内武装冲突；法治和有罪无罚，经济和社会政策；促进人权文化；高级专员驻哥伦比亚办事处提供的咨询服务和技术合作。

### A. 预防和保护

131. 高级专员鼓励哥伦比亚政府通过各种规范，调整机构间预警委员会的组成和职能，并确定委员会发出的预警没有得到反应时给予的处罚措施。高级专员还鼓励哥伦比亚政府通过提供及时的预算拨款，保障监察员办公室和机构间预警委员会这种预警制度的可持续性。

132. 高级专员鼓励哥伦比亚政府和国民议会确保内政部负责的保护人权维护者和其他团体的方案的可持续性。高级专员敦促采取必要措施，促使行政部门的公职人员对人权维护者个人和集体的活动表现出适当的尊重，这其中包括尊重妇女组织、土著和非裔哥伦比亚社区、工会领导人和其他社会团体领导人个别和集体开展的活动。为此目的，高级专员强烈要求对其言论危及上述人员生命、尊严和安全的公职人员的行为进行刑事定罪，并进行适当的纪律制裁。

133. 高级专员鼓励哥伦比亚政府采取特别紧急措施，为濒临消亡的土著社区提供保护，并遵守宪法法院有关国内流离失所者和其他处境危险的社区的预防和关注问题的各项裁决，尤其是 2004 年 T-25 号裁决。高级专员还鼓励该国根据国际原则和规范承担责任。

134. 高级专员敦促哥伦比亚政府和国民议会为总检察长办公室和监察员办公室提供必要的资源，以便其在土著人口、非裔哥伦比亚人口和被迫流离失所人口比例较高的地区以及有关机构目前尚不存在的地区建立机构。为上述目的，高级专员请总检察长和监察员在 2005 年上半年期间及时提出其扩大在领土上的影响的计划。

135. 高级专员鼓励总检察长与国防部进行协调，建立和实施对有关人权维护者和组织的军事情报档案的年度审查，以对这些文件所载资料的真实性和公正性进行审查，并删除其中的错误或带偏见的数据。

136. 高级专员鼓励国防部签署与驻哥伦比亚办事处之间的合作框架协议，以便在独立研究的基础上，推动在以全面、系统和务实的方式对保安部队的所有成员进行人权和国际人道主义法的培训方面，继续取得进展。

## B. 国内武装冲突

137. 高级专员要求革命武装力量—人民军、民族解放军、联合自卫军和其他游击队和准军事集团的领导人和其他成员尊重所有平民的生命权、人格完整和个人自由。高级专员还特别敦促他们在任何情况下都避免攻击平民和滥杀滥伤；绑架、招募未成年人和性暴力等不可接受的做法；以及恐怖主义行为。高级专员还因此要求这些领导人对其团体的成员发出明确的指令，确保国际人道主义规范得到强制遵守。

138. 高级专员要求革命武装力量—人民军、民族解放军、联合自卫队和其他非法武装团伙立即无条件地释放被扣为人质的所有人，并且还呼吁他们不加限制地承认人道主义规范为与国内武装冲突有关的原因而被剥夺自由的其他人员规定的保障。

139. 高级专员要求革命武装力量—人民军和民族解放军的成员履行关于禁止使用、储存、制造和转移杀伤人员地雷的国际义务。

140. 高级专员敦促所有直接参加战斗行动的人充分遵守有限、区别、适度和保护平民原则，并保障易受害群体获得人道主义援助。

141. 高级专员请哥伦比亚政府考虑是否可能撤销对《罗马规约》的保留，因为哥伦比亚根据该项保留已在七年的时间内没有接受国际刑事法院对在哥伦比亚境内犯下的战争罪的管辖权。

142. 高级专员呼吁所有非法武装团伙尽快与政府之间有效停止敌对行动。高级专员还敦促该国政府与非法武装团伙紧急开展对话和谈判，以解决国内武装冲突，实现持久和平。对话和谈判时，开始即应优先考虑国际人道主义法和人权。关于谈判，高级专员强烈要求该国政府和国民议会尽快制定一个法律框架，并建立起充分承认和保障受害者了解真相、伸张正义和获得赔偿的权利的适当机制。该法律框架还应该适当考虑到妇女和少数民族的状况。

### C. 法治和有罪无罚

143. 高级专员敦促哥伦比亚政府和国民议会充分遵守哥伦比亚作为国际人权和国际人道主义法文书、《国际刑事法院罗马规约》和国际劳工法文书的缔约国承担的义务。高级专员鼓励哥伦比亚批准各种有待批准的国际条约，并着手正式批准已获通过的国际条约。高级专员劝告该国不要对法规进行不符合国际文书规定或会削弱国家对诉讼的司法控制和限制监护权的修改。

144. 高级专员鼓励哥伦比亚政府、国民议会和司法部门促进制订适当的规则和建立适当的机制解决有罪无罚问题，其中特别要关注性别问题。高级专员还吁请调查侵犯人权和违反国际人道主义法问题的特别委员会的组成机构就特定案件以优先、一致和可持续的方式拿出具体成果，最终结案。

145. 高级专员鼓励司法部长实施官员和雇员职业制度；在 2005 年落实在评价人权和人道主义法机构过程中提出的建议；以及促进采取必要的立法和行政措施，确保司法部长办公室保护受害人和证人方案的效果和效率。高级专员还敦促司法部长尊重和保障检察官的独立性。

146. 高级专员敦促国防部长和司法部长采用有关“现行”概念以及除特殊情况外禁止在未事先取得法院命令的情况下进行拘留和搜查的国际法原则和规范。高级专员还敦促他们尊重无罪推定和保障正当程序，并惩处违反这些原则的官员。

147. 高级专员敦促国防部长采用停职的手段作为预防措施。高级专员还敦促国防部长下令确保军队刑事司法系统的官员不得主张对侵犯人权和违反国际人道主义法的案件或其他与兵役无关的罪案行使管辖权。高级专员还敦促司法部长明确下令检察官不得把与军队刑事司法管辖权无关的案件移交军队刑事司法系统。高级专员要求司法机构高级委员会根据宪法规定的管辖权限和国际规范的要求解决管辖权冲突。

148. 高级专员鼓励总检察长在严重侵犯人权和违反国际人道主义法行为的调查方面，包括与被剥夺自由者有关的调查方面，严格行使纪律惩戒权。高级专员敦促监察员办公室对监狱和看守所进行长期监督。高级专员请国家感化和监狱总署署长保障辩护律师可以进入拘留所，并鼓励内政司法部和国家感化和监狱总署把人权规范有效纳入有关规章、做法和对官员的培训方案中，并且落实高级专员办事处在合作和援助项目框架的范围内提出的建议。

149. 高级专员鼓励司法部长确保做到，人权和人道主义法机构中负责调查公职人员与非法武装团体之间的所谓联系的下属单位把工作的重点放在调查准军事集团与保安部队成员、文职雇员和其他个人之间的联系上来。高级专员还鼓励司法部长办公室的这一单位与其他单位进行协调，在其调查中加上这种联系所涉经济、财务和法律问题。高级专员还要求司法部长对附属于保安部队和其他安全机构的检察官员的结构进行修改。

150. 高级专员建议共和国总统以国家元首和武装部队总司令的身份采取一切必要措施，切断政府官员与准军事集团成员之间的一切联系，并有效解散准军事组织。

#### D. 经济和社会政策

151. 高级专员敦促国民议会和政府根据国际公认的方法汇编的最新统计数据基础上推行连贯的政策，其中包括强调性别观点，以缩小不平等差距，解决极端贫困问题，降低文盲率和失业率，保障有效行使健康权、教育权和住房权。对人口中处于最不利地位的人应实行免费初等教育并保障其获得医疗服务和住房补贴。

#### E. 促进人权文化

152. 高级专员鼓励该国政府和人权维护者组织在国家和区域各级继续加强稳定的对话论坛的制度化建设，以便在全国加深谅解以及尊重和进一步促进和保护人权。

153. 高级专员要求该国政府把目前有关落实高级专员建议的专题纳入关于人权和国际人权法的国家行动计划草案。高级专员还强烈要求，行动计划草案的拟定工作最迟应于 2005 年 10 月完成，并应成为社会各界广泛参与后达成的共识的结果，其中还应该包括全面的性别观点。

154. 高级专员敦促监察员办公室担负起监督在全国促进、行使和传播人权的任务。高级专员还请教育部长最终制定和宣传国家人权教育计划，并尽快开始加以实施

#### F. 高级专员驻哥伦比亚办事处提供的 咨询服务和技术合作

155. 高级专员鼓励发展公共统计制度，其中应适当地涉及侵犯人权和违反国际人权法的内容，并便利根据公认的国际参数对其进行分析。高级专员为此建议，2005 年，在驻哥伦比亚办事处提供协助和建议的情况下，在副总统办公室、监察员办公室、总检察长办公室、司法部长办公室、国防部、国家统计局、其他国家机关、人权非政府组织和学术机构之间开展一个联合项目。

156. 高级专员敦促哥伦比亚协调和有效地执行国际建议，其中包括本报告中提出的建议。高级专员要求副总统、相关各部部长、和平事务高级专员和其他国家机关相互之间充分协调其行动，以执行有关建议。高级专员要求在 2005 年上半年

公布最新的执行建议时间表。高级专员请各国家机关利用高级专员办事处的咨询能力。

157. 高级专员请各级国家机关和实体以及公民社会组织充分利用哥伦比亚办事处提供的技术合作和咨询服务。高级专员还请国际社会尤其是签署了 2003 年 7 月《伦敦宣言》的国家集团提供一切必要的财政和技术支持，促使各国家机构、非政府组织和高级专员办事处可以为执行高级专员提出的建议作出切实贡献。

### 注

<sup>1</sup> 2004 年 12 月 13 日，美洲人权委员会在支持哥伦比亚和平进程特派团美洲国家组织咨询服务基础上，发表了《关于哥伦比亚遣散进程的报告》。同日，欧洲联盟理事会表示支持哥伦比亚政府寻求谈判解决国内武装冲突，并呼吁为非法武装团伙的解除武装、遣散和重返社会进程早日制定一项全面的法律框架。

<sup>2</sup> 据报告，2003 年期间，Cacique Nutibara 集团与 Metro 集团之间爆发了内部争端和冲突，结果是在 2004 年 5 月，后一集团消失，其主要领导人“Rodrigo 司令”或“Doble Cero”遇害。

<sup>3</sup> 联合国妇女发展基金，“早期预警和性别问题：哥伦比亚的观察站和信息系统”，第 19 页。

<sup>4</sup> 2000 年的预算比前一年增加了 9%。2003 年，平均每个月要处理 435 件保护要求，而在 2004 年前 8 个月，月平均数字上升到 464 件。

<sup>5</sup> 见总检察长办公室 2004 年 9 月 1 日第 04234 号决议和 10 月 4 日第 4749 号决议。

<sup>6</sup> 共和国审计长，“2003 年社会政策评估”，2004 年 3 月，第 43 页。

<sup>7</sup> 开发计划署，《2004 年人的发展报告》，附件一。

<sup>8</sup> David de Ferranti, Guillermo E. Perry, Francisco H.G. Ferreira, Michael Walton, “Desigualdad en América Latina y el Caribe: ruptura con la historia”，内容提要，世界银行，2003 年，第 9 页。

<sup>9</sup> 见尾注 19。

<sup>10</sup> 按照国家统计署和国家银行提交的关于区域状况的最新报告，有 16,000 万人不能进入一般的保健系统。

<sup>11</sup> 根据建筑和地区城市发展中心进行的研究，有 9%的家庭去年失去了对其住宅的所有权。2004 年，经济适用住房的建设低于 1999 年的水平。整个建筑规模扩大了 13%，但据报告，经济适用住房的信贷支出减少了 2.5%。

<sup>12</sup> 见附件四。

<sup>13</sup> 见本报告结尾处提出的建议。

<sup>14</sup> 关于报告人权受到侵犯的案件的例子，见附件二 B 章。

<sup>15</sup> 在进行认真研究并将其与不同来源的资料包括自己直接观察的情况进行对比后，办事处只能认为指控是可靠的。

<sup>16</sup> 国家警察特派团的最后报告得出的结论就是这一状况的证明，其中指出，“对与犯罪组织尤其是准军事团体进行勾结的情况进行的大量内部调查令人忧虑”。这种特派团的目的是分析体制的状况，并提出预防和纠正危害道德标准的行为的建议。

<sup>17</sup> 根据这一情报，一名人权维护者的住宅以及一非政府组织在桑坦德省的所在地遭到任意搜查。

<sup>18</sup> 现行的概念适用于反叛和共谋犯罪——与假定属于游击队或准军事团体一部分的人有关的犯罪，可能导致忽视先行司法调查，以及在没有任何法院命令的情况下搜捕被指控的人，而不论是由于他们的言论或见解，还是由于他们生活在这些团体控制的地带。

<sup>19</sup> “2003 年至 2004 年期间的大规模搜捕情况”，总检察长办公室，波哥大首都区，2004 年 2 月 18 日。另见监察员要求对大规模拘留进行审查的声明，《时报》，2004 年 9 月 10 日。

<sup>20</sup> 总统平等和妇女问题顾问指出，对在武装冲突的情况下发生的性暴力活动没有进行过调查。关于妇女状况和这方面指控的情况，见附件二和附件三。

<sup>21</sup> 2004 年的平均失业率为 14%，妇女的失业率(18%)比男子的情况(11%)更严重。就业不足率仍然很高(33%)，同样，妇女所受的影响(23%)比男子(26%)更大。只有 15% 处于工作年龄的人口参加了养恤金制度。

<sup>22</sup> 根据社会保障部的统计，占 39% 的人口没有受到任何已经建立的保健体制的保障，几乎半数未得到保障的人都来自最穷阶层。处于这一状况的人们不得不承担保健服务费用，或求助于公共医院网络，而该网络的医院大多没有能力关注他们。在有保障的 61% 的人中，32% 隶属于共同筹资体制，29% 受有补贴的保健体制的保障。后者是为最贫穷阶层和非正规经济部门设计的。就健康权的实现及其质量来说，这种双重制度造成了不平等现象。

<sup>23</sup> 监察员办公室，“保护诉讼与保健权——在保健方面采取保护诉讼的原因”，波哥大，2004 年 8 月。

<sup>24</sup> 《关于促进拉丁美洲及加勒比地区教育改革的计划》，Fundacion Corona, Informe de progreso educativo, Columbia, entre el avance y el retroceso, 2003 年，第 6 页。

<sup>25</sup> 根据教育部的统计，全国 14 岁以上民众的文盲率为 7.6%，而某些地方更高(如乔科，20.1%；苏克雷，17%；瓜希拉，16.4%；马格达莱纳，14%)。该部对 2005 年在质量方面所作投入的预测表明，这方面的预算几乎减少一半。

<sup>26</sup> 见附件二。

<sup>27</sup> 恐怖主义行为是指 1949 年 8 月 12 日日内瓦四公约《第二号附加议定书》第四条所载禁令中包括的行为，包括其主要目的是在民众中散布恐怖的暴力行为或暴力威胁。最后提到的行为构成一种特定形式的恐怖主义行为，而且是同一文书第十三条特别禁止的对象。

<sup>28</sup> 这一统计数字还包括普通罪犯实施的绑架，以及责任不明的案件。

<sup>29</sup> 见附件二。

<sup>30</sup> 关于应由准军事团体负责的案件的例子，见附件二 C 节“违反国际人道主义法的行为”。关于国家对政府雇员在准军事团体实施的行为中的作为或不作为的责任的案件，见同一附件 B 节，“侵犯人权的行爲”。

<sup>31</sup> 关于这些违反情况的例子，见美洲国家组织支持哥伦比亚和平进程特派团的报告；和平事务高级专员 2004 年 5 月根据 DAS 的报告列出的违反停火行为一览表；以及监察员办公室编写的 2004 年 9 月停火实施情况报告。

<sup>32</sup> 根据社会团结网提供的官方数字，2004 年头六个月在卡萨纳雷有 2,091 人被迫流离失所，而 2003 年总共只有 2,490 人被迫流离失所。据估计，仅 Mani 市(卡萨纳雷)就有 640 人逃离该市。

<sup>33</sup> 见附件二。

<sup>34</sup> 见附件三。

## Annex I

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

1. In 2004, the office in Colombia of the United Nations High Commissioner for Human Rights, in fulfilment of its mandate, carried out its duties of observation, consulting, technical cooperation and promotion and dissemination, for which it received financial support from the following countries.<sup>a</sup>
2. Throughout 2004, the office has maintained a dialogue with the Government, with the national and regional authorities, diverse sectors of the society and the international community.

#### **I. OBSERVATION**

3. The office in Colombia of the United Nations High Commissioner for Human Rights, through its offices in Bogotá, Bucaramanga, Cali and Medellín, carries out its work of observation based on thematic and geographical priorities that enable it to analytically and systematically follow up on the situation of human rights and international humanitarian law in the country. Carrying out this activity facilitates identification of patterns and tendencies the analysis of which makes it possible to design its consulting work with the State and the civil society.
4. On 30 March 2004, the Bucaramanga branch office which covers an important region in the north-eastern part of Colombia was inaugurated. Since then, it has concentrated on consolidating its contacts with State authorities and institutions of the civil society, among other activities.
5. The opening of the Bucaramanga branch office marked the consolidation of efforts begun in January 2002 with the opening of the Cali and Medellín offices. This deployment enables the office to obtain first-hand information as quickly as possible and to better focus its cooperation with local counterparts. Through activities involving dialogue, the office also serves as a bridge between State entities and organizations of the civil society, while at the same time supporting and serving as a point of reference for efforts to design and implement regional public policies in human rights and humanitarian law.
6. The presence of the office in different regions of the country, in addition to strengthening relationships with the authorities and the civil society at the local and regional levels, contributes towards prevention and protection of vulnerable populations such as indigenous and Afro-Colombian communities, local organizations of human rights defenders, trade union activists and journalists, among others.

7. In 2004, 226 missions were carried out in the field and 1,211 complaints received, of which 827 were admitted as referring to conduct in violation of human rights and/or breaches of international humanitarian law.

## **II. ADVISORY SERVICES**

8. The office continued its dialogue with the authorities, particularly with the Office of the Vice-President, various ministries, the Congress, the judicial branch and control organisms. Follow-up was made on the legislative agenda of the Congress, the national legal system was analysed and State policies in fields within its mandate were evaluated. The office provided advice to different State entities and organizations of the civil society in the application and interpretation of international instruments in the field of human rights and international humanitarian law.

9. The office participated in a number of meetings to analyse government policies and programmes and their conformity to international principles and rules. A series of analytical documents was prepared in this respect. Topics analysed included democracy, justice and impunity and the framework of the negotiations, the impact of demobilization, the rights of victims to truth, justice and reparations, the focus on gender in guaranteeing human rights, and the content of economic, social and cultural rights. At forums, workshops and seminars, knowledge of international instruments and mechanisms for protecting human rights was promoted along with the implementation of recommendations issued by international bodies, especially those formulated by the High Commissioner.

10. In March 2004, the office provided support for the visit to Colombia of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. In order to increase the understanding of its mandate, a brochure entitled "Questions and answers about the rights of indigenous peoples" was drawn up. A brochure entitled "Questions and answers about freedom of opinion, expression and information" was also prepared.

11. The office, with the support of the United Nations Development Fund for Women, strengthened the inclusion of a gender perspective in the various areas of work and actively participated in the work of the round table on gender of the United Nations system in Colombia. It also facilitated workshops on developing gender indicators and basic tools to be included in the communication work in the field of gender and women's rights.

12. The office drew up a guide on how to observe and gather and analyse information regarding violations of the rights of women and children. In the context of diverse forums and meetings, it promoted the rights of women and mechanisms for protection and the importance of a gender focus in the realization of human rights.

### III. COOPERATION AND TECHNICAL ASSISTANCE

13. Cooperation and technical assistance provided by the office continued to focus on providing support to action by the institutions of the Government to implement the recommendations formulated by the High Commissioner and accepted by Colombia as international commitments before the international community contained in the Statement of the Chairperson of the Commission on Human Rights at its sixtieth session.

14. During 2004, the office has maintained an ongoing dialogue with organizations of the civil society, which has occasionally led to identifying and jointly formulating projects.

15. In 2004, a number of important tools for the defence and protection of human rights and international humanitarian law were published within the framework of technical cooperation, namely: *the Manual for classification of conducts that violate human rights; the Practical guide for evidence in disciplinary investigations regarding violations of human rights and breaches of international humanitarian law; International law on human rights; Human rights protection for persons who have been deprived of their liberty, basic documents.*

#### A. National plan of action on human rights

16. Throughout the year, the office has held meetings with a team of the Presidential Programme for promotion, respect and guarantee of human rights in order to analyse the operational system for the adoption of the national plan of action on human rights and international humanitarian law. The work carried out by that team constitutes an important element for the drawing up of the plan of action, which requires consultation and agreement with broad sectors of the civil society. In December 2004, an agreement was signed between the office and the Office of the Vice-President for technical cooperation in this field.

#### B. National plan of action on training, respect and the practice of human rights in the educational system

17. The office provided technical support to the Inter-institutional Committee charged with drawing up the plan of action, presided by the Office of the Ombudsman and composed of representatives of the Office of the Vice-President, the Ministry of Education, an NGO representing the civil society and UNDP. The proposed methodology made it possible to identify priority areas for intervention, applicable strategies and time limits to achieve the objectives, while taking into account the specific cultural and sociological realities in the diverse regions of Colombia. The office took special care to ensure that the plan of action incorporated international recommendations, including those made by the Special Rapporteur on the right to education. During the last phase of the work, planning matrices were drawn up for the plan as a whole and for each of its strategies. As a result, indicators now exist to measure the levels of results and their respective sources for verification.

## C. Institutional strengthening

### 1. The Attorney-General's Office

18. The project on institutional strengthening was begun following the signing of the letter of understanding with the Attorney-General in November 2003.

#### The career system for prosecutors

19. The office provided advice on the implementation of a career system for prosecutors and officials of the Attorney-General's Office. This implied analysing the draft basic statute of the Attorney-General's Office, together with existing regulations for the system of examinations, which were included in the observations. New regulations on the performance evaluation of prosecutors and officials of the Cuerpo Tecnico de Investigaciones (CTI) (technical investigation unit) are currently being designed and developed.

20. Once the Attorney-General has approved the regulations relating to the system of examinations, conditions will have been created to begin implementing the career system. These regulations, together with specific profiles for each duty, regulations on performance evaluation, and the basic statute, will provide the Attorney-General's Office with the basic tools to appropriately respond to the challenges of the new accusatory system in accordance with international standards.

#### National Unit on Human Rights and International Humanitarian Law

21. A diagnosis of the work of this unit was begun in August 2004 and is being carried out jointly with the Vice-President's Programme for the Fight against Impunity.

22. Interviews, surveys and analysis of documents are undertaken in order to gather the most complete information possible. Based on this information, an assessment will be submitted to the Attorney-General's Office in February 2005 with short-term, medium-term and long-term recommendations aimed at the institutional strengthening of the National Unit on Human Rights and International Humanitarian Law.

### 2. Interinstitutional project on the human rights situation of persons who have been deprived of their liberty

23. Faced with the grave situation in Colombia's prisons, the project aims to encourage the different national institutions to address the ongoing crisis situation in the penitentiary system in a programmatic and coherent fashion.

24. The project is designed and placed within a logical framework of implementation and administration by objectives, thereby seeking to influence the design and evaluation of public

policies in the field of prisons. During the year, continuous follow-up was made on the project, including a mission for external monitoring.

25. Within this framework, the office collaborated with the Ministry of the Interior and Justice, INPEC, the Ombudsman's Office and the Procurator-General's Office. It also encouraged the participation of other government sectors such as health care, and of organizations of the civil society, in the search for alternatives aimed at solving the critical situation.

26. In the implementation of the project, the office obtained the formal commitment of the administration of INPEC to implement a series of recommendations concerning the general operation of the prison system, and specific recommendations relating to the operation of six centres located in each of the Institute's regional branches. These recommendations would contribute to guaranteeing the humane treatment of persons deprived of their liberty. The office also presented an educational programme that foresees the development of a specific curriculum in the field of human rights and the integration of this subject into all of the courses given at the National Penitentiary School. It is hoped that the programme will be institutionalized and implemented in accordance with the approved proposal.

27. With respect to organs of control, the project focused on strengthening the programmatic capacity of response of the Ombudsman's Office and the Procurator-General's Office in the context of a situation that increasingly demands their attention, both as concerns individual cases and general situations.

28. Support provided by the office has contributed to the process of defining and establishing technical guidelines for follow-up, within the Ombudsman's Office, on international obligations of the State in the field of the protection of and guarantees for the rights of persons deprived of their liberty. This initiative will facilitate the implementation of an information system to systematically evaluate the functioning of the country's prisons. A training course for officials of the institution responsible for penitentiary issues has now been concluded.

29. The support provided to the Procurator-General's Office has allowed for the adoption and starting up of a plan of action to introduce standardized and systematized verification procedures for the preventive control of the respect for the rights of persons deprived of their liberty and of a system to inform the authorities and the public about its results. Concrete outcomes have been the structuring and strategic definition of its intervention in prison affairs, and information provided to the authorities and the public on the results of its verification, including on various aspects of prisons, such as overcrowding, the use of solitary confinement, administrative benefits, and the right to health care in prison.

#### D. Training in human rights and international humanitarian law

30. Human rights training is an essential element of the strategy to address the critical human rights situation in Colombia. In 2004, the office continued to encourage the institutionalization of human rights training in State institutions and in other sectors.

31. Training of government employees. In order to strengthen institutional capacity, several courses were given aimed at setting up networks of trainers or enlarging existing ones. Two courses for 29 judges and magistrates were held with the Rodrigo Lara Bonilla school for legal professionals to enlarge the network of human rights trainers within the judicial branch. Thirty-eight employees of the Military Criminal Justice School completed the training and now are to form a network of institutional trainers. Thirty-six employees of the Colombian Family Welfare Institute were trained to create a similar network.

32. Following the cooperation agreement signed in 2003 with the School for Judges and Prosecutors of Antioquia, two courses on human rights and international humanitarian law were organized for 57 prosecutors and judicial employees in that department. The office gave a basic course on human rights and international humanitarian law at the Office of the President for 25 members of the First Lady's security personnel.

33. Two courses for 40 officials were carried out with the Ombudsman's Office on the use of the manual for the classification of conducts in violation of human rights and international humanitarian law, published in May 2004 within the framework of the project for cooperation and technical assistance signed between the office and the Ombudsman's Office. The initiative seeks to provide those receiving and processing complaints at the Ombudsman's Office with an instrument to enable them to classify the complaints in accordance with national and international parameters on human rights and humanitarian law.

34. Training municipal ombudsmen. At the time of the finalization of this report, the training programme for municipal ombudsmen, after three years of existence, had achieved its goal of training 1,800 municipal ombudsmen chosen during the two legal periods<sup>b</sup> in human rights and international humanitarian law. This activity has allowed to strengthen the commitment, identity and sense of belonging of these officials to the Ministerio Público. Strategies for training and strengthening of the Ministerio Público have underpinned the basic role of the Ministry in consolidating respect for the rule of law. Therefore, the Procurator-General has expressed his desire to begin a discussion on the transformation of the role of municipal ombudsmen.

35. The project made it possible to observe the diverse territorial entities and to use experiences in formulating development plans that would include components for human rights and international humanitarian law, subject to agreement on the part of the municipal ombudsmen.

36. The project has contributed to strengthening the Institute for Studies of the Public Affairs Ministry as the preferred forum for future training of municipal ombudsmen in the field of human rights and international humanitarian law. To continue in this direction is tantamount to contributing towards the sustainability of a process that has generated positive results. The Procurator-General's Office and the Ombudsman's Office should use the Institute to implement the recommendation of the High Commissioner by integrating the municipal ombudsmen into their activities and programmes in the field of protection and promotion of those rights.

37. Civil society and the Church. In implementing the project entitled "Training in the perspective of rights for the pastoral agents of the Diocese of Florencia and the Vicarage of San Vicente del Caguán-Puerto Leguizamo", a process has been carried out to train trainers among priests, nuns, and missionary and lay agents in Caquetá, one of the departments most affected by the armed internal conflict. Two courses were given in Florencia and one in San Vicente del Caguán, with a participation of almost 100 people. It is hoped that in 2005 these ecclesiastical districts will provide support for their networks of trainers so that they may replicate their knowledge and reinforce the Colombian Catholic Church's ability to take on the defence and promotion of human rights.

38. Two activities for basic training in human rights were carried out with NGOs benefiting from the projects entitled Assisting Communities Together (ACT), one in Cali and the other in Medellín.

#### E. Activities with the United Nations system

39. The office encouraged and took the lead in the implementation of action 2, the inter-agency plan of action for the integration of the human rights dimension following the Secretary-General's second reform report (A/57/387 and Corr.1). A follow-up group was set up in Colombia, composed of the heads of agency<sup>c</sup> in order to follow up and supervise implementation of the work plan proposed by the technical team consisting of delegates of the agencies that are part of the follow-up group.

40. The technical team has been meeting every month since September 2004, with a work plan and a methodology to ensure the gradual integration of the human rights dimension in the policies, programmes, projects and activities of the United Nations system by the end of 2006.

41. As part of this programme, the office carried out four basic courses on human rights for employees of the system, given in Bogotá, Cali and Medellín, with a participation of 110 employees.

42. *Humanitarian Action Plan for 2005.* The office has provided support to the preparation of the plan of action by formulating observations of a technical nature to clarify the components to be included in the plan as well as lines of action related to its objectives. It also assisted in the

process of selecting proposals submitted within that framework; and the 140 proposals that were submitted have qualified and 22 have been given a high priority.

#### IV. INFORMATION, PROMOTION AND DISSEMINATION

43. As concerns publications by the office, it is worth mentioning 20,000 copies in Spanish and 1,000 in English of the 2004 Recommendations for Colombia, 5,000 copies of the report on the human rights situation in Colombia in 2003 and 20,000 handbooks on the Universal Declaration of Human Rights, adapted for children. Ten thousand copies of the 2005 calendar were also printed for distribution throughout the country. The total number of copies of publications disseminated by the office throughout the country reached 80,000.

44. In 2004, the office participated in a number of promotion and dissemination activities (seminars, forums, workshops and conferences), and was present at the Bogotá Book Fair, where all of its publications were for sale to the general public.

45. Within the framework of its work with the communications media, the office organized 10 workshops with journalists and 2 additional ones with the media directors of the United Nations system, the latter for promoting women's rights. Twenty-two papers and 46 press releases were issued and 10 press conferences held as of November. One thousand articles on the work of the office appeared in the national press, along with 350 in the international press, 400 items on the radio and 270 on television. The office gave approximately 32 interviews to the mass media. The office's web page had received 141,153 visits as of 3 December. Advice was also provided to diverse indigenous peoples' organizations on how to handle communications and human rights.

46. Within the framework of International Human Rights Day on 10 December, a free concert was given, entitled "Voices that sing for our rights", with 20,000 people in attendance. The concert was televised nationally and carried out within the framework of an agreement signed with the office of the Mayor of Bogotá and Radio y Televisión de Colombia.

47. The office worked with the Newell Sanford Colombia Company, an organization that donated 6,000 coloured pencils for workshops to promote human rights carried out in public and private schools in Bogotá. Approximately 740 packages of coloured pencils were delivered for workshops in other cities of the country.

48. In carrying out the agreement for technical cooperation signed with Radio Nederland Training Centre<sup>d</sup> the office, through its radio programme "*Naciones Unidas Manos Amigas*" ("United Nations Friendly Hands"), distributed four CDs containing children's stories about human rights. This programme was disseminated among 184 community radio stations and is broadcast by 300 of them throughout the country.

49. The office, in a joint endeavour with the Fundación Dos Mundos and the Villegas Editores Company, prepared a book of photographs containing images of the human rights situation in Colombia. The photographs were selected from those participating in the photojournalism contest in Colombia entitled “Images and Realities” carried out in 2003 by the Fundación Dos Mundos.

## NOTES

<sup>a</sup> Belgium, Canada, Denmark, Finland, Germany, Hungary, Ireland, Italy, Luxembourg, Morocco, the Netherlands, New Zealand, Norway, Pakistan, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States, and the European Commission.

<sup>b</sup> 2001-2003 and the period begun in 2004.

<sup>c</sup> UNHCR, ECLAC, OHCHR, IOM, UNAIDS, WHO/PAHO, WFP, UNDP, UNODC, UNFPA, UNICEF, UNIFEM.

<sup>d</sup> See *Annual Report 2003*, annex IV, para. 33.

## Annex II

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

## Introduction

1. The principal violations and breaches that the Office in Colombia of the High Commissioner received reports of during 2004, including identified modalities, attribution of responsibility and the most affected groups, are listed here. They are paradigmatic cases that the Office has exhaustively examined in accordance with its mandate and working methods.

### I. Human rights

#### Civil and political rights

##### Right to life

2. This right was affected by a marked number of extrajudicial executions, both individual and collective, directly attributed to members of the security forces. They include the execution of one person and attempted execution of three others in June, in the municipality of Bolívar (Valle), and a homicide in Puerto Guzmán (Putumayo) attributed to members of the battalion of peasant soldiers attached to the army's Fortaleza Platoon No. 5.

3. Reports were received regarding executions of civilians attributed to army personnel and which were subsequently presented as guerrillas killed in combat. This occurred specifically with members of the army's fourth brigade in Medellín, where alterations of the crime scene were also reported, as well as in the Oriente Antioqueño. The massacre of four peasants, which took place between 31 December 2003 and 1 January 2004, in Granada, and other executions in the La Cruz neighbourhood of Medellín in September, including that of an adult and a minor (both ex militia members who were police informants), are representative of this phenomenon. This also occurred in other regions of the country. For example, in March, in Puracé (Cauca), extrajudicial executions of minors were reported that were attributed to members of counter-guerrilla battalion No. 37, Macheteros del Cauca. An individual execution by members of the army's Alfonso Manosalva Flórez battalion in March in Quibdo (Chocó) was reported in which it was alleged that a firearm had been planted on the victim's body.

4. In another notorious case, the Office recorded the allegation of the massacre of three trade unionists by members of the army in August, in Saravena, Arauca. The authorities hastily supported the version of army personnel referring to deaths in combat. Judicial and disciplinary investigations pointed to the existence of extrajudicial executions. Responsibility is also attributed to the army in the deaths of seven members of the police and four civilians in Guaitarrilla, Nariño, in March, as well as those of five civilians in Cajamarca (Tolima), in April.

5. Indigenous communities were particularly affected. The Office reported the extrajudicial execution of a member of the Kankuamo tribe, whose community is the subject of precautionary measures on the part of the Inter-American Commission on Human Rights (CIDH), attributed to army personnel attached to the La Popa Battalion in March, in Atánquez (Cesar). The Office also received reports of the massacres of Wuayuu indigenous people in April and of Wiwas in January and April, by paramilitaries in La Guajira, in which members of the army were alleged to be responsible by omission.

6. Executions and massacres carried out by paramilitaries, in which well-founded information was received indicating responsibility on the part of the State, continued to be recorded. Allegations were made regarding the omission or connivance on the part of local authorities in the execution in April of a political leader and human rights defender, a beneficiary of the Ministry of the Interior's programme for protection, along with his bodyguard, by members of the AUC, in Cúcuta (Norte de Santander). Other reports linked responsibility to members of the Vargas 21 battalion for complicity in the execution of a minor in January, as well as the execution in February of a woman human rights defender and president of the community action board of the village of Puerto Esperanza, along with her son. These events took place in El Castillo and were attributed to paramilitaries of the Centauros Bloc in Meta. In the latter case, the presence of members of the army among the paramilitaries carrying out the action was reported.

7. This year, State responsibility for failure to act, and even connivance, with respect to homicides perpetrated by paramilitaries in the Comuna 13 of Medellín (Antioquia) continued to be observed, in spite of strong military and police control. Omission on the part of the authorities was denounced in the homicide of the community leader and ex-member of the Asociación Mujeres de la Independencia (AMI) in October, in that same locality.

8. Reports were received of connivance following joint actions by members of the Security Forces in the massacre of six coca field workers, in May, in San Luis, Oriente Antioqueño. According to the information received, army personnel carried out the action and the paramilitaries obstructed access by the authorities to remove the bodies according to judicial procedures. The massacre of four persons, in February, was jointly attributed to members of Bajes artillery battalion and paramilitaries of the old Cacique Nutibara Bloc, in Granada, Antioquia. Another allegation is related to the massacre in February of four persons by members of the army's fourth brigade, in Medellín (Antioquia). The victims had been threatened by paramilitaries in the Bajo Cauca Antioqueño. In this last case, allegations were also made regarding manipulation of evidence by army personnel.

9. The Office recorded an increase in allegations of extrajudicial executions in which civilian victims had been killed by paramilitaries and subsequently presented by the army as guerrillas or paramilitaries killed in combat, such as in the extrajudicial executions in March of a member of the Kankuamo tribe, in Valledupar (Cesar), and of two minors, one from the Wiwa tribe, in February in San Juan de Cesar (Guajira). The victims had been detained at paramilitary roadblocks by the Northern Bloc of the ACCU, and subsequently presented by the army as paramilitaries killed in combat.

### Right to personal integrity

10. Reports were received of violations of the right to personal integrity resulting from acts of torture and cruel, inhumane or degrading treatment, as well as due to the excessive use of force by members of the security forces and other security employees.

11. The Office received reports of torture and cruel, inhumane or degrading treatment of members of the Embera Wounaan community of Gengadó and Guijaradó, in Río Quito (Chocó) in March, attributed to soldiers of the Alfonso Manosalva battalion of the army's Fourth Brigade. Allegations were also made regarding the torture of a person in September who had been arbitrarily detained in the Comuna 13 in Medellín (Antioquia) by members of the military of the Pedro Nel Ospina Engineers Battalion No. 4, attached to the same brigade.

12. Cases were reported of extrajudicial executions in which the cadavers showed signs of torture, such as those of two minors, in June, in Cali (Valle), attributed to members of the National Police. However, there was persistent under-reporting of torture in the forensic reports carried out on the cadavers of the victims. There was also under-reporting of rapes.

13. Persons in jails or penitentiaries were also affected by these violations. The Procurator-General's Office investigated the responsibility of employees of INPEC for torture in Valledupar (Cesar), Barranquilla (Atlántico) and La Dorada (Caldas). Cruel, inhuman or degrading treatments were also reported against inmates of the prison in San Isidro (Cauca). The INPEC is investigating more than 80 reports of this kind of treatment.

14. Reports were received regarding the use of excessive force on the part of members of the security forces, such as actions attributed to the Escuadrón Móvil Antidisturbios (Mobile Anti-riot Squadron) during a public demonstration against the FTA in Cartagena (Bolívar), which produced many wounded, including seven journalists, as well as during a peaceful demonstration by the population against the "toll" in May, on the Bello - Hatillo highway (Antioquia). The Office received reports of excessive use of force attributed to the National Police in operations in Cali (Valle) against members of a civil association, including beneficiaries of precautionary measures by the CIDH (Inter-American Court of Human Rights), and against demonstrators belonging to social organizations and trade unions, during the May Day march.

### Right to individual liberty and personal security

15. This right was affected by forced disappearances and illegal or arbitrary detentions. Most of the forced disappearances were attributed to paramilitary groups. In some cases, investigations are being carried out regarding responsibility of government employees, especially of the army. It should be noted that forced disappearance is very under-reported. Allegations were made regarding complicity by soldiers attached to the army's Fourth Brigade in the disappearances of two persons in October 2003. The victims had been tortured by members of the army and, after their disappearance, were found in March 2004 by members of the Technical Investigation Corps of the Attorney-General's Office (CTI), in a common grave chopped into pieces, supposedly executed by paramilitaries. The Procurator-General's Office investigated

responsibility on the part of the State, attributed to members of the army, and to a lesser extent of the National Police, in reports of forced disappearances, particularly in the departments of Antioquia, Tolima, Bolívar, Caquetá, Cesar, Magdalena, Guaviare and Atlántico.

16. The Office in Colombia received information regarding massive detentions, with or without court orders, based for the most part on weak declarations or indications provided by informants or demobilized persons, as well as on intelligence reports. Representative examples are the detentions of 32 people by members of the National Police and the Attorney-General's Office in February in Chaparral (Tolima), and those of 24 persons by employees of the DAS, the Attorney-General's Office and the army in Corinto (Cauca), in June. The same bases gave rise to individual arrests affecting human rights defenders and leaders. These include the detention in June of a defender by members of the SIJIN in Barranquilla (Atlántico), who was subsequently freed, and the detention, without a court order, of a member of the Asociación de Negros Unidos (Association of United Blacks) of the Yurumanguí River, by the Marine Corps, in August, in Buenaventura (Valle).

17. In various cases, the actions by the Attorney-General's Office were questioned for having supported those procedures by providing blank arrest warrants or warrants drawn up a posteriori. In the detention in Santa Rosa (Cauca) of 24 persons, 5 women and 19 men, by members of the High Mountain Battalion No. 4, the DAS, the Attorney-General's Office and the CTI, denunciation was made that the Attorney-General's Office had arrived with a blank arrest warrant which it then proceeded to fill in based on the statements of a hooded informant. The stigmatization caused by arbitrary arrests, in which the victims are also exhibited to the media as belonging to illegal armed groups, put their lives at risk. A case in point was that of Professor Alfredo Correa de Andreis, executed in September, in Barranquilla (Atlántico). The victim had been arrested in June and accused of the crime of rebellion based on information provided by a person reintegrated into society. His execution took place 15 days after he was freed due to the lack of evidence against him.

#### Right to due process

18. Reports continue to be received of violations of due process resulting from the lack of respect for the independence and impartiality of the justice system for procedural guarantees and for the principle of the presumption of innocence.

19. Various cases were reported involving irregularities arising from tampering with evidence and witnesses attributed to employees of the Attorney-General's Office and to members of the DAS and the army. The use of testimony by persons falsely claiming to be demobilized and by cloned witnesses were attributed to members of the DAS and the Attorney-General's Office in the investigation of human rights defender Amaury Padilla, arrested in December 2003 in Cartagena (Bolívar) and subsequently freed in June 2004. Another case in point is that of Rina Bolaño, a bacteriologist kidnapped by the FARC-EP and the victim of a rape by a commander of that armed group in August 2003, who was accused of rebellion by the presumed perpetrator of the rape who had subsequently been reintegrated into society. Allegations were made that members of DAS had tampered with testimony against her with complicity on the part of the prosecutor, information which was contained in the decision revoking her arraignment and

freeing her. In August 2004, the investigation against her was terminated, however the trial for the crimes initially committed against her made no headway. In another case, the Procurator-General's Office determined that members of the army and employees of the Attorney-General's Office had tampered with the crime scene in the case of the extrajudicial executions of seven members of the police and of the Gaula (special police anti-kidnapping unit) and of four civilians by members of the army in Guaitarilla (Nariño) in March.

20. Obstruction of justice, along with violation of judicial independence and autonomy, was reported in cases in which several prosecutors were relieved of their duties by the Attorney-General, invoking his discretionary powers. It was alleged that, in some of these cases, the findings of the prosecutors' investigations had led to their being fired. In addition, violations of the rights to honour, reputation and dignity as well as the presumption of innocence were observed when it was stated that these decisions were based on the policy of the Attorney-General's Office to purge corrupt officials, without the benefit of judicial or disciplinary investigations. This occurred, for example, in the cases of prosecutor Alvaro Bayona and prosecutors Omaira Gómez and Aidee López in Bogotá in April.

21. Judicial independence was violated following the taking over by the military criminal justice system of cases of grave human rights violations and breaches of international humanitarian law. In several of these cases, specifically those related to allegations of homicides of protected persons, the Attorney-General's Office itself remitted the investigations to military jurisdiction. Examples of this include the trials in the case of Guaitarilla, mentioned above, and in other executions and homicides, such as those of a woman in July in the Comuna 13 of Medellín (Antioquia) and another in March of a person in Quibdo (Chocó) attributed to members of the army. A similar allegation was made in connection with a homicide in June in Bolívar (Valle), attributed to members of the Police, and another in February in Cali (Valle) attributed to a soldier from the air base. It must be pointed out that jurisdictional conflicts arose in other cases, such as in Cajamarca, where the killing of five civilians is attributed to army personnel. The Higher Council of the Judiciary decided in a second opinion to reverse its previous decision and sent the investigation to the ordinary justice system.

#### Right to freedom of movement and residence

22. The principal violations of this right are forced displacements in which responsibility is attributed to the security forces for direct action or by omission or connivance in operations by illegal armed groups, particularly paramilitaries. Several of these examples also constitute breaches of international humanitarian law and are reported in the corresponding chapter.

#### Right to privacy and inviolability of the home

23. This right was affected by the carrying out of illegal or arbitrary raids and searches with court orders based on flimsy legal foundations, generally under the heading of so-called voluntary raids or searches which are carried out in spite of the lack of a court order on the ground that the persons to whom these actions are aimed have supposedly given their consent. Examples of the latter were reports received regarding several raids in Puerto Leguizamo (Putumayo) carried out in early 2004 by members of the Security Forces and employees of the

Procurator-General's Office and the Attorney-General's Office. Reports were also received of a raid carried out by the Attorney-General's Office and the Guala, at a farm belonging to the parents of a human rights defender in May in Aratoca (Santander). In addition, reports were received concerning an illegal raid by employees of the DAS and the Attorney-General's Office in the home of a female human rights defender, a leader of the CREDHOS and of the Fundación Mujer y Futuro, in October, in Bucaramanga (Santander).

*Right to freedom of opinion and expression*

24. Violations were reported of the right to freedom of expression and information through attempted extrajudicial executions, threats, arbitrary detentions, and the excessive use of force against journalists. The Office recorded reports of threats against two journalists at La Opinión newspaper in May, attributed to employees of the DIJIN and a colonel from the National Police, in Cúcuta (Norte de Santander). One of the journalists had to leave the country. Another case was recorded in June in Puerto Asís (Putumayo), involving the arbitrary arrest of two journalists without a court order and without informing them of the reasons for their detentions, by members of the Navy and the army, who had already seized and inspected all of their journalistic materials, which were returned to them before they were freed.

25. Paramilitaries participated in carrying out certain actions, and well-founded information was received demonstrating responsibility of the State, whether by omission or connivance. An example of omission was denounced in relation to threats against a journalist, a beneficiary of the Ministry of the Interior's Programme for Protection, and which were attributed to paramilitaries. The threats were linked to the journalist's work on SINTRAEMCALI (union) in February in Cali (Valle). Complicity was denounced between public servants and paramilitary groups in threats made against three journalists in June due to their coverage of the arrest of the local mayor accused of links to paramilitary groups. The journalists subsequently received information about plans to kill them. Responsibility was attributed to paramilitaries working in complicity with local municipal authorities.

26. Freedom of expression and information was also affected by threats against journalists at *Semana* magazine in Bogotá in October, after the weekly published excerpts from recordings of conversations between the High Commissioner for Peace and paramilitary leaders who were negotiating with the Government at Santa Fe de Ralito. Allegations were also made regarding violations of freedom of opinion and expression carried out against the musical group Los Pasajeros. The musicians were detained by the judicial police and accused by the prosecutor working with the Elite Anti-terrorist Group, using intelligence reports based on statements by informants and former members of illegal groups reintegrated into society. They were freed in December. The members of the group were apparently persecuted for their activities at protests and trade union demonstrations. It was reported that the commander of the Metropolitan Police of Medellín declared that their songs were a clear apology for subversion.

## II. International Humanitarian Law

### Homicides and threats against protected persons

27. Civilians continued to be the victims of individual and collective homicides by members of the illegal armed groups. Reports were received of several massacres perpetrated by members of the FARC-EP in Antioquia, including the killing of three men in April, and the murders of seven peasants, in July, both in San Carlos, and of five peasants in Cocorná in May. Collective homicides against people working with illegal crops and attributed to the FARC-EP were also reported, such as that of 34 peasants in June and another of 9 peasants in August, both in Tibú (Norte de Santander). The killing of a community leader in February in Tulúa (Valle) was reported.

28. The collective homicide of three Wiwa indigenous persons, in January in San Juan del Cesar (Guajira), was attributed to paramilitary groups. This occurrence also led to the forced displacement of 800 members of that community. The collective homicide of 4 persons in March in San Luis (Antioquia), was also denounced, as well as that of 11 others in May in villages of the municipality of Tame (Arauca). There was also a massacre of 11 people, including a pregnant woman and 2 children, in October in Candelaria (Valle). Paramilitary incursions were reported in which individual and collective homicides were denounced, such as those that occurred in Quinchía (Risaralda) in July, taking the lives of 13 people, and in various villages of the Valle del Guamuez (Putumayo), between 15 and 16 August, in which at least 12 people died.

29. Reports continued to be received of selective homicides attributed to guerrilla and paramilitary groups. The killings in June of the private secretary of the mayor of San Vicente del Caguan (Caqueta) and his wife were attributed to the FARC-EP, along with the homicides of the mayor and a city councilman in the municipality of Rivera (Huila), and of a community leader in June in Valledupar (Cesar). The collective homicide of four returnees in September in San Carlos was also reported, as well as that of a schoolteacher in Tame (Arauca) in April. The paramilitary groups were alleged to be responsible for the homicides of a woman schoolteacher and an ex-city council member in October and November in Fortul (Arauca); of a community leader in the Comuna 13 of Medellín (Antioquia) in October; and a teacher in San Calixto (Norte de Santander) in November.

30. Various homicides of members of indigenous communities were reported, some of whom had been the subject of precautionary measures by the Inter-American Commission on Human Rights (CIDH). The FARC-EP were alleged to be responsible for the homicides of a member of the tribal council at the San Lorenzo reservation in July in Riosucio (Caldas); of a leader of the Guambiano tribe in February in Silvia (Cauca); and of a 70-year-old Arhuaco Mamo, or tribal elder, in November in the Sierra Nevada de Santa Marta (Magdalena). The homicides of two members of the Embera Chamís tribe were attributed to the Central Bolívar Bloc of the AUC (paramilitaries), in Riosucio (Caldas) in August, along with the murder of a Kankuamo indigenous leader, by members of the Northern Bloc of the ACCU, in August in Valledupar

(Cesar), and the homicide of a member of the Pijao tribe, by members of the Tolima Bloc in Coyaima (Tolima) in August.

31. There were reports of homicides attributed to members of the security forces. These included homicides committed by members of artillery battalion No. 4, attached to the army's Fourth Brigade in Granada (Antioquia) in June, and the killings of two women by members of Anti-Guerrilla Battalion No. 37 in March 2004 in Puracé (Cauca).

32. The Office received information on threats made against populations in order to impede their movement in certain regions of the country, thereby leaving communities blockaded and under siege. The prohibition on entry by certain persons into the Chalán - Colosó - Ovejas zone on the outskirts of Morroa (Sucre) was attributed to the FARC-EP. Similar situations were reported on the Carmen de Bolívar - El Salado (Bolívar) route, where the guerrilla group had issued an order prohibiting travel on the road, as well as on the Carare River in Landázuri (Santander), where they prohibited river transport in April. Members of the National Police were alleged to have threatened people transporting food to the community stores in certain villages of the Medio Atrato Antioqueño in April, impeding their freedom of movement and intensifying that region's humanitarian crisis. The Office received information regarding threats attributed to members of paramilitary groups acting in complicity with members of the army and with transporters of food between San Juan del Cesar (Guajira) and the Wiwa/Kogui indigenous reservation in April.

#### Attacks against the civil population and indiscriminate attacks

33. The illegal armed groups continued to violate the humanitarian principles of limitation, distinction and proportionality and failed to respect the immunity of the civilian population, through deliberate and indiscriminate attacks, attributed specifically to the FARC-EP. This group continued indiscriminate use of explosive devices. Information was also received on the use of gas cylinders launched against the civilian population in San Miguel (Putumayo) and in various municipalities in Nariño, gravely wounding civilians and causing material damage to homes. The launching of a grenade and shots fired against civilians gathered in a public place was also reported in January in Anza (Antioquia), causing the deaths of two civilians and wounding seven others. Reports were also made of an attack by the AUC against a house inhabited by civilians, resulting in the death of a seven-year-old boy and the wounding of two women, in Anorí (Antioquia) in September.

34. Indiscriminate attacks were reported, including one attributed jointly to the FARC-EP and the ELN against the police station and the neighbouring houses in Cumbitara, la Llanada, Ricaurte and los Andes (Nariño), in February, killing one civilian and wounding four others.

35. Reports were made that during military operations carried out by mobile brigade No. 9 in San Vicente del Caguán (Caquetá) in April, apparently against the FARC-EP, the army members fired at civilians who had taken refuge near their home in order to protect themselves, gravely wounding a child who subsequently died because she was impeding in seeking medical attention. Bombardments on the part of the Colombian Air Force against the Awa indigenous reservation in Ricaurte (Nariño) in February were also denounced. These bombardments

caused the displacement of 200 indigenous people. Also, the Procurator-General's Office is investigating indiscriminate bombardments and machine-gunning of inhabited villages that were attributed to the security forces in the departments of Bolívar, Cauca, Tolima and Caquetá.

#### Acts of terrorism

36. The guerrilla groups, especially the FARC-EP, continued to commit acts of terrorism. The explosion of a bomb at a discotheque in Apartadó (Antioquia) in May, which caused the deaths of 7 civilians, including a girl, and wounded 22 others, was reported, along with the detonation of an explosive device within a vehicle, causing the deaths of 2 persons and wounding 12, in May, in San Carlos (Antioquia). The Office also received reports regarding the explosion of a car bomb in May in Tame (Arauca), killing 2 civilians including a boy, and wounding 47, as well as that of another car bomb in the eastern part of Cali in June. These actions were attributed to the FARC-EP.

#### Torture and other attacks on personal dignity

37. Torture of people who were later found dead, attributed to members of the FARC-EP, were reported, such as the case of five people who had been taken hostage and whose bodies were subsequently found bearing signs of torture in Corinto (Cauca), in January. A similar situation was reported in the case of peasants who were the victims of homicide and who had been previously tortured, in January in Pensilvania (Caldas).

38. Reports of torture that were attributed to the paramilitaries in the Tayrona Park (Magdalena), in August, against a person who was also castrated and whose throat had been slit. There were allegations of tortures during paramilitary incursions in the villages of Flor Amarillo, Piñalito and Cravo Charco, in Tame (Arauca), in May, where several of the victims had been killed after being tortured with electric shocks, and tortures committed against members of the Wayu tribe during an incursion into Bahía Portete, Uribia (Guajira). Acts of torture were alleged in regions under guerrilla control, in which the civilian population was stigmatized and accused by the paramilitaries of collaboration with the guerrillas. It was reported that members of Mobile Brigade No. 8 had tortured two peasants during counter-insurgency operations carried out in April in Cunday (Tolima). It was also reported that the soldiers had initially passed themselves off as guerrilla members.

#### Hostage-taking

39. Hostage-taking continues to be a practice mainly used by the guerrilla groups and, to a lesser extent, by the paramilitaries. Reports of hostage-taking received by the Office include that of five university students and a woman professor, attributed to the FARC-EP, in September in Frontino (Antioquia), and of four peace indigenous authorities, including the Municipal Mayor, and his driver, attributed to the FARC-EP, in August in Toribío (Cauca). That same group is also accused of taking a boy and a girl hostage in Orito (Putumayo), as well as four civilians in Neiva (Huila) in February. The ELN is accused of taking 12 hostages in May in Quibdo (Chocó), and of taking hostage the bishop of Yopal, in July in Paya (Boyacá).

40. The Office received information on cases of hostage-taking attributed to members of paramilitary groups, such as that involving five Embera Katíos, in May, and that of an Embera Katío Governor in May, both in Tierralta (Córdoba). Denunciation was also made of the abduction of former senator José E. Gnecco, in June, on the Santa Marta-Riohacha highway by the AUC under the command of Jorge 40.

41. The FARC-EP were blamed for the killing of a 15-year-old girl whom they had taken hostage as well as the killing of another hostage, the brother of the Minister of Education, in July.

#### Forced displacement

42. Cases of forced displacement, both individual and collective, continued to occur in 2004 that were attributed to the illegal armed groups. The FARC-EP were accused of several massive displacements in the municipalities of San Francisco, in March and October, in San Carlos, in July and September, and in Cocorná in July. Displacements were also reported in Samaná (Caldas), in April and in Riosucio (Chocó), which were attributed to the same guerrilla group.

43. The paramilitaries were blamed for massive displacements in several communities living on the Opogadó and Bojayá rivers (Chocó), in March and in Hacarí (Norte de Santander), in February, among others.

44. Combats between guerrilla and paramilitary groups generated massive displacements in San Juan (Chocó), in July, and in Maguy Payán (Nariño), May. Cases of displacement were also recorded resulting from combat between the security forces and the illegal armed groups, such as those occurring between May and June in Cartagena del Chairá (Caquetá), and in Ricaurte (Nariño), in February.

#### Children as victims of the armed conflict

45. Boys and girls continued to be the victims of homicides, threats, indiscriminate attacks, hostage-taking (Putumayo), forced displacement, and acts of terrorism (Arauca), among others.

46. According to the Ombudsman's Office, denunciations were made of 10 homicides of boys and girls of the Wayu tribe, 5 of whom had been burned alive. The Ombudsman's Office reported that a girl was raped by members of the paramilitary groups in the community of Walilparture, Dibulla (Guajira). This Office received information of the torture of a boy accused of theft by the paramilitaries in April in Landázuri (Santander).

47. Cases persist of boys and girls injured by anti-personnel mines. For example, in July, a boy was wounded by the explosion of a mine in Samaná (Caldas), four boys were wounded after accidentally activating a mine, in September in Argelia (Antioquia), and three Embera Katío boys were wounded by anti-personnel mines between April and June, in the Quebrada

Cañaveral reservation at Puerto Libertador (Córdoba). These devices had apparently been planted by the FARC-EP.

48. Cases continued to occur of forced recruitment, such as that of 27 boys, attributed to the Centauros Bloc of the AUC, in February in Bogotá, another of a 12-year-old boy, attributed to paramilitaries, in July, in Apartadó (Antioquia), and a third of 11 boys by members of the old Cacique Nutibara Bloc of the AUC, in August, in the Comuna 13 of Medellín (Antioquia).

49. Information has also been received regarding the use of children as informants or in intelligence operations, including demobilized minors, in violation of Directive 13 of 2004, issued by the Procurator-General.

#### Women victims of the armed conflict

50. The rights of women and girls continued to be affected by the armed conflict. Reports were received of threats against them for merely having relatives or loved ones who were members of the opposing armed group. Peasant, indigenous and Afro-Colombian women continue to be those most affected by this situation, especially those who are organized in groups, displaced, returned from displacement, or confined. In May, for example, a member of the Kankuama tribe was killed in Guatapurí (Cesar). The victim had been executed by the FARC-EP because she had cooked and washed clothing for members of the army. Reports were also made of the massacre of four women, one of whom was pregnant, attributed to the FARC-EP, in October in Colosó (Sucre). The motive had supposedly been the women's personal relationships with members of the security forces.

51. The Office recorded an increase in reports received of rapes and other forms of sexual violence attributed to armed groups participating in the hostilities. Denunciation was made of sexual slavery of women imposed by the FARC-EP in Tolima, Risaralda and Quindío. Also reported were the rape of a woman and her two daughters by paramilitaries belonging to the Central Bolívar Bloc, in Risaralda, the rape of two Wayuu indigenous girls in Dibulla (Guajira), as well as sexual slavery imposed by members of the paramilitaries in Casanare. The rapes of two girls, attributed to members of the army's Fourth Brigade, were denounced as having occurred in July in Sonsón (Antioquia), as well as forced nudity and the attempted rape of two women members of the Embera Wounaan tribe by soldiers of the Alfonso Manosalva Florez battalion in March in Chocó. Allegations were also made to the effect that two 14-year-old girls had been made pregnant by soldiers of the High Mountain Battalion, due to their proximity to, and occasional occupation of, the local school in Pichindé, Cali (Valle).

52. Women and their organizations have been the victims of threats, tortures and disappearances for opposing the social and political control exercised by the illegal armed groups, particularly the paramilitaries. Reports were made of threats and tortures inflicted upon a woman journalist belonging to the Organización Femenina Popular (Popular Feminine Organization or OFP), whose hair had been cut and whose feet had been burned with hot water by the paramilitaries in Barrancabermeja (Santander) in June. Other organizations that have been threatened include the Casa de la Mujer in Bogotá, the Liga de Mujeres Desplazadas de Bolívar in Cartagena and ANMUCIC in different regions of the country. Some of the latter

organization's leaders have had to flee to other parts of the country, while others have been forced into exile.

#### Attacks against medical units

53. The illegal armed groups, especially the FARC-EP, continue to carry out attacks on members of medical units. The Office received information that members of the FARC-EP took seven members of a health brigade hostage for two days in August when they were carrying out a day of vaccinations at the Flor Amarillo community (Arauca). Reports were made of the homicide in July, in Dibulla (Guajira), of a member of the Kogui tribe, who was a nurse's aide at the Gonawinda health clinic and was in a meeting with members of the Taninaka community, and of the theft of a municipal boat used for vaccinations, in August, in Puerto Asís (Putumayo). Reports were made of obstruction on the part of members of the army, of the medical unit at Pance (Valle) when they were detained at a military checkpoint in May.

#### Use of anti-personnel mines

54. The illegal armed groups persisted in using anti-personnel mines. It was reported that the FARC-EP planted anti-personnel mines in March in San Francisco (Antioquia) and in the municipality of Cocorná (Antioquia), where two peasants and a soldier were wounded. It was discovered that the mines had been planted near a school. The Office recorded the death of one person from the detonation of a mine, in April, in Murindó (Chocó), as well as the deaths of various members of the army due to the use of these devices in Orito (Putumayo). Boys and girls are among the principal victims of mines.

## Annex III

### **SITUATION OF ESPECIALLY VULNERABLE GROUPS**

#### Human rights defenders, trade unionists and other social leaders

1. During 2004, the vulnerable situation of human rights defenders was affected by the threats of illegal armed groups, in particular by paramilitaries. In addition, certain public statements by high-level Government officials<sup>a</sup> questioning the legitimacy of the work of their organizations, further worsened their situation. State policy in respect to the legitimacy of their work has not been coherent. The Government continued to promote measures for protection, through the protection programme of the Ministry of the Interior and intensified dialogues with human rights organizations over the last months of the year. At the same time, the statements and attitudes of a number of officials have gone against presidential and ministerial directives to benefit human rights defenders and trade unionists.<sup>b</sup> This contributed towards polarization and elevated risk factors affecting their situation.
2. Homicides, threats and harassments against human rights defenders and trade unionists were recorded. The great majority of these were attributed to members of paramilitary groups but also to members of the FARC-EP. Over the first nine months of 2004, the Government recorded the killings of 27 trade unionists, while the Central Unitaria de Trabajadores (United Union of Workers, CUT) reported 50 killed. More than 50 per cent of the victims were teachers.
3. The Office also received reports of cases in which human rights defenders and trade unionists were the victims of arbitrary detentions, arbitrary or illegal searches, violations of due process, and attacks on freedom of assembly and peaceful protest, attributed to functionaries of the Attorney-General's Office and the Security Forces. Criminal trials of human rights defenders for alleged crimes against the constitutional regime and public security based on weak evidence, such as intelligence reports, and exposed them to death threats. This has led to human rights defenders and trade unionists practicing self-censorship and limiting their own activities, thereby reducing their opportunities for exercising their freedom of opinion, a trend already perceptible last year.
4. Opposition by women and their organizations to social and political control by the illegal armed groups has given rise to attacks on their lives, displacements and exile of their leaders. This situation affects women's organizational processes and participation in forums for peace and democracy. The organizations most affected continue to be the Organización Femenina Popular (OFP), Asociación Nacional de Mujeres Campesinas e Indígenas de Colombia (ANMUCIC), and the Liga de Mujeres Desplazadas de Bolívar.

#### Communities at risk

5. The risk factors particularly affected communities threatened with attacks or displacements, and communities that are already displaced, blockaded or under siege. While the total number of displaced persons continued to rise, due to the accumulation of internally displaced persons from previous years who have been unable to resolve their situation, the downward trend in the

number of new forced displacements continued, although this situation seemed to be reverting during the latter half of the year.<sup>c</sup> This reduction could be attributed to factors such as the changing dynamics of the armed conflict, the impact of the security policy, the policy on returns, the existence of communities blockaded by the illegal armed groups, and the negotiations with the paramilitaries. In certain zones of the country, an increase in displacement resulting from confrontations between participants in the hostilities was recorded, such as in the departments of Putumayo and Caquetá.

6. The budget of the Social Solidarity Network increased considerably and significant efforts were made in terms of providing emergency humanitarian aid and strengthening its units for attention and orientation. Little progress was made, however, in providing durable and sustainable solutions, especially as regards the policy on return promoted by the Government. The dismantling of preferential policies for assistance was noted, with the Government choosing to create a general category of the vulnerable population to be attended to within the context of social policy. The Constitutional Court, in addition to questioning the State's response, emphasized the needs of women heads of households, minors and the elderly. No State actions were registered aimed at adequately dealing with domestic and sexual violence or questions relating to sexual and reproductive health among the displaced population. Fifty-two per cent of displaced women report having suffered some type of physical abuse and 36 per cent report having been forced to have sexual relations with unknown persons.<sup>d</sup>

#### Indigenous and Afro-Colombian communities

7. The internal armed conflict continued to threaten the country's ethnic and cultural diversity. The general downward trend in indicators of certain forms of violence was not reflected in the situation of indigenous and Afro-Colombian communities. There was an increase in confrontations in a number of territories belonging to the ethnic groups. The Office recorded reports of bombardments, homicides, forced recruitments, confinements, food blockades, and the forcing of civilians to serve as guides. The impunity of these acts continues to present a challenge to the administration of justice. The communities most affected were those in the Sierra Nevada de Santa Marta (SNSM), the coffee-growing region, the Chocó area, and in zones in which the Plan Patriota<sup>e</sup> is being carried out. Following his visit to Colombia in early 2004, the Special Rapporteur on human rights and basic liberties of indigenous people, states that "*at least 12 small indigenous peoples in the Amazon are in danger of extinction due to the effects of diverse processes ... the most vulnerable include the Awa, Kofán, Siona, Páez, Coreguaje, Carijona, Guayabero, Muinane-Bora, Pastos, Embera and Witoto peoples in the departments of Putumayo, Caquetá and Guaviare*".

8. Homicides, threats and hostage-taking of indigenous traditional leaders and politicians by the AUC and the FARC-EP are particularly noteworthy. Homicides attributed to members of the Security Forces were also recorded,<sup>f</sup> along with mass and arbitrary arrests of leaders of ethnic groups, as well as various cases of links between members of the Security Forces and paramilitary groups in the Sierra Nevada de Santa Marta. The communities most affected by selective homicides by the paramilitary groups were the Embera Chamí (Caldas), Wayuu (La Guajira), Wiwa (SNSM/La Guajira), and Kankuama (Cesar). Those most affected by killings by the FARC-EP were the Embera Chamí (Caldas), Kankuamas (Cesar), Koguis

(SNSM) and Guambiana (Cauca) communities. Hostage-taking by the AUC and the FARC-EP has mainly affected the Embera Katios, Paeces and Awas. Attacks by the illegal armed groups on medical missions affected access to health care and attention for the indigenous peoples.

9. Fumigation continued to be carried out in indigenous territories in the Sierra Nevada de Santa Marta, Norte de Santander, Guaviare and Caquetá. The Special Rapporteur on the situation of human rights and basic liberties of the indigenous peoples “*gathered testimony on abuses and violations of human rights, specifically of indigenous women,*” including physical and sexual violence by armed elements, as well as intra-community and domestic violence by members of their communities.

10. Afro-Colombian communities are the victims of exclusion and discrimination. Their marginalization manifests itself in a high level of extreme poverty (76 per cent), high rates of unemployment (42 per cent), illiteracy three times the average rate, and infant mortality almost four times what it is for other groups.<sup>g</sup> Although collective title to their territories has been successfully transferred to the Afro-Colombian communities, the armed conflict and the presence of illegal armed elements impede their effective exercise of property rights with regard to their territories.

### Children

11. A large part of the child population continued to be victim of the armed internal conflict. Thousands of boys and girls form part of the ranks of the illegal armed groups and participate in the hostilities. Children are also affected by hostage-taking, displacements, anti-personnel mines, and the consequences of breaches of humanitarian law committed against their families and communities.

12. A significant number of boys and girls are also the victims of violations of their rights to life, integrity and liberty, due to abandonment, abuse, sexual exploitation and exploitation at work, physical mistreatment and domestic violence. Also, nearly 20 out of every 100 Colombian girls and boys lack birth certificates, making it difficult for the State to provide the protection it owes them. A great many children are also affected by the situation of poverty and inequality, which deprives them of opportunities for developing their personalities, manifested in low levels of access, availability, quality and sustainability regarding the rights to food, health and education. The Ministry of Education reports that 50 per cent of the nearly 1 million boys and girls who work do not attend school.<sup>h</sup>

### Women

13. The rights of women and girls continue to be violated by sexist stereotypes and different forms of discrimination,<sup>i</sup> violence and exclusion. In spite of the adoption of certain policies on their behalf, social, political and economic inequalities continue to impede the exercise of their rights under conditions of equality with men. In the labour market, salary differences between men and women persist, and the unemployment rate continues to be higher for women.<sup>j</sup> Women’s share of publicly elected positions continues to be insufficient.<sup>k</sup> Regarding leadership posts in the public sector, while 42 per cent of public servants are women, this proportion does not hold true for leadership posts, in which their share is less than 15 per cent.<sup>l</sup>

14. Women and girls continue to be gravely affected by the different forms of domestic and sexual violence. According to the Institute of Forensic Medicine, sexual violence against women and girls has increased by 23 per cent as compared to the previous year. In 2004, a larger number of cases of sexual violence (rape, sexual slavery, forced nudity) by guerrillas and paramilitary groups, as well as members of the Armed Forces, were reported.

15. The security of women and girls has been aggravated by the presence of the different armed groups in daily life and as a result of the social control exercised over their lives in the public and private spheres. This particularly holds true for peasant, indigenous and Afro-Colombian women, and especially those who are organized, displaced, returnees or confined. Women and girls have been the victims of threats and attacks on their lives, personal integrity and individual liberty merely for being relatives of, or having relationships with, a member of the armed factions, as well as for obstructing forced recruitment of their sons and daughters, particularly by the FARC-EP and the paramilitaries. Women and girls are the principal victims of trafficking in people.

16. The lack of a comprehensive and differentiated policy for prevention, protection and assistance for women and girls who are victims of the armed conflict, especially women and girls who are displaced, demobilized, or reintegrated into society, is an additional aggravating factor in their situation. The judicial system continues to be ineffective in addressing cases of gender violence. Sexist stereotyping persist in providing attention in cases of domestic and sexual violence, along with a lack of experience in gender affairs on the part of judicial officials. This situation tends to discourage the reporting of cases and increases the lack of confidence in the justice system therefore leading to increased impunity.

#### Journalists and opinion-makers

17. The Office received complaints from various journalists and social communicators who reported that they carry out their work in a climate of indirect censorship, intimidation and obstruction to accurate information. It was reported that, over the first 10 months of 2004, 2 journalists were the victims of homicides, 32 of threats, of whom 4 had to leave the country, 4 were victims of the excessive use of force by members of the Security Forces, and 8 were obstructed in terms of freedom of the press resulting from actions by State agents. The majority of threats were attributed to paramilitary groups, followed by unknown sources, and finally the FARC-EP. In addition, impunity continued in cases of threats against journalists. These events have contributed, in various regions, to a situation of self-censorship that has existed for several years, along with the uncritical use of official sources, the provision of inaccurate information, and violation of the right to information. The Special Rapporteur for the promotion, protection and protection of freedom of expression and opinion, in his visit to Colombia in February, pointed out the difficult atmosphere for journalists in fully exercising their profession, and emphasized the concentration of ownership of the media, and the non-acceptance of trade unions within the sector.

18. Certain journalists informed the Office that they had been pressured and intimidated by members of the Security Forces so that they would publish only favourable statistics or “battle reports,” and alleged that they had received threats after having published a version other than that provided by the authorities.<sup>m</sup> As a result of such threats, three journalists had to shut down their news services or modify their reporting style.

### Hostages, disappeared persons and their families

19. The practice of hostage-taking by the illegal armed groups has subjected men, women, girls and boys to the illegal loss of freedom and inhumane treatment. Seventy-three per cent of the victims recorded over the first nine months of 2004 were male and 27 per cent female. Twenty-one per cent of these abductions involved minors. This situation occurred in 29 of 32 departments in the country, principally in Antioquia, Bogotá, Meta and Cauca. These hostages are in addition to those who remain in captivity and have not been freed by their captors, thereby increasing the number of families living in uncertainty. The same situation occurs with the families of disappeared persons, with the aggravating factor of under-reporting and the invisible nature of this grave phenomenon. Particular emphasis should be made to the situation of women who are required to act as heads of households and the particular vulnerability of women, girls and boys held hostage. The armed groups committing these war crimes have clear responsibilities for these hostages.

20. The State has responsibilities in terms of assistance and support for the families as well as in seeking appropriate mechanisms to free the hostages without putting their lives at risk.<sup>n</sup> The State mechanism of the Urgent Search Commission for disappeared persons constitutes a tool that should continue to be strengthened.

### Others

21. The illegal armed groups persist in attacking officials such as mayors and former mayors, assassinations of which increased in 2004. Municipal councilmen have been the victims of homicides, threats, displacements and hostage-taking, although at lower rates than those previously recorded. Various members of the Unión Patriótica and the Communist Party continued to be subject to homicides, attacks, threats and grave risks, in addition to their political rights being affected. In 2004, an increase was recorded in the number of homicides of members of these groups, who are the beneficiaries of protective measures on the part of the Programme of the Ministry of the Interior. Judicial officials, along with victims, witnesses and others taking part in criminal and disciplinary procedures, have been affected in terms of their security, particularly by the violent acts of the illegal armed groups. In 2004, homicides, attempted homicides and threats were reported against prosecutors, procurators, judges, investigators, and other judicial officials. Doctors constituted another vulnerable group who suffered from arbitrary arrests, threats and other attacks, particularly those practicing in areas of influence of the illegal armed groups. The latter also victimized business people through extortions and hostage-taking.

22. The internal armed conflict reinforced gender discrimination, homophobia and heterosexism. Reports were made of attacks by the illegal armed groups, through physical or psychological abuse or social cleansing, against persons because of their sexual orientation. Such persons were also frequently the victims of abuses and discrimination by the authorities. Allegations were received against members of the National Police in Medellín, Bucaramanga and Santa Marta. The Constitutional Court took action on behalf of the right to equality and other fundamental rights, emphasizing that a person's sexual orientation constitutes an element that defines their identity and a fundamental component of individual autonomy.<sup>o</sup> Nonetheless, there is a lack of appropriate policies for guaranteeing the rights of lesbians, gays, bisexuals and transsexuals, as well as explicit legislative initiatives to provide criminal and disciplinary sanctions for discrimination against people based on their sexual orientation.

## Notes

<sup>a</sup> These include the President of Colombia.

<sup>b</sup> Presidential Directive No. 07 of September 1999 and Directive No. 9 of the Ministry of Defence of July 2003.

<sup>c</sup> See the following table:

Year	Social Solidarity Network			CODHES		
	Semester I	Semester II	Total	Semester I	Semester II	Total
2002	230 444	181 450	411 894	203 681	208 872	412 553
2003	128 848	84 849	213 697	119 690	87 917	207 607
2004	72 072	42 901 (to September)	114 973	130 346	75 158 (to September)	205 504

For the SSN, the only forcibly displaced persons are those who have registered as such in the Sole Registry of the Displaced Population. Displaced persons may register within a year of having presented the situation. By the end of the first semester of 2005, the SSN will have the consolidated information corresponding to the first semester of 2004. For its part, CODHES uses the registry of the SSN together with other sources, such as the press, the ICRC's assistance records, information provided by the Catholic Church etc. With this, it produces an estimate for a determined period.

<sup>d</sup> National Policy on Sexual and Reproductive Health. Document of the Ministry of Social Protection, page 20, paragraph 1, 2003.

<sup>e</sup> Various indigenous and Afro-Colombian communities that were affected were the subject of cautionary or provisional measures on the part of the Inter-American Human Rights Court.

<sup>f</sup> Memo on indigenous people from the Ministry of Defence.

<sup>g</sup> Report of the Special Rapporteur on Racism concerning his mission to Colombia in September 2003. E/CN.4/2004/18/Add.3, paragraph 34.

<sup>h</sup> The Ministry only reports on child labourers between the ages of 12 and 7 in the urban zone and 10 and 17 in the rural zone.

<sup>i</sup> Report of the Colombian State on implementation of the Beijing platform (1995), May 2004, page 11.

<sup>j</sup> DANE (National Department of Statistics), Ongoing Survey of Families, October 2004. In September, female unemployment was at 17 per cent whereas unemployment among males was 10 per cent.

<sup>k</sup> For the period 2004-2007, 2 women governors were elected out of a total of 32. Just 7.6 per cent of municipal mayors were women.

<sup>l</sup> Mujeres constructoras de Paz y Desarrollo (Women Builders of Peace and Development), Presidential Councillor for women's equality, pages 51 and 52, Bogotá, 2003.

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

<sup>n</sup> See press release of the office in Colombia.

<sup>o</sup> Sentence T-301-04.

## Annex IV

### NOTE ON STATISTICS

1. Statistical indicators are a powerful tool for the protection of human rights and international humanitarian law. They can be used as an instrument to formulate better policies; supervise progress made; determine undesired effects of laws, policies and practices; determine which actors are influencing the enjoyment of rights and make clear whether or not they are fulfilling their obligations; give prior warning of possible violations and enable preventive measures to be taken; strengthen the social consensus regarding difficult decisions that must be made in the context of limited resources; and throw light on questions that have been ignored or kept quiet.
2. Colombia lacks a statistical system that adequately covers the reality with regard to human rights violations and breaches of international humanitarian law.
3. Current official statistics on violations of human rights and breaches of international humanitarian law suffer from systematic and accidental errors. This could be, among other things, the result of a deficient definition of the indicators, which are not in accordance with international instruments, and the use of a less than appropriate methodology in gathering data.
4. The brief observations that follow are aimed at motivating the establishment in Colombia of a system of official statistics that would adequately collect data on violations of human rights and breaches of international humanitarian law. This would make it possible to have better elements for formulating and putting into practice comprehensive public policies in this field.
5. Regarding human rights, the Office has observed that the official statistics of the executive branch are limited and, with few exceptions, do not include relevant indicators regarding violations to neither civil and political rights, nor to economic, social and cultural rights.
6. For example, they do not record forced disappearances, extrajudicial executions, torture and cruel, inhuman or degrading treatment, arbitrary arrests, rapes and violations of due process in accordance with established international standards. The situation is the same regarding statistics on homicides, which do not adequately differentiate as to whether the perpetrator was an agent of the State or a private individual acting with the consent or acquiescence of the State.
7. An example of the above are the statistics on torture, recorded by the Center for Criminological Investigations (CIC) of the Central Office of the Judicial Police, for the period from 1993 to 30 September 2004. These show that, between 1993 and 2001, there was a yearly average of 1,230 cases of torture at the national level. From 2002 to September of 2004, the recorded number falls to an average of six cases per year. In 2004, the Office recorded 20 cases of events that could be classified, under international norms, as torture or cruel, inhuman or degrading treatment or punishment. According to the internal regulations of the National Police, torture is committed by private individuals having no link to the State. According to

international law on human rights, torture and cruel, inhuman or degrading treatment or punishment can be perpetrated by government employees or private individuals who act with the acquiescence or tolerance of government employees.

8. Another example refers to forced disappearances. The Center for Criminological Investigations of the Police does not record any cases of forced disappearances, despite the fact that this conduct has been classified as a crime in the Criminal Code currently in force. According to Colombian legislation, perpetrators of this crime can be both government employees as well as private individuals who act without any links to government employees. However, according to international law on human rights, forced disappearance can only be committed by government employees or private individuals who act with the acquiescence or tolerance of government employees. It is possible that cases of forced disappearance are being incorrectly included under the statistical heading of kidnappings. According to information supplied by the International Committee of the Red Cross in Colombia (ICRC), more than 200 cases could to date be classified as forced disappearances.

9. Statistics kept by the army incorrectly record acts of terrorism, massacres, the use of unconventional arms, kidnapping, the use of children in warfare, and attacks on protected properties carried out by illegal armed groups as “violations of human rights by illegal groups”. It should be noted that these conducts are breaches of international humanitarian law and are only considered violations of human rights when carried out by government employees or private individuals acting under their orders or with their complicity.

10. In 2004, the Office recorded a large number of reports of cases of people who were executed by the paramilitaries and later presented by the authorities as having been killed in combat. The lack of an independent and impartial investigation into these allegations tends to generate a statistical distortion, because these homicides are included as part of the operational achievements of the security forces.

11. The statistics of the Observatory of the Presidential Program on Human Rights and International Humanitarian Law, based on diverse sources, use definitions that are incompatible with international instruments on human rights. Thus, for example, the extrajudicial execution of three trade union leaders, which occurred on 5 August 2004 and was attributed to members of the military forces, was not considered to be a grave violation of the trade unionists’ human rights. The Ministry for Social Protection does not consider these deaths as “linked to trade union activities,” because they are “in the course of a criminal investigation aimed at determining the circumstances of the manner and place in which these events occurred”. Using this criterion, no human rights violation could be classified as such as long as no court sentence has been handed down.

12. The Observatory records homicides, threats and kidnappings of journalists by illegal armed groups, but does not include cases of the excessive use of force or other attacks on freedom of expression attributed to members of the security forces. In 2004, the Office recorded 40 cases of incidents that could be classified, under international norms, as violations of freedom of expression and opinion.

13. Statistics kept by the Ombudsman's Office, in contrast, show a higher degree of precision and are more relevant in relation to human rights and international humanitarian law. However, they do not appear to be taken into account in the statistics of the executive branch.

14. Regarding breaches of international humanitarian law, there are more official statistics, but the majority of them refer to conduct attributed to members of the illegal armed groups. There are few statistics on conduct attributed to agents of the State.

15. As of August 2004, the Observatory recorded nine homicides of indigenous persons attributed to members of the military forces. However, the indicators up until September of 2004, available on their web page, do not include government employees among those presumed responsible for homicides of indigenous persons.

16. Official statistics on breaches of international humanitarian law also contain holes and gaps. On the one hand, they do not include breaches committed by agents of the State, as may be seen in the data of the Observatory of the Presidential Program on Human Rights and International Humanitarian Law. On the other hand, the majority of these breaches are attributed to unknown perpetrators. The statistics are also subject to evident under-reporting. In 2004, the Office has recorded 248 cases that could be classified, under international norms, as breaches of international humanitarian law. Of this total, 57 cases would be attributable to members of the security forces.

17. Official statistics also reveal imprecision and distortions. One example of this is the parameter of "common homicide" used by the Criminal Investigations Center of the National Police and by the Observatory of the Office of the Vice-President. This denomination includes all types of violent death, with the exception of those arising from traffic accidents. Nor is the parameter precise regarding the ethnic origin of the victim, the status of the perpetrator (State agent or private individual), or the circumstances in which the breach took place.

18. Another example of lack of precision in official statistics is the use of the term "acts of terrorism". The Observatory, in agreement with the Ministry of Defence, understands acts of terrorism as "*events in which explosive artifacts are indiscriminately used, attacking the lives and properties of noncombatants*". According to a resolution adopted by the United Nations, acts of terrorism are understood as, "*criminal acts for political purposes conceived or planned in order to provoke a state of terror among the general population, a group of persons or determined individuals and which are unjustifiable under all circumstances, whatever the political, philosophical, ideological, racial, ethnic, religious or any other type of considerations used in order to justify them*".<sup>a</sup>

19. One example of the statistical contradictions is the discrepancy between different sources. Thus the Presidential Program for Human Rights and International Humanitarian Law records 1 or 14 cases of attacks on the civilian population, according to the source of information. If the source is the Ministry of Defence, it reflects a 75 per cent decrease in attacks on civilian populations. If the information comes from bulletins issued by the DAS, it shows a 180 per cent increase.

20. Finally, the lack of disaggregated statistics hinders the understanding of the impact of violations and breaches on specific social sectors of society. For example, the Social Solidarity Network, because it lacks disaggregated statistics regarding forced displacement of indigenous persons and Afro-Colombians, as well as of women, is not able to accurately determine the situation of the most vulnerable communities and populations.

#### **Note**

<sup>a</sup> See the United Nations Declaration on measures to eliminate international terrorism, annexed to General Assembly Resolution 49/60, document A/RES/49/60 (17 February 1995), article 3.

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