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公民权利和政治权利，包括失踪和即审即决问题

强迫或非自愿失踪问题

强迫或非自愿失踪问题工作组的报告

增 编

对哥伦比亚的访问 **

(2005 年 7 月 5 日至 13 日)

* 本文件由于技术原因重新印发。

** 本访问报告的内容提要以所有正式语文分发。报告本身载于内容提要附件，仅以原文和西班牙文分发。附录仅以英文分发。

内 容 提 要

应哥伦比亚政府邀请，强迫或非自愿失踪问题工作组(工作组)于 2005 年 7 月 5 日至 13 日访问了哥伦比亚。代表工作组进行这次访问的有副主席兼报告员阿德巴约·阿德坎耶和工作组成员圣蒂安戈·科奎拉。此次访问的目的是跟踪工作组 1988 年第一次访问时所提出的建议，查明自此以来在防止和解决强迫或非自愿失踪问题方面所取得的进展，并调查哥伦比亚失踪现象的发展情况。

代表团访问了波哥大、巴兰卡维梅哈和麦德林三个城市，与高级官员、地方民政当局和军方及警方的代表举行了会晤。工作组成员还会晤了非政府组织、强迫失踪受害者代表和家属。在这些会晤期间，代表团观察到，不仅非政府组织和政府对哥伦比亚局势的看法各异，而且官方当局本身，尤其是首都和首都以外的当局对哥伦比亚局势的看法也互相矛盾。本报告试图说明这一现象，并在附件中举例说明了这种不同的观点。

本报告对工作组 1988 年上次访问以来有关强迫失踪的宪法和法律框架作了一个概述。报告突出说明了在一个高度发达的法律系统和法律机制极差的具体成果之间现存的差距。因此，工作组成员就如何制止目前哥伦比亚境内的失踪状况、保护受害者家属以及打听受害者命运和寻找受害者下落的非政府组织、解决因恐惧和有罪不罚而少报失踪案件的情况、更加切实地在哥伦比亚落实有关失踪问题的现有法律机制提出了一些建议。

词 汇

Procurator General	Procurador General
Prosecutor General	Fiscalía General
Human Rights Ombudsman	Defensor del Pueblo
Municipal Representative	Personero municipal
National Commission for Research on Disappeared Persons	Comisión Nacional de Búsqueda de Personas Desaparecidas
Protective action on human rights	Acción de tutela
Constitutional corpus	bloque constitucional

Annex

**REPORT SUBMITTED BY THE WORKING GROUP ON ENFORCED OR
INVOLUNTARY DISAPPEARANCES ON THE MISSION TO COLOMBIA**

(5-13 July 2005)

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Introduction

1. At its twenty-fourth session, the Working Group on Enforced or Involuntary Disappearances delegated Toine van Dongen and Diego García-Sayán to carry out a visit to Colombia. This visit took place between 24 October and 2 November 1988. During this visit, the two members of the mission were received by the President of the Republic, and high-ranking officials. The mission visited the cities of Calí, Medellín and Girardot. Following this visit, the Working Group formulated a number of recommendations to the Government of Colombia concerning past cases of disappearances and measures to prevent disappearances from occurring in the future.
2. On 30 March 1995, the Government of Colombia invited the Working Group to visit the country. Unfortunately, a mutually acceptable date for the visit could not be set. On two occasions, the Working Group asked the Government of Colombia to suggest possible dates for the visit. On 26 September 2001, the Government of Colombia reiterated its invitation to the Working Group to visit the country. On 4 November 2002, the Government informed the Working Group that owing to a change of government, there was a need to initiate new steps with a view to such a visit taking place. On 8 November 2002 and again on 25 April 2003, the Working Group reiterated to the Government of Colombia its interest in a visit. After meeting with officials from the Government of Colombia in the course of 2004, the dates for the visit were agreed for the summer of 2005. Finally, the second visit of the Working Group to Colombia took place from 5 to 13 July 2005.
3. The Working Group was represented by the Vice-Chairman-Rapporteur, J. Adebayo Adedokun, and Working Group member Santiago Corcuera. The purpose of this visit was to follow up on the recommendations made by the Working Group during its first visit, to identify progress made since then to prevent and resolve the problem of enforced or involuntary disappearances and to investigate the development of the phenomenon of disappearance in Colombia.
4. During this visit, the Working Group visited the capital, Bogotá, Barrancabermeja (district of Santander) and Medellín (district of Antioquia). It also made an on-site visit to Commune 13 (Comuna 13), a zone in the suburbs of Medellín where multiple graves were found.
5. The delegation held meetings in Bogotá with Carolina Barco, the Minister for Foreign Affairs; Sabas Pretelt de la Vega, the Minister of the Interior and of Justice; Luis Carlos Restrepo, the High Commissioner for Peace; Volmar Perez Ortiz, the Human Rights Ombudsman (Defensor del Pueblo); Edgardo Maya Villazon, Procurator General (Procurador General de la Nación); Luis Camilo Osorio, the Prosecutor General (Fiscalía General de la Nación); as well as other high-ranking representatives of the Departments for Foreign Affairs and National Defence, the Ministry of the Interior and of Justice, the Presidential Programme of Human Rights and the police.
6. While in Bogotá, the Group also met with the members of the Constitutional Court and the Supreme Court. Meetings were also organized with specialized offices, such as the National Institute of Legal Medicine and Forensic Sciences, and the National Commission to Search for Disappeared Persons (Comisión Nacional de Búsqueda de Personas Desaparecidas).

7. During their visit to Barrancabermeja, the members of the Working Group met with a large delegation including Hugo Heliodoro Aguilar Naranjo, the Governor of Santander; Edgar Cote Gravino, Mayor of Barrancabermeja; Jorge Gómez Lizarazo, the Regional Human Rights Ombudsman; officials of the Ministry of the Interior and of Justice operating in the area; a number of officials of the central government belonging to the Presidential Programme of Human Rights (including Adviser to the President on International Humanitarian Law); as well as other local authorities of the civil administration and representatives of the army and the police.

8. In Medellín, the Working Group met with local and departmental authorities at the Mayor's office including local civil and military authorities, representatives of the police, and representatives of the Minister for Foreign Affairs, the Office of the Ombudsman General and the Vice-Presidency.

9. Members of the mission also had the opportunity of holding rounds of hearings with families of victims, their lawyers and witnesses, members of associations of relatives of disappeared persons or individuals concerned with disappearances, human rights and other non-governmental organizations (NGOs) and women's groups. Most of these people requested that their testimonies be taken confidentially and their responses be kept anonymous.

10. The delegation expressed its gratitude to the Government for the invitation to visit Colombia and recognized the cooperation of the Colombian authorities. Most of the discussions took place in an open and constructive manner for which the Working Group is grateful.

11. The delegation expresses its deep appreciation for the assistance and support provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Bogotá, Bucaramanga and Medellín. The Working Group appreciated the professionalism and the dedication of the staff to improve the situation of human rights in Colombia. The delegation would also like to thank the Office of the United Nations Resident Representative/Resident Coordinator of the United Nations Development Programme (UNDP) in Colombia for its assistance to the mission.

I. GENERAL OBSERVATIONS

A. The internal armed conflict

12. For more than 40 years now, Colombia has been an arena of conflict where various actors have perpetrated all kinds of violence and gross human rights violations. The major actors have included: a plethora of armed revolutionary movements, organized as guerrilla forces; ultra-rightist paramilitary groups, or the so-called "self-defence units"; and, of course, the Colombian State itself, along with its coercive instruments comprising the regular Armed Forces, the National Police, and other security bodies among others. The conflict had originally centred on the matter of economic and political exclusion and access, the question of land and its distribution and issues of governance generally.

13. The conflict was later complicated by interests in the cocoa industry and the development of new plantation farms for bananas and oil palm-producing trees, the illegal drug trade and exploitation of huge deposits of oil and other mineral resources found across the country's major regions. Struggle for and control of flow of incomes or "rents" from these economies provided additional sources for financing of the armed conflict, as well as the motivations and strategies for continuing it. The interests involved ranged from the local, through the national, to the transnational.

14. Initially, the Colombian State had undeniably played a significant role in promoting the formation, organization, training and arming of paramilitary or self-defence groups, intending to use these as a counter-force to help in combating armed revolutionary movements. Currently, however, the Government alleges that there exist no links between the State or State authorities and the paramilitary groups; and that the official policy treats both the paramilitaries and guerrillas as "illegal armed groups".

15. Also, officially, there is no internal armed conflict in Colombia and the problem of violence in Colombia is linked to "terrorist activities". Whilst officials outside the capital and the Human Rights Ombudsman acknowledge the existence of an internal armed conflict as evident, officials of the capital argue that there is no armed conflict according to international humanitarian law, for example Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

16. Denying the condition of an internal armed conflict has important implications. One of which is that it becomes possible to refuse any distinction between combatants and non-combatants. The civilian population is kept hostage between the various fighting forces.

B. The democratic security policy

17. Since coming to power, President Alvaro Uribe Vélez presented a plan called "the Democratic Security Policy". The basic objectives of this policy are to strengthen and guarantee the rule of law across the territory of the country, through the consolidation of democratic authority, the free exercise of the authority of institutions and the legal participation of citizens in matters of common interest.

18. Colombian authorities have stated that the Democratic Security Policy has achieved significant progress in reducing the level of violence throughout the country. It has been said that the State has territorial control and that police are now present in all sectors in Colombia. According to official figures, the number of homicides for 2005 is half of last year's figure. It has also been stated that the number of kidnappings or killings of trade unionists has gone down.

19. The Colombian authorities state that human rights are a major influence on all public institutions. It is reported that many government ministries and departments have also formally embraced a programme of human rights education as a necessary part of their professional training, and are well aware of the issues involved.

20. It has been reported by non-governmental sources that the dismantlement of paramilitary units is largely a cosmetic exercise. While the number of paramilitaries may be diminishing throughout Colombia (and even these figures are contested), they have been consolidating their power and taking over the economic and political institutions of the country. It has been suggested that the paramilitary forces “control” 30 per cent of the parliament and officials such as governors or mayors. Colombia may confront a process of institutionalization of the paramilitary forces.

21. Various reports indicate that disappearances have not lessened, but continued and either remain constant, or may have increased since 1996. In the majority of cases reported to the Working Group it is paramilitaries, acting allegedly with the acquiescence of certain elements within the State military and security forces that have been singled out and held primarily responsible for the occurrences. Nor have disappearances stopped following the negotiations and the agreements for ceasefire and demobilization reached between the paramilitaries and the Government. During interviews with government officials, State involvement with or connivance in disappearances was frequently denied yet, interviews with common citizens suffering from generalized violence in their day-to-day life provided eloquent and convincing testimony to direct State involvement in and complicity with enforced or involuntary disappearances in many parts of the country.

II. CONSTITUTIONAL AND LEGAL FRAMEWORK ON ENFORCED DISAPPEARANCES: CHANGES AND PROGRESS MADE SINCE 1988

22. Since 1988, Colombia has established one of the most developed systems of constitutional, legal and institutional mechanisms for dealing with enforced disappearances. The changes referred to at the constitutional and legal levels are briefly described as follows.

A. Constitution of 1991

23. Colombia enacted a new constitution in 1991, which displays characteristics of a modern and advanced basic law. It recognizes all of the fundamental human rights and provides for the appropriate guarantees and safeguards in case of their violation. Additionally, human rights treaties to which Colombia is a party are included within the so-called constitutional corpus (*bloque constitucional*). Indeed, the Constitution of Colombia provides that human rights treaties have the same legal status as the Constitution itself. What is more, such treaties could actually have a higher position in the legal hierarchy because when there is a contradiction between the provisions of the Constitution and the clauses of such treaties, article 93 of the Constitution establishes that the rights enshrined in the Constitution shall be interpreted in accordance with the treaties on human rights ratified by Colombia.

24. Article 12 of the Constitution specifically forbids the practice of enforced disappearance.

25. Article 44 of the Constitution refers to the rights of children. It should be noted that, although a specific reference to enforced disappearance is not contained in this article, allusion is made to the fact that children should be protected against abandonment, kidnapping, sale, sexual abuse and labour exploitation, practices which are either implicit in or are frequently coupled with the crime of enforced disappearance.

B. Criminal Code on disappearance

26. It was not until the year 2000 that a criminal definition of enforced disappearance was finally included in the criminal legal framework of the country, together with the crimes of genocide, enforced displacement and torture. Law 589 on enforced disappearance contains the definition and other provisions regarding enforced disappearance, which were incorporated into the Criminal Code.

27. These legal provisions have several positive aspects in the light of the Declaration on the Protection of all Persons from Enforced Disappearance (General Assembly resolution 47/133). The definition of enforced disappearance provided in Law 589 of 2000: (a) includes all the elements provided in the Declaration; (b) establishes a punishment of 25 to 40 years of imprisonment, which is consistent with the extreme seriousness of the offence, as provided for in article 4.1 of the Declaration; (c) provides for mitigating measures only in the case that the perpetrators cooperate in the liberation of the victim or in the finding of the remains of the victim, as the case may be, as required by article 4.2 of the Declaration; (d) provides that the crime of enforced disappearance cannot be justified as a result of due obedience to a superior as provided by article 6 of the Declaration; (e) establishes that enforced disappearances cannot be subject to amnesty or exoneration as set out in article 19 of the Declaration. Unfortunately, it seems that these positive aspects have been substantially undermined by the *Justicia y Paz* Law, which will be discussed below. Another positive aspect is found in article 3 of the Military Criminal Code - Law 522 of 1999 - which provides that judicial proceedings in cases of enforced disappearance may only be carried out by ordinary, not military, courts of law.

C. Inter-American Convention on Forced Disappearance of Persons

28. Furthermore, by means of Law 707 of 2001, the Inter-American Convention on Forced Disappearance of Persons was approved by the Congress, and was finally ratified by Colombia in April 2005. This Convention forms a part of the so-called "constitutional corpus". Colombia is also a party to the Rome Statute of the International Criminal Court, which created the International Criminal Court and contains a definition of the international crime of enforced disappearance.

III. INSTITUTIONAL MECHANISMS

29. As a result of the constitutional and legal innovations and amendments analysed above, a number of State institutions were established to deal with the situation of enforced disappearances. This section below describes some of these institutions and their functions.

A. National Commission to Search for Disappeared Persons and the Urgent Search Mechanism

30. The Law 589 of 2000 created several mechanisms for dealing with enforced disappearance. Among them is the Commission to Search for Disappeared Persons. Meant to be a national and permanent institution, the Commission has the responsibility to design and support the execution of search plans, establish working groups for specific purposes, support and promote the investigation of the crime of enforced disappearance, and evaluate and support the performance of all work relating to the area.

31. The Commission has the significant advantage that its membership comprises not just officials from Government (e.g. General Prosecutor, Ministry of Defence, Presidential Adviser on Human Rights) but also includes representatives of autonomous State institutions (the Human Rights Ombudsman and the Procurator General), as well as representatives of important NGOs.

32. Law 589 also produced the Urgent Search Mechanism, so that when the whereabouts of a person are unknown anyone can request the judicial authority to start an immediate and urgent search and investigate any authority or private party in order to find the disappeared person. Additionally, Law 971 of 2005 was approved by the Colombian Congress in order to provide detailed regulations governing the operation of this mechanism. This Law was approved the day after the mission left Colombia.

33. Law 589 treats the mechanism of urgent search as an autonomous mechanism that will not preclude recourse to the other remedies such as habeas corpus or the criminal investigation of the crime of disappearance. Additionally, the judicial authority that receives a petition to start the Urgent Search Mechanism is obligated to activate it, without submitting the petition for the distribution of workload that would otherwise apply in a regular judicial proceeding. Upon receipt of the petition, the judicial officer must act within 24 hours to begin the pertinent search measures. One of the greatest advantages of this Law is that it dispenses with the requirement of confidentiality of the relevant information.

B. National Registry of the Disappeared

34. The same Law 589 created the National Registry of the Disappeared, within the National Institute of Legal Medicine and Forensic Sciences. The Registry is designed to build up a data base on disappearances. At the National Institute of Legal Medicine, the following information is registered about the victims: identity of the disappeared persons; the date and time of the disappearance; as well as lists of corpses, unburied human remains and unidentified persons, with an indication of the date of the findings and other relevant data.

C. The Human Rights Ombudsman

35. The institution of the Human Rights Ombudsman has its legal basis in articles 281 to 284 of the Constitution and in Laws 5 and 24 of 1992. The Human Rights Ombudsman is elected by the Chamber of Representatives of the Colombian Congress, from amongst three candidates proposed by the President of Colombia. The Human Rights Ombudsman acts as an auxiliary officer of the Procurator General and therefore acts under the supreme command of the Procurator General. The Human Rights Ombudsman has, among many other important tasks, the responsibility to preside over the National Commission to Search for Disappeared Persons.

D. Constitutional Court

36. At the apex of Colombia's justice system is the Constitutional Court on which sit nine distinguished judges. It is charged by the Constitution with the power to review and decide on the constitutionality of legislative and other governmental acts. These include laws enacted by the Colombian Congress and assented to by the President. Additionally, it can review judicial decisions related to the protection action of human rights (*acción de tutela*). The Court has

issued several important decisions regarding enforced disappearances, among others, regarding the constitutionality of the Inter-American Convention on Enforced Disappearances, the constitutionality of the search mechanism and other related issues.

37. The members of the Working Group were concerned by reports that this linchpin of Colombia's constitutional and justice system has come under increasing public criticism from official sources.

E. Human rights units in the Government

38. Finally, most of the Government of Colombia ministries and departments have had human rights units established within them. For example, there is a Presidential Programme of Human Rights created by Decree No. 1636 of 2000, and placed under the direct supervision of the Vice-President of Colombia. The Ministry of the Interior, besides having recently had the old Ministry of Justice merged with it to form one common Ministry of the Interior and of Justice, also houses four human rights protection programmes being run under a unit of the Ministry known as the General Direction on Human Rights (DGDH). Additionally, the Ministry of Defence has an Office of Human Rights, while the Ministry for Foreign Affairs operates a Directorate of Human Rights, in charge of channelling matters stemming from international bodies and institutions regarding human rights. Of course, as is to be expected, there are human rights units to be found in the Office of the Procurator General and the Prosecutor General, the Office of the People's Defender, as well as in municipal authorities and other State bodies, meant to assist these in investigating and punishing violations of human rights

IV. SHORTCOMINGS IN THE IMPLEMENTATION OF LAW

39. Despite the progress made by Colombia in the development of its constitutional and institutional framework for handling disappearances, the actual implementation of these laws and procedures has left much to be desired, as discussed below.

A. Gap between legal progress and practical implementation

40. The Criminal Code was amended to establish the crime of enforced disappearance as an autonomous crime in 2000. Yet, based on information provided by the Office of the Prosecutor General, only 84 investigations have been opened since 2001 implicating government officials (i.e. National Army, National Navy and National Police). However 390 complaints of enforced disappearances have been received since 2001. Out of those 390 cases, 176 relate to perpetrators who are not reported to belong to a government entity. The same report indicates that only 28 persons have been sanctioned in the first stage of the criminal procedure and 16 in the second stage. Furthermore, 25 persons have been acquitted at the first procedural stage and 7 in the second.

41. With respect to the results achieved by the National Commission to Search for Disappeared Persons, a report prepared by its chairman indicates that "the lack of measurement and follow-up instruments to the cases that have been started and the urgent search mechanisms that have been implemented, has lead to the impossibility to render specific results with respect to the search of persons and the efficiency of the mechanism". This report also indicates that

one of the reasons why the mechanism has not produced specific results is that the Prosecutor General has put forward interpretations of the functions of the National Commission which have been largely at variance with those of other members. These have prevented the National Commission from making progress, particularly in connection with the proper roles of the working groups for the search of persons.

42. During the interviews held by the Working Group with several actors participating in the National Commission, the Working Group learned that the activities of the National Commission regarding urgent searches have not advanced, largely because of the requirement of the confidentiality of the investigation imposed by the Prosecutor General. It is hoped that this impediment will be resolved by means of the application of Law 589.

B. Overlapping institutions and agencies, competing programmes and missions

43. Colombia has probably established more national institutional mechanisms for dealing with the enforcement of human rights standards and against their violation than any other country in the world today. But the Working Group wonders whether this has necessarily led to the intended goal. According to the opinions of non-governmental sources and local legal experts, the problems include: having too many institutions and agencies operating within and across different arms of government, including the legislative, executive and judicial, each with their own competing programmes and missions; inadequate staffing; inadequate funding; lack of central coordination; poor inter-agency communication; fragmentation of authority, with heads of the various agencies viewing them as their own power bases. These factors can only lead to ineffective and weak policy implementation. The Working Group understands that, in order to solve the problem of potential conflict of functions, the Presidential Programme of Human Rights and International Humanitarian Law of the Vice-Presidency of the republic will coordinate actions of all government agencies having jurisdiction on the subject.

44. Admissions separately made to the mission by both the Director-General of the National Institute of Legal Medicine and Forensic Sciences with respect to the latter body's power, and by the Human Rights Ombudsman as regards the database on disappearances being recorded by various agencies, further testify to the nature of the bureaucratic problem. According to the former: "If the authorities do not call upon the National Institute (of Legal Medicine and Forensic Sciences) to participate in the excavation of graves and exhumation of corpses in them, the Institute cannot on its own carry out such functions." And according to the latter: "The database of the Ombudsman's Office does not coincide with that of the National Police or for that matter the one in the Procurator General's Office. Obviously, there is need to unify the database for all the different national mechanisms, so that they can speak the same language and eliminate the differences."

45. Having matters dealing with Justice grouped together with those relating to internal affairs and both based within one common Government ministry was observed to be fraught with potential problems. Not the least of these was the potential that issues of Justice may be subordinated to those of internal administrative concern. A justice ministry is supposed to be concerned with performing the traditional autonomous role as the third arm of government charged with overseeing the judicial branch, including the functions of the Attorney-General's Office, the task of adjudication in general, implementation of the human rights policy of the

Government, and helping to bring justice to victims of human rights violations; while an “interior ministry” is left to deal with issues of public order, safety and internal security. Though financial secltitude is essential, cost efficiencies cannot justify the lumping together of incompatible functions.

C. Definition of the criminal offence of enforced disappearance and non-State actors

46. Besides those problems arising from the nature of the institutional set-up created, there are other substantive difficulties with some of the existing laws. For example, a negative aspect of the definition of enforced disappearance contained in Colombian criminal law is that it includes the possibility of acts being characterized as a disappearance even when committed by non-State actors (*El particular que perteneciendo a un grupo armado al margen de la ley*) without the support, consent or acquiescence of the State.

47. The definition of the Declaration on the Protection of all Persons from Enforced Disappearance refers only to acts perpetrated “by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government”. The Inter-American Convention on Forced Disappearance of Persons is to the same effect.

48. Although the inclusion of non-State actors acting without the support or consent of the Government may at first glance look like an advancement of the law, in the sense that it protects more than the limited definition of the Declaration, it is the opinion of the Working Group that enforced disappearance is a “State crime” (as opposed to kidnapping). Although in other cases of violations of human rights the inclusion of non-State actors indeed offers more protection to the victims (i.e. in the case of discrimination or labour or environmental human rights), in the case of enforced disappearance such inclusion dilutes the responsibility of the State.

49. For that same reason, the Working Group resists accepting the official Colombian attitude to “disappearances”, linking the definition of the phenomenon to or even equating it with “kidnappings”. To accept this definition would amount to diluting or even ousting State responsibility for acts of “disappearances”. The Working Group made it a point to emphasize that “disappearances” are a State responsibility, while “kidnappings” are things one attributes to non-State individuals, gangs or criminal networks. The Working Group also took pains to condemn both acts of “disappearances” and “kidnappings”, irrespective of their perpetrators, as reprehensible.

D. Tracing the fate and whereabouts of victims

50. At the time of the mission’s arrival in Bogotá, Colombia was estimated to have a total of 895 or so outstanding cases from among the over 1,150 cases reported since 1981. That sheer number of outstanding cases attributed to Colombia in the report of the Working Group to the sixtieth session of the Commission on Human Rights is evidence that the existing national mechanisms have failed to produce concrete results in one of the very important areas central to our mandate: namely to help in tracing the fate and whereabouts of victims, with a view to the clarification of the cases concerned.

51. As was the experience of members of the previous mission, the Working Group team was also told by some of those interviewed that a number of disappeared persons might have been among the many bodies which had been found and never identified. Reportedly, thousands of graveyards containing bodies of missing and disappeared persons still exist all over the country. Apparently, information gleaned from the general public about such graves reveals a more widespread pattern than previously known. The graves in *Comuna 13* in Medellín visited by the Working Group team during the mission may not be unique.

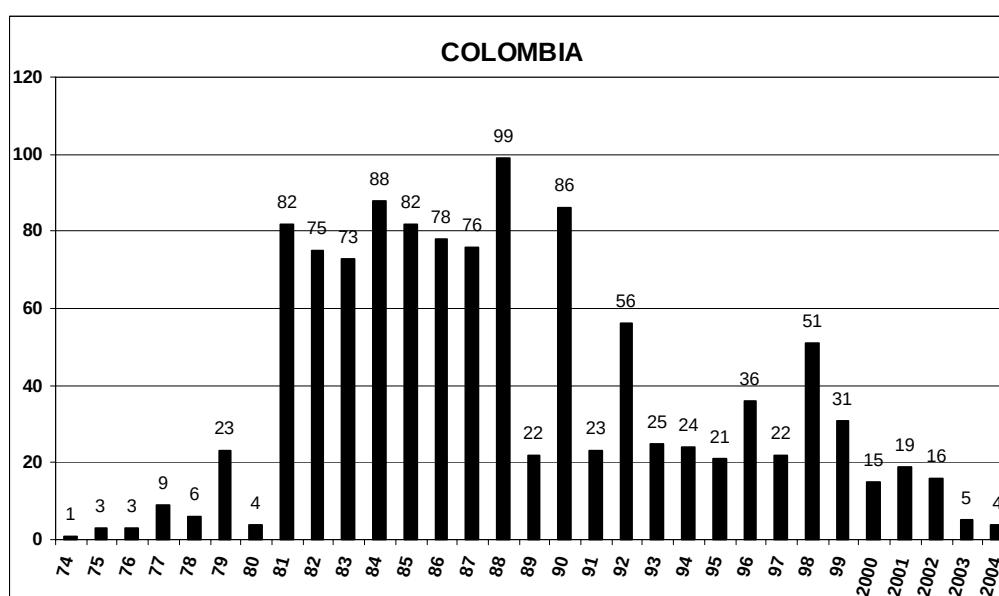
52. Also, the practice of killing disappeared persons and cutting up or mutilating their bodies, then burying them in individual or mass graves, was reported to be part of the strategy used by perpetrators in attempting to cover up evidence. In the same vein, it was alleged that exhumation carried out by the authorities in a few of the known cases was often done without any decorum, decency or care but with bulldozers, making it difficult to identify the bodies of loved ones.

53. The need to protect individual or mass graves was stressed by a number of respondents as being important for aiding investigations and ultimately for building memorials. But, with respect particularly to the latter, it was insisted that only appropriate memorials built at suitable sites should be considered, if these were to succeed in helping families of victims to recover from the trauma of their loss of loved ones.

E. Disappearance and underreporting of cases

54. Since 1981, the Working Group has received each year cases of enforced disappearances from Colombia. The number of these cases has fluctuated over time. This variability is visible in the following figure, which shows the number of disappearances per year.

Figure 1



Excerpt from the Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2005/65, 23 December 2004.

55. Two distinct periods can be observed. The first period starts with the first case received by the Working Group in 1973 and goes to the end of the 1990s. During that period, alleged perpetrators of disappearances were mainly the police, the military forces and the security services. During this period, the paramilitary forces were allegedly backing official forces in these operations, but sometimes acted on their own. The main targets of these disappearances were persons active in associations (in defence of human rights, in defence of farmers, the internally displaced and trade unions), people accused of being members or supporters of the guerrillas or left-wing parties and farmers. During the second period, starting around 1998 to the time of writing, the profiles of the perpetrators and the victims seem to have changed. Reports received indicate fewer cases in which official forces were directly involved and many more cases where paramilitary forces are directly responsible for the disappearances. While there are still many disappearances of persons accused of being “left-wing sympathizers”, the number of “common people”, especially farmers, seems to have increased.

56. The possible reasons for these changes are many. It has been said that the army is less involved in cases of disappearances. Nevertheless, reports and testimonies show that sometimes a soldier is also a paramilitary member, and he has only to change his armband to hide his official position. It has also been reported that certain factions of the army may use paramilitary groups to do a “dirty job” they could not do openly. As for the rise in the number of farmers, peasants or rural people being abducted, it seems that the possession of land has become one of the objectives of the paramilitary forces. Various sources report that disappearances perpetrated against the civilian population in rural areas may be aimed at causing terror and displacement, and the unlawful appropriation of land and other property. This coincides with the information received stating that paramilitary groups are gaining more and more influence in the Colombian economy.

57. From the beginning of the mission, the Working Group found, to its regret, that there is substantial underreporting of cases of enforced disappearance in Colombia. The Working Group anticipated their finding about underreporting in its report to the fifty-fourth session of the Commission (E/CN.4/1998/43, para. 140).

58. During the mission many cases of enforced disappearances were handed over to the Working Group. At the first stage of processing of the cases received in Colombia, the provisional figures indicate around 116 newly reported cases including three women and two children.

59. Another aspect of disappearances that has been underreported in the past and continues at the present time relates to the way in which acts of disappearance are perpetrated in conjunction with other gross violations, with targets drawn from among the most vulnerable groups in society. Numerous testimonies were received concerning these phenomena. The most common examples brought to our notice were: disappearances, combined with “social cleansing” (said to have been a marked feature of the practice in the city of Barrancabermeja for much of the late 1980s and throughout the 1990s, with the urban poor, the unemployed and the so-called “undesirables”, including prostitutes, petty thieves, vagabonds, gamblers and homosexuals as the victims); disappearances, subsequently combined with executions (the victims being drawn mostly from among radical political party leaders or members and trade unionists suspected of

collaborating with the guerrilla groups); disappearances, combined with enforced displacement (taking place often mostly in rural areas, the objective being to dispossess victims of their land and properties); disappearances, combined with rape and other forms of sexual violence (with women and girls as victims); disappearances, combined with forced conscription recruitment (directed at children). There seems to have been an increase in all of these practices since the Working Group's first mission to Colombia in 1988.

60. The general factors accounting for the underreporting of disappearances are similar in Colombia as elsewhere, and include the factors of poverty, illiteracy, submissiveness to fatalism, fear of reprisals, weaknesses in the administration of justice, ineffectual reporting channels and mechanisms, deeply rooted systems of impunity, and a culture of silence. To these generalized factors, explaining why so many acts of disappearance are often left underreported and undenounced must be added other, more specific, factors obviously critical to the Colombian situation: the collaborative links long established and perceived to subsist between the Colombian State or State Authorities and paramilitary groups; the pervasive atmosphere of fear, intimidation, and terror, under which relatives of victims, their lawyers, witnesses to disappearances or their families, members of organizations of relatives and other NGOs or individuals live, particularly in those areas controlled or dominated by the paramilitaries; the profound lack of trust in the judicial system. The Working Group is hopeful that the recently (and in certain regions of the country only) adopted accusatorial criminal procedural system will render more trustworthy, transparent and rapid judicial decisions.

61. Furthermore, a perception of impunity is read as an incentive on the part of the perpetrators to continue committing the crime.

62. In every meeting the Group held with representatives of civil society, the same facts were repeated. The perpetrators of enforced disappearances live among the population. But their membership in paramilitary groups is well known. They have social contacts with representatives of the authorities and of the armed forces. They have information about what members of the community are doing. In this situation, disappearances are used as warnings addressed to the population not to break the rules established by the paramilitaries and not to oppose the paramilitaries. And when a disappearance occurs, paramilitaries also know if someone is reporting these cases to the authorities or if the relatives are searching for the victims. Thus, disappearance has become an important means used by the paramilitaries of exercising social control. As noted above, few cases of disappearance have been successfully prosecuted.

V. MATTERS OF CONCERN

A. Legal provisions for demobilization of paramilitaries in relation to enforced disappearances

63. Law 418 of 1997 established a mechanism to advance talks and negotiations with paramilitary groups and aimed at implementing demobilization and an end to conflict. The term of effectiveness of this Law has been extended on two occasions, the first by Law 548 of 1999 and then by Law 782 of 2002. The Law will now be in effect until 2006. For purposes of facilitating the peace talks, arrest and imprisonment warrants issued by the judicial authorities would cease to be in effect with respect to persons involved in the peace talks.

64. Furthermore, this Law provides that the Government can grant the benefit of pardon to Colombian nationals sentenced for the commission of political offences, or to individuals who voluntarily abandon their activities as members of paramilitary groups and request such benefit having demonstrated, to the satisfaction of the Government, their willingness to be reinserted into civilian life.

65. However, such benefits would not be applicable to persons having committed “atrocious acts of ferocity or barbarity, terrorism, kidnapping, genocide, homicide committed outside combat, or placing the victim in a defenceless position”. Enforced disappearances would clearly fall within the described exception.

66. Law 975 of 2005, known as the Justice and Peace Law, provides for mitigation of sentence for persons who might have been indicted, accused or condemned as a result of any criminal offence committed during, and as a result of, their participation in paramilitary groups, and who might not have been eligible to obtain the benefits of Law 782 mentioned above. Therefore, this new Law could benefit perpetrators of enforced disappearances, when demobilizing either collectively or individually. As explained in detail in this report, some of the mitigating benefits provided for in this Law could be contrary to the Declaration.

67. During the meeting held by the members of the Working Group with the Minister of the Interior and of Justice, discussions took place with respect to the effects of the application of the Justice and Peace Law to perpetrators of enforced disappearances. The Minister indicated that the Justice and Peace Law was only applicable to non-State actors (*grupos armados al margen de la ley*), that thus, none of the persons who would benefit from it would fall within the scope of the mandate of the Working Group, and that State actors committing enforced disappearances would be prosecuted and severely punished without any type of judicial benefits or mitigating circumstances. When the members of the Working Group clarified their mandate as including enforced disappearances perpetrated by non-State actors with the support, consent or acquiescence of State actors, the Minister adamantly stated that such individuals would not be subject to the benefits provided for in the Justice and Peace Law.

68. The Working Group remains concerned, specifically, (a) about the fact that the Justice and Peace Law does not exclude enforced disappearances perpetrated by members of paramilitary groups with the support, consent or acquiescence of State actors and (b) that the reports of every organization of families of victims of enforced disappearance with whom the members of the Working Group held meetings, that several leaders and other members of paramilitary groups, potentially eligible under the relevant Law were liable for enforced disappearances committed with the direct or indirect involvement or acquiescence of governmental officers, particularly members of the police or the Armed Forces.

69. Additionally, the Working Group is concerned about the fact that the Justice and Peace Law does not comply with the requirements of the Declaration because the Law provides for the substantial reduction of penalties applicable to the commission of enforced disappearances. This is not in keeping with the serious nature of the crime.

70. Under the amendments to the Criminal Code introduced under Law 589, the penalty provided for those convicted of enforced disappearance is 25 to 40 years of imprisonment, while

the Justice and Peace Law allows for an alternative punishment of only 5 to 8 years, and freedom on probation for a term equivalent to half of the imposed punishment. This reduction of the penalty can only be granted if the eligibility conditions provided for in the case of collective or individual demobilization are met. Article 4.2 of the Declaration provides that “mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance”.

71. Article 10 of the Justice and Peace Law provides that, in the event of collective demobilization, a condition for obtaining the benefit of the Law is that the abducted persons under the control of the demobilized group be set free. However, this article does not require the supply of information by members of the armed group which would contribute to clarification in cases where the disappeared person might have been executed or otherwise under the control of other groups or persons.

72. Article 11 of the same Law, which refers to individual demobilizations, does not provide for the requirement established in article 4.2 of the Declaration in any manner whatsoever.

73. Furthermore, article 17 of the Law only provides for a “free version” of the facts, and not a complete confession. The Working Group recognizes the fundamental right not to confess as a matter of basic criminal liability. However, a full confession and complete supply of information to clarify the case can certainly be established as a condition for judicial benefits. Under this scenario, the accused would not be obliged to confess, but if he were to be found guilty, he would not obtain the mitigating benefits without providing complete information on the circumstance of the disappearance.

74. Although the Law provides that judicial police will investigate the whereabouts of victims with the assistance of the demobilized paramilitaries (art. 15), such assistance is not established as a condition precedent for eligibility to judicial benefits or mitigation. The Law does include, as part of the concept of integral reparation, a requirement for efficient collaboration to find the disappeared person or the human remains (art. 45.5). However, the law also provides that integral reparation has to be specifically claimed by the victim, and that if the victim did not do so, this would not be an impediment to the person responsible for the crime to obtain the corresponding benefits provided for in the Law (art. 23, last para.).

75. All of these considerations lead the Working Group to conclude that the Law does not comply with the requirements of the Declaration.

76. Upon conclusion of the mission, the Justice and Peace Law had not yet been enacted by the President. The Working Group issued a press release in which it “respectfully begged the President to exercise his constitutional power to object such law and refer it to the Congress so that it could be harmonized with international human rights law”. However, 10 days after the conclusion of the mission, the President enacted the Law, without taking into consideration any of the concerns voiced by the Working Group.

77. Nonetheless, the Working Group still reiterates the point about the need for realigning Colombia’s newly assented Justice and Peace Law in line with the State’s international

obligations under the declaration. President Uribe's assent to the Justice and Peace Law may not necessarily mark the end to the enactment process, but could lead to the whole matter being sent up to the Constitutional Court, where the question about constitutionality or otherwise of the Justice and Peace Law would be decided, including the observed non-compliance with the State's international obligations in certain areas.

B. Protection regime and the environment of fear

78. Some of the analysis in the previous section of the present report already touches upon this sub-theme of the present report, highlighting the gap seemingly existing between the protection measures officially said to be in place for victims of gross human rights violations or their families and the environment of fear and terror under which most victims or their families live. As with the other areas examined, the gap exists because there is considerable disjuncture between what the laws or the books state, or the pronouncements of the Government affirming those laws as directives of policy, and the actual day-to-day experiences of victims or their families as regards the laws or principles and their application.

79. On paper, the Government has long affirmed and continues to verbalize its commitment to ensuring that all people involved in the investigation of any enforced case of disappearance should be adequately protected against ill-treatment, intimidation, and reprisals. The protection is meant to extend to the relatives of victims, their legal counsel and witnesses, associations and NGOs championing their cause, and, last but by no means the least, the prosecutors themselves and human rights defenders. Even victims of disappearance have a right to Government protection, or so say Government officials, at least until the disappeared person's fate and whereabouts are determined. It is further stated that the reason for developing the many constitutional, legal, and institutional mechanisms described above is precisely to help achieve this objective.

80. Besides those constitutional, legal, and institutional mechanisms of enforcement and protection, there are four other and more specific measures being run by DGDH of the Interior Ministry. The Government points to DGDH as evidence about the existence of a serious protection regime for victims. The protection programmes concerned are those established specifically for (a) political leaders (especially from the opposition) and activities of social and human rights organizations, and for witnesses in case of human rights abuses and violations of international humanitarian law; (b) leaders and members of the Patriotic Union and the Communist Party; (c) journalists and social communicators; (d) mayors, councillors and ombudsmen (UNDP, Colombia's conflict: pointers on the road to peace, National report on human development for Colombia - 2003, pp. 217-218).

81. In practice, however, most of these measures and programmes have not functioned as planned. That is, they have not succeeded in providing the much-needed protection for people at risk or under threat. The reasons for this are many, not the least of which centre on the bureaucratic problems identified earlier. To those could be added a factor concerning a lack of political will, about which more is said shortly. But, whatever the constellation of explanations, the fact remains that the witness protection and victim protection measures such as exist do not appear to work.

82. In general, the Working Group was deeply concerned by the hostile and derisive attitude of the Government towards human rights defenders, NGOs and even towards OHCHR in Colombia (which reportedly is sometimes referred to as “another NGO”). With respect to NGOs, the Working Group received testimony from several sources indicating that government officials and paramilitary groups tend to view NGOs as belonging to the guerrilla and other subversive groups. Such attitudes, particularly when expressed by high-ranking government officials, increase the risk and vulnerability of the members of these organizations. Along the same lines, and even more worrying, the Working Group heard direct assertions of intense fear and terror on the part of family members of disappeared persons as well as witnesses of grave crimes.

83. The Working Group was alarmed that family members of disappeared persons or civil society organizations working in this field are perceived and treated by government officials and members of the police and the armed forces as dangerous opponents. The Working Group heard direct assertions that victims of enforced disappearance somehow deserved their fate. In this respect, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/2005/64/Add.3, para. 92) indicated that “the Special Rapporteur urges the Government to thwart the phenomenon of stigmatization, which represents per se a serious human rights violation and fuels the spiral of violence and resentment. The Government should take appropriate measures to prevent the use of stigmatization, especially on the part of its top officials, and the polarization of opinions, two elements that are poisoning the political debate and the exercise of pluralism”. The Working Group supports this recommendation wholeheartedly.

84. Additionally, the Working Group received numerous reports about risks to the safety and security of prosecutors involved in investigations of enforced disappearances. They are sometimes threatened and occasionally even physically eliminated, the obvious purpose being to dissuade prosecutors from continuing with the relevant investigations.

C. Lack of political will

85. The lack of political will was a factor that was constantly emphasized by non-governmental bodies and organizations, including human rights defenders and members of associations of relatives of disappeared persons or individuals interviewed by the Working Group over the entire mission. As far as most of these groups were concerned, it was the lack of will, and not the want of appropriate constitutional, legal, and institutional mechanisms, that was responsible for the meagre progress made in rooting out the problem of disappearances in Colombia. Even the best and most ideal constitution and laws, and excellent and most well-crafted institutions, will fail to work anywhere, if those charged with operating them do not apply or show the necessary political will and determination in administering them.

86. The core problem of policy regarding disappearances in Colombia was identified as centring on the question: how does one break out of the vicious cycle of terror and fear leading among other things to the various national mechanisms (including that about urgent action) not working, initial acts of disappearances producing reprisals, more disappearances and even murders, perpetrators continuing to wax strong in their impunity, and State authorities not being able to hold perpetrators to account? Dismantling the structure of paramilitaries was seen as the

key. But enough political will would be needed on the part of the national leadership to achieve that objective, and to help Colombia to break out of the vicious cycle. This takes us straight to the new Justice and Peace Law and its relations to the question of enforced disappearances under the Declaration.

VI. CONCLUSIONS

87. The present report encompasses an overview of the constitutional and legal framework on enforced disappearances since the last visit of the Working Group on Enforced or Involuntary Disappearances (the Working Group) in 1988. It highlights the existing gap between a highly sophisticated legal system and very poor concrete results of these mechanisms. Consequently, the members of the Working Group articulate recommendations to halt the ongoing situation of disappearances in the country, to protect the families of the victims and the non-governmental organizations (NGOs) working to ascertain the fate and the whereabouts of the victims, to solve the situation of underreporting of cases of disappearances due to fear and impunity and to implement the existing mechanisms on disappearances in Colombia.

88. Despite the fact that the mandate of the Working Group is restricted to enforced disappearances committed by State actors or by organized groups or private parties acting in the name of the Government or with the direct or indirect support, authorization or acquiescence of the Government, the Working Group emphatically condemns any atrocity committed by armed groups of any nature or any other criminals participating in the context of the internal armed conflict taking place in Colombia. In adherence to its mandate (Commission on Human Rights resolution 2004/40), the Working Group pays strict attention to acts contravening the Declaration; that is, to acts of disappearance committed by State agents or by parallel armed groups that act in connivance with State actors, such as the army or the police.

89. The Working Group is grateful to the Government of Colombia for its invitation to visit the beautiful country, during what otherwise, are no doubt very challenging times. The Working Group highly appreciates the exemplary measure of cooperation extended to members of the mission. The Working Group is pleased to report that Colombia remains signatory to all the main international instruments regulating norms and standards of human rights and international humanitarian law. The Working Group also notes that the Government has in the past opened its doors to quite a number of human rights missions from very different provenance. The position of the Government in this regard would seem to reflect the expectation that scrutiny of the country's human rights record will be essentially aimed at contributing to improvement of the human rights situation and thereby help to extirpate the problem of enforced disappearance. The present report, at any rate, should be read in that light.

90. Finally, as in 1988, members of the mission were deeply impressed by the courageous attitude of Colombia's human rights defenders whether operating at governmental or non-governmental levels, including organizations of women's groups. In providing legal aid and other kinds of assistance to victims of violence in general and enforced disappearance in particular, they fill a need that is not otherwise attended to by the State. They have to work oftentimes under extremely hazardous circumstances. Many of them have died in the course of their duty. They deserve more acknowledgement, support and protection from the Government as well as the international community than appears to have been provided thus far.

VII. RECOMMENDATIONS

91. Recommendations derived from the present report on findings of this mission are grouped into two parts, namely those of a general kind and others addressing more specific issues.

General

92. The Government of Colombia should cease to deny the internal armed conflict plaguing the country and conditions sustaining it. This honest assessment is necessary for the Government to undertake sound diagnosis of the structural roots and predispositional factors giving rise to and sustaining the conflict, and for the designing of appropriate strategies of change.

93. It is equally important that the Government confront, rather than deny, the realities of the links that members of the military forces and National Police have maintained with paramilitary groups. This means accepting, rather than seeking to be released from “responsibility for the interpretation, for years, of the legal framework that gave them cover; for their disproportionate use of the armaments it provided to them; and for failing to take measures necessary to prohibit, prevent, and duly punish their criminal activities” (as the Inter-American Court of Human Rights (IACHR) has established, quoting the report of a recent mission by the latter body on the Demobilization Process in Colombia, undertaken within the framework of the advisory services to the Mission to Support the Peace Process in Colombia).

94. The Government should understand why in the majority of cases reported to the Working Group, paramilitaries, acting allegedly with the acquiescence of certain elements within the State military and security forces, have been and continue to be singled out for the occurrences. The Government has argued that such cases have not had adequate evidence or documentation for purposes of prosecution and judicial processing. Moreover, merely declaring paramilitaries and guerrilla groups to be “illegal armed groups” is insufficient to stop disappearances. The Government should take, and be seen to take, concrete measures to investigate the ties allegedly still existing between paramilitary groups and the State military forces or elements within the latter and their contribution to the phenomenon of disappearances from past to present. The ties must be broken and those responsible for their reported continuation must be punished.

95. The considerable efforts that have been made and continue to be made in realigning national laws and practices with Colombia’s international obligations must be highly commended. The Government must be encouraged to continue in that direction, and should be given the necessary assistance to ensure that the system of constitutional, legal, and institutional mechanisms the Government has established becomes firmly rooted and effectively functioning.

96. The Working Group wishes to remind the Government of the continuing responsibility to conduct thorough and impartial investigations “for as long as the fate of the victim of enforced disappearance remains unclarified”, in accordance with article 13 (6) of the Declaration.

97. The Working Group urges the Colombian authorities to do everything in their power to ensure the safety of relatives and witnesses, in accordance with article 13 (3) of the Declaration.

98. Despite the progress made by Colombia in designing an impressive constitutional, legal and institutional framework for handling cases of disappearances, the actual implementation of the framework has left much to be desired. Obviously, establishment of those mechanisms cannot substitute for political action. The Government must demonstrate that it has enough political will and determination to deal with the problem of criminalization of disappearances under the Constitution as well as the Criminal Code.

99. The Government must take credible steps to cut the links between the military and paramilitary groups, if the country is to be assisted in breaking out of a vicious cycle of terror and fear.

100. The Working Group urges the Government to take measures to end all forms of disappearances, including the perpetration of acts carried out in combination with such other forms of gross violations as “social cleansing”, executions, enforced displacement, rape and other forms of sexual violence and the forced recruitment of minors.

101. The Government must appreciate that without guaranteeing the right to truth, justice and reparation, and then backing this up with a huge investment in human development, the much-desired goal of achieving peace and reconciliation of Colombian society will be difficult to realize or sustain.

Specific

102. The Working Group lauds the very courageous and impartial work being carried out by the Constitutional Court as the apex of Colombia’s justice system, and endorses one of the recommendations of the Office of the United Nations High Commissioner for Human Rights urging both the Government and Congress not to undertake changes in regulations that would weaken the judicial control that the Constitutional Court exercises over actions by the State or limit the right of *tutela*.

103. It is necessary to strengthen the framework for inter-agency cooperation, so as to minimize the incidence of conflicts arising from having too many institutions and agencies with their own competing programmes operating within and across different arms of government, with the resultant squabbles over which institutions or agencies have what mission or control over which aspects of Colombia’s overall protection or prevention programme.

104. Concrete and appropriate measures must be taken to ensure that the National Commission to Search for Disappeared Persons can perform its laudable functions, including the Urgent Search Mechanism.

105. The tentative steps taken to create one National Register of Disappeared Persons must be commended, and other agencies of the Government running their own separate databases on disappearances must be mandated to integrate these databases with the National Register.
106. The Ministry of the Interior and of Justice should be separated, because administration of justice and interior matters are two differently-oriented roles, and they are often incompatible.
107. The office of the Procurator General and the Prosecutor General cannot claim to be unaware that the meagre results of indictments and sanctions meted out so far to perpetrators of enforced disappearances is not for lack of cases to investigate. The Prosecutor General must rise to the challenges of the office. He must be assisted in performing the central duty of investigating and sentencing all criminal acts, including disappearances.
108. Human, technical and legal resources should be increased for the Procurator General (or the Ombudsman's) Office, along with those of the local municipal representative and the Office for People's Defence, so as to assist them in discharging their critical functions of protecting human rights and exercising disciplinary control over State agents.
109. All assets, properties, land and possessions forcibly and illegally acquired or occupied by persons who have previously participated in paramilitary operations should be seized and handed over to their rightful owners, in accordance with the Law of Extinction of Domain or any other applicable legal provisions.
110. Any persons linked to, or known to have helped or supported, the paramilitary groups or their activities should be investigated and if needs be prosecuted as accomplices to criminal activities, and if found guilty punished, according to the law. If politicians are involved, they should be prevented from finishing their terms of office and/or held ineligible for re-election.
111. The Government must in its protection and preventive strategy take urgent measures recognizing the special needs of the country's most vulnerable groups, particularly women, children, human rights defenders, trade union leaders, the urban poor, rural dwellers and members of the indigenous and Afro-Colombian communities.
112. The Government must begin to treat civil society groups, human rights and other NGOs, as partners in, and not enemies of progress, and work with them from that positive perspective, while taking concrete steps to stop verbal or physical harassment of associations of families of disappeared persons or their individual members.
113. Effective measures must be taken by the Government to protect families of victims, their lawyers and witnesses, and to rescue them from the environment of fear, terror and harassment under which most of them constantly live.

114. There is need to protect the many individual and mass graves reportedly existing all over the country, given the importance of the gravesites for aiding investigation into cases of disappearances.

115. The building of appropriate memorials at suitable places should be considered, provided only that such memorials should both help families of victims to recover from the trauma of loss of their loved ones and the nation as a whole to come to terms with the past.

116. The Justice and Peace Law should be amended in some of its provisions so as to ensure compliance of the Law with State obligations under the Declaration, including the international human rights norms regarding truth, justice and reparation.

117. The Government should seriously consider creating a National Commission for Truth, Reconciliation and Reparation.

Appendix

VOICES FROM THE FIELD: ISSUES, EXPECTATIONS AND DILEMMAS

1. In the course of the wide consultations conducted as part of our mission, the Working Group was met with high expectations about the mission and its outcome by a large number of groups and individuals across the country. But the Working Group also encountered scepticisms and cynicism regarding both the process and outcome voiced by influential segments of society. The latter revolved generally around doubts as to whether the Colombian authorities possessed sufficient disposition, will, means, and power for taking on the structure of the paramilitaries. Some of the groups or individuals wondered whether the Working Group would follow up on and not stop merely at publishing another mission report, asking rhetorically what had happened to the report from 1989 (E/CN.4/1989/18/Add.1). A few of our respondents were also uncertain whether the international community had been speaking out loudly enough about the situation in Colombia. From the authorities, on the other hand, were received positive statements officially reporting progress made on judicial reform and efforts at constitution- and institution-building for dealing with disappearances, while at the same time expressing cautious optimism in turning things around in a not-too-distant future. But some of the official statements also brought out the dilemmas with which interlocutors believed the Government of Colombia to be confronted, such as being made to choose between conflict resolution and the promotion of human rights, between peace and justice.

2 This appendix to the present report is devoted to bringing out all the issues that were encountered by the mission during its investigation. We found no better way of doing this than presenting these issues, expectations and dilemmas in the form of a narrative of quotes chronologically recorded in the course of our consultations as voices from the field. It is an unconventional way of presenting the details of a report, but one considered necessary for mirroring the panoramic view of the Colombian situation on disappearances and all of its ramifications. As the reader will notice, some of the key issues raised served as central material for the analysis in the main body of the report.

“Ley de Justicia y Paz (Justice and Peace) is an amnesty Law, a clever device, and a mockery. Victims were not allowed to be part of the process that produced the Law. It is no secret that the Law was created because of the responsibility that those currently controlling power at the State level have towards the paramilitary bodies.”

“There is no political will on the part of the authorities to deal with the problem of criminalization of disappearances under the Constitution.”

“The Law on Justice and Peace was very controversial from the very beginning”

“Even in the very capital Bogotá where we have a section of the city which is populated by families of internally displaced persons, children of these people are being made to disappear constantly. But their parents fear to report.”

“Many of us did not want to come to see this visiting United Nations group or hold meeting with you, for fear.”

“For many families of victims still grieving over the fate of their loved ones, impunity is better than to be made to disappear themselves.”

“It would be disaster if the Working Group did not also follow up on but merely stopped at publishing another mission report. What happened to that of 1989?”

“On the border with Panama are two Afro-Colombian communities two of which have a lot of victims of disappearances and displacement.”

“The challenge now is not about disappearance, but rather displacement of people from their land. Also, there is a new element. The army kills farmers, but dresses them up as guerrillas.”

“Working Group must demand from non-governmental organizations (NGOs) documentary submissions based on empirically researched facts and figures, rather than hearsay.”

“How do you expect over 7,500 cases of disappearances to be investigated within 60 days, when the State has had all these decades and has not been able to complete its investigation into those cases?”

“Domestic laws and practices regarding disappearances must be brought into conformity with the norms and principles of both international human rights and international humanitarian law.”

“The international community must speak out more and loudly enough about the situation in Colombia.”

“Government must be urged to suspend provisionally any officials who have been found compromised, until investigations into their activities are completed.”

“We are grateful that at long last, and in spite of long-standing demands by non-governmental human rights organizations for establishing its presence, the international community has finally decided to get the Office of the United Nations High Commissioner for Human Rights (OHCHR) to establish an office in Colombia. It is a recognition that what had been happening in the country was not simply about a drug war but an extended human rights crisis.”

“Acts of disappearance are of long-standing nature. The information currently available dates back to only 1996, when we started documenting phenomenon. But the violations are not only long-standing but also increasing and ongoing.”

“‘Deliberateness of the practices’ characterizes the nature of recent violations. Also, one of the clear patterns in the action of perpetrators of disappearances in recent times is the targeting of human rights defenders, journalists, academics, leaders of rural groups.”

“Disappearance is a tool of intimidation and meant to send a message to the population. The tactic is used when paramilitaries want to settle in an area and dispossess its inhabitants of their land.”

“There is a deliberate confusion created in the definition of ‘disappearance’ and ‘kidnapping’, and partly to dilute the State responsibility. The same is true of application of the law. To be sure, ‘disappearances’ are a State responsibility; ‘kidnappings’ are things you attribute to non-State individuals, gangs or criminal networks.”

“An example of the differential and highly unequal criminal justice system. People who commit small crimes and even minor infringements, the Colombian law generally tends to come down heavily upon; but paramilitary and regular army generals who commit heinous crimes, such as disappearances, forced displacements, and murders, can be certain to get off almost scot-free.”

“We have had various mechanisms instituted for protecting human rights. Training of officials in human rights education is also the Government’s priority, the target being mostly the State security forces.”

“It is a very definite policy of Government not to cooperate with any of the illegally armed private groups.”

“The Colombian State and this Government have a very well-defined role regarding prosecution of individuals found guilty of human rights violations.”

“You [the Working Group] should help us to correct the erroneous belief that people who carry out acts of disappearances are doing so with the collusion of the State or its officials.”

“Both the guerrilla groups and paramilitaries are illegal armed groups, and that is how we treat them.”

“The Colombian armed forces act within an institutionalized system of democratic control. The President is the Commander in Chief of the Armed Forces.”

“The military court system is not empowered to try any member of the armed forces accused of crimes against humanity, including enforced disappearances.”

“It is important to reflect the progress achieved by the Colombian State in combating the influence of drug traffickers joined with that of illegal armed groups.”

“If the authorities do not call upon the National Institute (of Legal Medicine and Forensic Sciences) to participate in the excavation of graves and exhumation of corpses in them, the Institute cannot on its own carry out such functions.”

“The database of the Ombudsman’s Office does not coincide with that of the National Police or for that matter the one in the Procurator-General’s Office. Obviously, there is need to unify the database for all the different national mechanisms, so that they can speak the same language and eliminate the differences.”

“The new Law on Justice and Peace should and will contribute towards discovery of the truth about the past experiences.”

“Real truth-telling must include investigations into and confessions about the rise of those illegal armed groups, both the guerrillas and paramilitaries, what factors gave rise to them and when, who their backers and financiers were, and what roles individuals had played in their development.”

“Families of victims should be given permission to visit areas of violation, and not be hindered by paramilitaries.”

“We want justice, we want reparations. We hope we will not have to wait another 25 years like the people in Argentina.”

“Colombia has a tradition of creating national mechanisms and instruments for dealing with complaints of massive human rights violations. But the problem is getting this mechanism to work.”

“Disappearances are still occurring in Colombia even as I speak.”

“It is still the paramilitaries that make people disappear in Colombia, but we now see them sitting on the same table negotiating with the Government.”

“We are chased away from our region for daring to ask for justice.”

“Thousands of clandestine graveyards exist all over the country.”

“The exhumation is done not with decorum, decency and care, but using bulldozers that will make it difficult to identify the bodies of the loved ones.”

“The country needs a national commission for truth and reconciliation.”

“Reparation claims do not have to depend on the solidarity network operating in a society. It is and should be seen and treated as a right. Honestly, this country needs a national commission for reparation.”

“Safety and security problems being faced by the families of victims of disappearance and displacement include violent death, physical attacks, further disappearance and displacement, harassment, intimidation of associations helping to champion or seek support for families or relatives of victims.”

“Families have no trust in officials within the justice department making investigations into the disappearances.”

“It is painful to watch the heads of paramilitary bodies now sitting at the same table as the authorities.”

“Please, don’t mention my name anywhere. Please, please. I beg you.”

“The army today is doing the same thing that the paramilitaries have been accused of.”

“The paramilitaries work hand in hand with the mayors of all the major cities and towns. Everybody knows this.”

“The paramilitaries have taken over the IDP settlements.”

“Witness protection and victim protection do not exist in fact.”

“If the authorities state that X number of paramilitaries have been investigated and jailed, ask them, at what rank? And for what crimes or offences? In a majority of the cases, investigation is only at the lower ranks and very often for minor crimes.”

“Investigations into cases of disappearances are a duty of the Office of the Prosecutor-General of the Nation, and the support of the United Nations Working Group is very much needed to carry out our functions well.”

“More than 350 of our staff members, including professionals in forensic areas, are deployed all over the country for these and other related crimes. They work at considerable personal risk.”

“Colombia has a good history of cooperating with international organizations, treaty bodies and mechanisms.”

“Unfortunately, there are individual State officials who have had links with paramilitary bodies.”

“Paramilitary bodies and guerrillas are financed from drug trade and trafficking.”

“No doubt, there has been high rate of disappearances and, in the past, official approach to the recognition of this had not been something to be proud of.”

“As at the present, it is impossible to prevail on President Uribe not to sign the Justice and Peace Law. There is a constitutional process for law-making here. The Procurator-General’s Office is waiting for that process to be concluded. Then, later, because this country also has obligations under the various international treaties it has entered into, we will later work on pointing out whatever incompatibilities are observed to exist between the Law and the country’s international obligations at the Constitutional Court stage.”

“Out of the 167 complaints about disappearances received by the department in recent past, the majority have been from the city of Barrancabermeja.”

“Families of victims have often alleged that the so-called self-defence forces or the paramilitaries were the perpetrators.”

“The problem of paramilitary activities is important to the Defender’s office because of two major things: sheer number of the complaints being made against the perpetrators and the problem of impunity.”

“People are afraid of filing a complaint or denouncing the practice because people live with the paramilitaries.”

“People come to the office one year later, after the disappeared person would have been killed. So, the so-called ‘Urgent Search Mechanism’ becomes very irrelevant and even useless.”

“The fates of other victims such as prostitutes, thieves, criminals, vagabonds, gamblers, homosexuals, and miscreants in general, tend to be justified as part of ‘social cleansing’: that is, disappearances carried out in the name of wanting to keep the city clean.”

“Forced disappearance is a day-to-day issue of our lives.”

“There is a belated reporting of cases. The delay is caused by fear and terror, but it is also a survival strategy devised by families in order to keep other relatives alive.”

“Disappearances, though a worse tragedy, have become a way of life. Many women have postponed reporting.”

“Disappearances are not just a family affair but also social and community problem. They tend to destroy social awareness, community life, and the fabric of society.”

“We as women insist on the need for documenting the phenomenon both as a historical necessity and part of getting at the truth.”

“Campaigning against fear is part of the pedagogical functions that our women’s group has taken upon itself as a duty. The challenge centres on how to overcome fear about fear.”

“The paramilitaries are the operatives of security. The police draw up the plans, the paramilitaries implement these.”

“Our organization has been in existence for 18 years, until it was forced to relocate abroad. It is a victim of what we call ‘the Para State’.”

“We seek the creation of a truth commission to investigate the 18 cases from 2000 to 2003 that we have documented.”

“The oil companies fund the paramilitary bodies with the knowledge and complicity of the Colombian State authorities.”

“The State is not interested in demobilizing paramilitaries in Barranca until the many Mega-Projects are completed, including the privatization of the oil and gas industry.”

“A copy of a complaints document filed by a number of petitioners to the Mayor, asking the latter to explain his links with certain paramilitary individuals, was subsequently found with the commander of the paramilitaries in Barranca. It was in the news, and became a national news item.”

“An ‘Urgent Search Mechanism’ that neither ‘searches’ nor is ‘urgent’.”

“Many of the families want to know where their disappeared loved ones are They demand their right to truth, right to justice, and right to reparation.”

“I am here to report the cases of two of my children who disappeared. The cases will be filed with the Working Group before completion of its mission. The children have had identity cards issued to them, in which their ages are falsified. I once received a telephone call from one of them telling me about this. But as yet I have no information about their fate or whereabouts.”

“Taking people off trucks or buses at road blocks that are manned by State security forces, police or paramilitaries is the familiar mode of operations for disappearances.”

“My wife disappeared in October 2003. It is a well-known case with which Amnesty International is also familiar.”

“I am a representative of the Afro-Colombian community. I have come to inform the Working Group of the case involving my brother. The case is of course one out of the numerous disappearances that have taken place in the area and most of which have gone undenounced.”

“The President of the national union of public universities was travelling to this place some time ago when he disappeared for four years, and was later found dead and his corpse discovered only 8 to 15 days ago.”

“The experience of trade unionists here as regards disappearances is minimal, compared with that of human rights organizations, if by ‘disappearance’ one means a situation holding at least the prospect about victims being found alive. As far as trade unionists are concerned, their situation in this area is that of being physically eliminated through outright assassination.”

“The city (of Medellín) is completely paramilitarized. The public transport system is in the hands of the paramilitaries. They are also in control of the municipality.”

“The Justice and Peace Law is a law of impunity for paramilitaries pure and simple.”

“The most notorious cases of disappearances in the past had been in the city of Medellín. But today we have almost succeeded in wiping out the phenomenon here.”

“Perpetrators of disappearances are not State agencies, but the illegal armed groups.”

“There is enough evidence to show allocation of responsibilities between the State agencies and paramilitaries. It is difficult to believe that there are no links between the two.”

“There is a cultural aspect to the impunity question surrounding disappearances. This is the widespread feeling that victims somehow deserve to have disappeared. It has also led to NGOs and the families of victims whom they represent or speak for being constantly stigmatized.”

“In Commune 13 of the city of Medellín, over 50 people disappeared in the presence of members of police force. It is a massive and systematic case, where the perpetrators could not have carried out the acts without any of help of the State agencies.”

“Here is an urgent need to empower and support organizations of families of victims.”

“Each region of the country has separate experiences with drug trafficking, extortion and corruption. But there is common criminality.”

“The SDUs (self-defence units) were doing precisely what the public security agencies were not able to do, namely helping to rid given areas of insecurity and maintain law and order in those affected parts.”

“All groups, including common criminals, use disappearance and kidnapping as part of their strategies of operations.”

“Fourteen graves were discovered in Communa 13 of Medellín alone.”

“There is a basic methodological problem with the way official statistics on disappearances are reported.”

“Financial and logistical support is needed from the international community to assist and run the country’s protection programmes for people at risk.”

“A round table on disappearances was held one month ago in Antioquia. The objective was to make disappearances a subject of public debate and as part of coming to terms with the past.”

“The Prosecutor’s Office has been working quietly and transparently on the problem of disappearances - sometime at great risk to the investigators themselves as well as their families.”

“Give us proof of collusion of *paras* with the State, and we will investigate.”

“Campaigns of disappearances waged by State security agents against the self-styled communist Patriotic Union (UP) party members have tended to be explained by statements officially stigmatizing the victims as either insurgents, narco-traffickers or paramilitarists.”

“We have been interested in learning from South Africa’s experience with transition from war to peace; and at one time, we even invited Archbishop Desmond Tutu to come and advise us on how to structure our own programme of transitional justice in order also to achieve post-conflict reconciliation. He advised that the essence is to get a given victim or family member to forgive past atrocities, but not to forget them.”

“One of the worst, traumatic experiences is the common knowledge amongst family of victims about the existence of mass graves and the sheer quantity of their number spread across the country.”

“The State has an obligation to pay salaries to families of victims who were public servants at the point of their disappearance until the persons are found either alive or dead.”

“For the paramilitaries, leftist individuals or organizations are necessarily guerrillas and therefore expendable.”

“The paramilitaries demanded that I give up my disappeared children to serve in their force, but I said ‘no’.”

“I have invested so much in training my daughter in order for her to qualify in her chosen profession. It is painful to have her disappeared, raped, and later murdered and dismembered.”
