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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 \*

#### 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时期为 2005 年，是应人权委员会第六十一届会议的要求编写的。

#### 国家状况和国内武装冲突的发展

2005 年期间，公众的注意力主要集中在有关立法的辩论和国内武装冲突的影响之上。其他突出的问题包括准军事集团的显著影响、与这些集团的谈判和这些集团的遣

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\* 本报告以所有正式语文分发。附件仅以提交语文和英文分发。

散。《自由贸易协定》也受到广泛的讨论。《宪法》得到了修正，以便立即重新选举共和国总统。宪法法院认为，这一修正以及关于选举保障的法律都符合《宪法》。6月，2005年第975号法律(“正义与和平”法)获得通过，成为适用于对严重罪行负有责任的遣散武装人员的法律框架。至于冲突的情况，治安部队对于游击队即哥伦比亚革命武装力量——人民军(FARC-EP)的后卫军保持了攻势，而非法的武装集团依然在袭击平民。准军事集团的遣散复员还在继续，尽管是断断续续的。虽然该国和国际上都尝试了各种努力，但是在解救由革命武装力量——人民军(FARC-EP)所劫持的人员方面没有取得重大进展。在该年的下半年，与民族解放军(ELN)的游击部队开始谈判，而该国政府与民族解放军领导人定于12月会晤。贩运毒品、绑架、勒索和走私汽油继续是非法武装集团经费的主要来源。高级专员于5月访问了哥伦比亚，并会见了政府当局和民间社会的代表。被迫或非自愿失踪问题工作组于7月访问了该国。

### 人权和国际人道主义法状况

人权状况的特点在于一系列对公民权利和政治权利的严重侵权行为，以及影响到经济、社会和文化权利的尚未解决的各项挑战所造成的严重侵权行为。官方的统计数据仍然未能充分地反映这一情况，并且总体上缺乏对性别问题的重点。可以看到由于司法方面问题以及由于有罪不罚而造成的侵权行为，并由此导致法外处决和被迫失踪的经常现象。另有记载表明发生了任意拘押、酷刑和其他残忍、不人道或有辱人格待遇的案件、以及对言论自由的攻击。尽管这些侵权行为并不是最高层的国家蓄意政策，但是由于政府当局不愿面对事实，而且补救行动也不充分，很难解决这些问题。由于国家公务人员的行为或不行为，准军事集团继续从事了侵犯人权的行。影响到哥伦比亚一半以上居民、尤其是少数民族、妇女和儿童的贫困状况反映出极端的平等，尤其是在获得和享受教育权、卫生权、就业和住房权等各方面更是如此。

非法武装集团继续犯下严重的罪行，尤其是革命武装力量——人民军(FARC-EP)和哥伦比亚联合自卫军(AUC)犯下的罪行。这些集团在军事行动中无视人道主义准则，袭击平民。游击部队(尤其是革命武装力量——人民军(FARC-EP)，在少数情况下也包括民族解放军(ELN))继续对平民进行残杀、大屠杀、恐怖主义行动、威胁和袭击，并劫持人质、使用杀伤人员地雷、招募儿童兵，并袭击医疗人员和单位。准军事集团一再违反其中止敌对行动的承诺，持续地对平民百姓加以残杀、威胁和袭击、劫持人

质、施以酷刑及羞辱性或有辱人格的待遇、强迫失踪、招募儿童、并犯下性暴力行为。保安部队，尤其是军队人员则被指控违反了区别不同对象的原则，例如使用儿童刺探情报或担当其他军事任务，使用学校和民房展开军事行动，并犯有性暴力行为。

### 在遣散复原武装部队方面的挑战及其法律框架

2005 年，哥伦比亚在法治、和平、公正及制止有罪不罚等方面面临着挑战。自 2003 年下半年起，根据记录，已有 11100 人集体从准军事集团复原。2002 年第 782 号法律及其第 128 号执行法令颁发之后，又于 6 月发出的“公正与和平法”，成为适用于复原方面的法律框架。对于那些因对严重侵犯人权负有责任或违反了国际人道主义法而无法适用以前法律的复原人员，这项法律规定了司法上的从宽规定。但是尽管这项法律提到了受害者了解真相权、取得司法公正权和取得赔偿权，但是它仍然还不符合国际原则。另外注意到的是，由于司法制度在体制上的缺点以及由于新法律的规定，多数复原的人员都符合附带某些从宽规定的规则，其中包括大赦。此外，这项法律并没有涉及由于国家人员的行为或不行为而使国家对准军事集团所犯的一些罪行应当承担责任的问題。由此可见解决有罪不罚状况的困难程度。没有为保证消除非法的结构而设置任何机制。准军事集团在该国的一些地区仍然具有很大影响，尤其是在政治、经济和社会事务方面具有影响。根据记载表明，存在着违反停止敌对行动、招募新成员以及建立新集团的各种案件。

### 特别脆弱群体的状况

一些特别脆弱群体遭受到非法集团在内部武装冲突期间的暴力行动，而且其基本权利和自由也受到侵犯。脆弱群体还受到某些政策和一些国家人员的行为造成的影响。这一群体包括人权维护者、妇女组织和受害者组织成员、社区领袖和失踪者领袖，以及工会人员。一般面临这方面风险的社区，例如那些流离失所或受到封锁的社区、以及土著和非洲裔哥伦比亚人和其他少数民族社区，受到特别严重的影响，并遭受到暴力和犯罪行为的侵害。其他特别脆弱群体包括儿童、妇女、属于性特征少数的人士、记者、政党的党员和领袖、依良心拒服兵役者、被拘押者、人质和失踪人士，以及地方政府和司法部门的人员。这方面情况将在附件四中详述。

## 公共政策和有关建议的执行情况

驻哥伦比亚办事处继续力图促进执行高级专员的建议。一些国家机构为取得进展作了较大的努力，而另一些机构却未能采取及时、相关或适当的措施。到该年年底，建议执行状况趋于存在很大差异，但进展比预期的要小。在防止和保护方面，采取了一些积极的措施，例如提出了一些规程，以便约束机构间预警委员会的某些程序，或增加专门指定用于内政部保护方案的预算。但是，在确认和后续警示的行动方面依然存在着缺点，这一方面也是由于风险评估的迟缓和无效。有一项关于尊重人权维护者个人及集体工作的通告并没有充分地遵循有关应当惩处无视总统这方面指示行为的建议。在审查情报记录方面没有取得具体的进展。为建议中所提到的 12 个面临危险的土著社区中的 2 个社区采取了一些措施。但是，在遵循宪法法院关于照顾流离失所者方面的要求而作出了重大努力，不过这方面仍然需要进一步改进。

非法武装集团继续公然藐视高级专员的建议。治安部队在其行动中有时无视区别原则、有限度原则和相称性的人道主义原则。

值得注意的是，已经通过了一些规则，批准了一些国际条约，同时在拟定《人权教育计划》方面取得了进展。另一方面，《人权问题全国行动计划》工作取得的进展小于预期。而在向内政和司法部以及向国家感化和监狱研究所(INPEC)所提的建议方面情况也是这样。关于有罪不罚的问题，司法部长办公室和总检察长办公室采取了一些行动。定罪的数量很少，对公务员责任的调查收效有限以及向军事刑事法院转交案件不当，都是令人担忧的情况。11 月，驻哥伦比亚办事处与国防部签署协议，考虑改进根据全面、系统和可行原则提供人权和国际人道主义法的教育。另一方面，在惩处国家工作人员与准军事集团勾结，或有效遣散准军事集团方面所取得的进展很小。普遍的贫困和不平等依然是社会和经济政策领域的重大挑战。在建立有关人权和国际人道主义法的适当统计制度方面没有取得进展。

## 建 议

根据人权委员会于 2005 年 4 月 22 日协商一致通过的人权委员会《主席声明》，高级专员强调指出，她向国家政府的三个分支以及负责保护和促进人权的管制机构，并向民间社会各界、向国际社会和向非法武装集团提出的各项建议得到实施是极为重

要的。各项建议的全文载于附件一。

高级专员促请国家政府部门特别注意六项建议。她再次特别强调向非法武装集团提出的重要要求。高级专员还认为，该国必须通过从一开始便优先尊重国际人道主义法和人权的对话和谈判来克服内部武装冲突。

高级专员坚信，如果始终一致地全面地执行建议，该国人权和国际人道主义法方面的状况会有切实的改善。2005 年所取得的少量进展应当能够鼓励各方在 2006 年及以后阶段作出更大努力。高级专员建议其驻哥伦比亚办事处目前的任期应延长到 2006 年 10 月原定结束日期之后的较长时期。

## 目 录

	<u>段 次</u>	<u>页 次</u>
导 言.....	1 - 2	7
一、国家背景和国内武装冲突的发展.....	3 - 15	7
二、人权和国际人道主义法状况.....	16 - 69	10
三、复员遣散及其法律框架的挑战性问题.....	70 - 80	21
四、特别弱势群体的境况.....	81 - 90	23
五、公共政策及执行建议的情况.....	91 - 136	24
六、建 议.....	137 - 151	31

附 件

I. 2006 RECOMMENDATIONS.....	34
II. ACTIVITIES OF THE OFFICE IN COLOMBIA OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS .....	38
III. REPRESENTATIVE CASES OF VIOLATIONS OF HUMAN RIGHTS AND BREACHES OF INTERNATIONAL HUMANITARIAN LAW .....	46
IV. SITUATION OF ESPECIALLY VULNERABLE GROUPS .....	63
V. THE CHALLENGES OF DEMOBILIZATION AND ITS LEGAL FRAMEWORK .....	71

## 导 言

1. 1996 年，人权委员会要求联合国人权事务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。办事处于 1996 年 11 月 26 日根据哥伦比亚政府与联合国人权事务高级专员之间的一项协议而设立。根据这项协议，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状况，以便在该国当前的暴力和国内武装冲突的情况下，就制定和适用有关政策、方案和措施以促进和保护人权向哥伦比亚政府当局提供咨询。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，该项协议的有效期于 2002 年 9 月延长至 2006 年 10 月。

2. 人权委员会在第六十一届会议上通过主席声明重申，驻哥伦比亚办事处“通过监测、咨询、技术合作和宣传及推动方面的活动，[……]在处理侵犯人权和违反国际人道主义法的工作方面发挥了重大作用”，并请高级专员“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”。该项报告阐述了 2005 年的情况，载有五项附件：建议；驻哥伦比亚办事处的监测、咨询、技术合作及推进活动；侵犯人权和违反国际人道主义法的情况；特别脆弱群体的状况；在遣散复原武装部队方面的挑战及其法律框架。

### 一、国家背景和国内武装冲突的发展

3. 2005 年，该国的政治形势中主要的情况就是有关重要的立法以及内部武装冲突影响问题的辩论。其他突出的问题包括准军事集团的强有力影响、与这些集团的谈判以及这些集团的遣散复原。《自由贸易协定》也受到广泛的议论。

4. 2005 年 7 月，最高法院任命了新的总检察长，于 8 月任职。国防部长于 7 月辞职，由总统办公室的法律顾问接任。政治和立法方面的议程重点在于修改《宪法》，以便有可能立即重新选举共和国总统。宪法法院宣布这项修正符合《宪法》。而涉及到选举制度的所谓“保障法”情况也是一样。这一年的主要特点是，随着该国准备 2006 年 3 月和 5 月的新的选举，在见解和言论自由方面、尤其是在政治领域中面临重大挑战。一些政治团体受到袭击、威胁，其成员遭到暗杀。

5. 另一项备受公众关注的事件是 2005 年第 975 号法获得通过(称为“正义与和平”法)，该项法案曾在国会受到长时间的辩论。这项法律于 7 月颁布，但由于很多人

的要求，仍将需要依宪法审查。预计将在 2006 年上半年作出最终决定。2005 年 10 月，根据这项第 975 号法令成立了民族和解和赔偿委员会。委员会的 13 名成员中有两名受害者组织代表的任命尚未确定。

6. 与美国进行的有关《自由贸易协定》的谈判引起了公众对于这项协定是否值得签署的讨论。公众舆论的有些方面表示担心协定的一些条款对经济的某些部门、以及对经济、社会和文化权利的某些方面可能会造成消极影响。该国政府继续与非法作物和毒品贩运作斗争。在这场斗争中，其优先推行的是烟熏消除麻醉品作物的政策。种植这类作物的面积减少了 7%，少于往年。同时，开垦新的地区以及已开垦地区的面积有大幅增长。<sup>1</sup> 11 月，政府暂时同意在沿厄瓜多尔边界的地区中止对非法作物喷洒药剂。对于在国家公园采用烟熏的方式也引起了一些议论。毒品贩运是非法武装集团的首要经费来源之一，此外还有绑架、勒索和走私汽油。

7. 关于内部武装冲突的情况，治安部队持续地对哥伦比亚革命武装力量——人民军(FARC-EP)展开攻势，行动主要是在该国的南部实施，开始于前一年。国家保安部队为保持军事主动并为维持在主要城市中心和高速公路持续驻扎人员而作了不懈努力。哥伦比亚革命武装力量——人民军(FARC-EP)集中力量攻击在梅塔、瓜希拉和卡克塔诸省以外的武装部队，在这些地方展开的军事行动规模最大。在临近厄瓜多尔地区(纳里尼奥、普图马约和诸如考卡等其他地区)的作战行动也在升级。普图马约和阿劳卡是两个受到非法武装集团行动影响最大的省份，这些行动包括武装打击以及对基础结构的破坏，并造成了大量人员的死伤。哥伦比亚革命武装力量——人民军(FARC-EP)继续对市政府、尤其是卡克塔市政府进行攻击。尽管该国和国际上都作了一些努力，但是在释放由哥伦比亚革命武装力量——人民军(FARC-EP)绑架的警察、军人和平民方面没有取得重大进展。

8. 2005 年期间，尽管困难重重，准军事集团与政府之间继续展开谈判，同时这些集团中有更多的人员已经复原。由于准军事集团领袖的抗议，10 月份政府同意将遣散复原的最后期限从年底延长到 2006 年 2 月中旬。尽管已经宣布停止敌对行动，但是参与谈判的准军事集团继续采取暴力行动。这些行动有很多与毒品贩运有直接关联。这些集团对于该国一些地区的行政以及政治、社会和经济生活的控制以及非法影响已更加明显。准军事集团问题的另一方面来自于准军事集团人员与政府公务员之间的联系。

9. 由美洲国家组织成立的核查哥伦比亚和平进程特派团(MAPP-OEA)发表了两项新的报告。在最新的 10 月份报告里,美洲国家组织新上任的秘书长建议“充分遵守人权和国际人道主义法的义务,尤其是那些有意对人权事务大幅加强核查,并且在遣散复原、放下武器和重归社会过程中持续地履行‘正义与和平法’的各方”。

10. 9 月,政府将民族解放军(ELN)游击部队的发言人从监狱释放三个月,使他有机会在民间社会知名人士的支持下探索与社会各部门展开和平谈判的可能性。12 月,民族解放军领导人与政府之间在国外进行了第一次会晤。

11. 同年年底该国发生的其他值得一提的事件包括在考卡省有几百名土著人占据了农地,他们声称对土地拥有所有权,并指责政府未能履行其及时关注土著人需要的承诺。这一占据致使土著人与保安部队成员之间发生暴力冲突。11 月是 M-19 成员攻占法院 20 周年纪念日,当时曾造成 100 多人死亡,其中有 11 名最高法院的法官。迄今为止,没有一个人因这些罪行而被定罪。为了制止有罪不罚的状况,最高法院任命了一个特别真相委员会,而司法部长办公室也重新开展了调查。

12. 正如联合国秘书长在 1 月底所宣布的,哥伦比亚问题特别顾问于 2005 年 4 月结束了其斡旋访问。秘书长自 1999 年以来就一直对哥伦比亚问题展开斡旋。秘书长并宣布,如果在不久的将来情况发生变化,而且各方提出明确的请求,他就依然会向哥伦比亚提供斡旋。

13. 2 月,在卡塔赫纳举行了哥伦比亚问题国际协调与合作集团第二次会议,以便继续于 2003 年 7 月在伦敦开始的对话与合作谈判。各国政府的代表发表了一项声明,其中除其他事项外鼓励哥伦比亚政府继续努力,落实联合国人权事务高级专员的建议。

14. 高级专员于 5 月访问了哥伦比亚。在访问期间,她几次会晤了该国总统,以及高级政府官员、国会、宪法法院、检察长、司法部长、监察专员,还有民间社会组织、教会、外交使团和联合国系统人员。她并前往乔科在那里她会见了地方社区、非政府组织和 Quibdó 主教管区的代表。

15. 7 月,被迫或非自愿失踪问题工作组访问了该国。在结束访问时,工作组成员报告说,他们获悉了关于在哥伦比亚发生的 1,100 多起失踪事件的情况,其中有 900 起仍然还没有答案。

## 二、人权和国际人道主义法状况

16. 高级专员在工作中依据以下三个来源提出意见、评价和建议：对官方数据和统计资料的深入研究；在该国各地的实地访问期间进行的直接、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，对各种投诉的严格审查。附件三提供了有关侵犯人权和违反人道主义法案件的详尽资料。

### 对概念的定义

17. 一般理解是，侵犯人权就是在政府当局的默许下由政府公务员或其他个人的行为或不行为影响到国际公约所确认的各项权利。就哥伦比亚而言，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行为或不行为。许多侵权行为和违规行为构成了可以由国际刑事法院加以司法制裁的危害人类罪<sup>2</sup>或战争罪<sup>3</sup>。

### 人权状况

18. 该国人权状况中的部分特点就是一系列严重的侵权行为。这些行为同时影响到了公民权利和政治权利，并对经济、社会和文化权利造成了重大的挑战。

19. 应当指出，严重的侵权行为并不是由于该国政府的蓄意政策造成的。但是，一方面由于该国政府缺乏对问题的充分认识，另一方面又由于政府当局未能采取适当行动，情况无法得到改善。结果，其中有些侵权行为就成为日常发生的行为。

20. 许多侵权行为对于土著和非洲裔哥伦比亚社区成员、社会和政治领袖、人权维护者、农民、妇女和儿童具有更大的影响。它们还影响到地方的政府公务员、尤其是市政厅官员、以及记者和被拘捕人士。

21. 严重的侵权行为包括那些影响到生命权、人身不受侵犯以及人身自由和安全权的行为。驻哥伦比亚办事处收到的有关这些侵权行为的申诉比去年要多。但是，2005 年提出的可信申诉更经常报告的是保安部队人员的直接参与。在一些案例中，准军事集团的行为表明，由于政府官员的行为或不行为，国家也负有责任。

22. 在全国范围里，一些暴力的指标继续在下降，这是积极的事态发展，而且是对整个局势的有利因素。但是，与此同时，杀人、大屠杀和绑架的绝对数字依然很

高。可以指出，这些指标并不特别或独立地指出政府公务员的行动，但这些人的行动直接或通过与准军事集团人员的联系而构成了侵犯人权的事件。

23. 2002年12月以来哥伦比亚联合自卫军(AUC)宣布停止敌对行动以及2003年底以来一些准军事集团的集体遣散复原使这些集团的暴力行动减少，从而也减少了其成员造成的暴力事件。但是，整个2005年期间，违反停止敌对行动的行为继续发生，导致了一些处决和其他侵犯人权的行为。在发生遣散复原的一些地区里，暴力行为实际上有所增加。应当指出，遣散复原似乎并没有减少准军事集团在各自地区里的影响或控制。相反，这些集团利用基于压力和威胁的两手战略，反而巩固了自身，在一些情况下，还在经济、社会和政治领域里扩大了影响。

### 公民权利和政治权利

24. 2005年期间，公民权利和政治权利受到严重侵犯。对于有关侵犯生命权、人身不受侵犯和人身自由和安全权及正当程序的报告已经展开了调查。同时还收到了有关侵犯隐私和个人私情，以及基本的见解自由和舆论自由、集会自由、行动自由和住所自由的报告。驻哥伦比亚办事处观察到存在一种涉及到执法和不追究罪行问题的那种暴力所导致的法外处决和被迫失踪的经常性现象。同时还注意到了任意拘押、酷刑、残忍、不人道或有辱人格待遇以及对言论自由的打击。这些事件的一些实例见附件三。

25. **法外处决。**驻哥伦比亚办事处注意到归咎于保安部队人员，尤其是军人的处决行动的指控有所增加。在安提奥基亚、以及在北桑坦德和 **Sierra Nevada de Santa Marta** 地区情况尤其如此。政府当局在变动了犯罪现场之后，将其中的多数处决称作是作战过程中游击队的死伤情况。军事刑事司法体制对许多案情调查不当。有记录表明，在一些情况下，据说指挥人员本身就同意在受害者身上套游击队的装束，以便掩盖事实，造成作战中死亡的假象。

26. 这种行为、某些政府当局否认事实以及对肇事者不实行任何制裁的情况引起了高级官员责任的问题。司法部长的调查已经证实，在过去的一些案件中确实发生过法外处决的情况，尽管政府当局最初公开地否认过这些情况。<sup>4</sup> 这应当提醒政府当局采取适当行动。据报告，政府已经举行了一些高级别会议，以便解决这一问题。

27. 其中的一些案件涉及到社会领袖、土著人和被指控与叛军勾结者或游击队成

员，其中包括儿童。另外还受到了可归咎于部队人员的大屠杀报告，尤其是在安提奥基亚。另有一些归咎为准军事集团在保安部队人员的共谋之下采取的行动，这在普图马约和纳里尼奥两省尤为严重。在一些行动展开之前，先发生了任意逮捕和酷刑行为。据报告，受害者在被处决以前的审讯期间受到虐待。

28. 一些指控说，法外处决是保安部队人员对被认为贫穷潦倒或吸毒成瘾者展开的“社会清洗”行动。据报告在麦德林(Medellín)发生的六起事件显示出“社会清洗”迹象。有一项报告说有一名残疾青年已经失踪。他的处决被归咎于塞萨尔地区的军事人员，死亡被掩盖成是在作战中发生的。

29. 另有记载表明准军事集团实行了处决和发出了死亡威胁，尽管这些集团已承诺停止敌对行动。这些行动引起了国家由于政府公务员(尤其是保安部队)的行为或不行为而应当承担的责任。据收到的申诉说，受害者由准军事集团交送，随后被军方处决，接着被装扮成在作战中死亡的武装集团成员，这在麦德林市区(安提奥基亚)尤为多见。另一种情况是，据报告，受害者被准军事集团处决，而军队声称是在作战中死亡的，这种情况在普图马约和 Sierra Nevada de Santa Marta 时有发生。而且还有收到的指控表明，国家警察的人员在纳里尼奥省协助 Bloque Central Bolívar-Libertadores del Sur 处决一人。

30. 有时，尽管政府当局收到了关于风险的报告和警告，但却没有行动，随后便发生准军事集团的处决、大屠杀和威胁，因而国家对此应当负责，这种情况在普图马约曾有发生。在一起案件中，已知的准军事集团将一名受害者押送处决地，在路上途经警察所却未被阻止，因此政府当局明显的睁一眼闭一眼态度也应对此负责。这一案件的受害者曾经与司法机关合作调查准军事集团的行动，但据称他虽然申诉受到了威胁，却被国家拒绝提供保护。

31. **强迫失踪。**目前仍有有关强迫失踪的指控。这种事件往往是在失踪发生之后的一段时间由于发现秘密的单独或集体埋葬地才了解到的，例如在 Salazar、Sardinata 和 Cúcuta 农村地区(Norte de Santander)和 San Onofre (Sucre)就有发生。在 San Onofre 发生的案件中，观察到了该地区政府公务员与准军事集团之间的关联。由于司法部长和其他机构的工作(包括现任的 Corozal 海上陆战队司令的帮助)，已经起出 60 具尸体。据说有些受害者死去不到一年。有些在处决前遭受酷刑，或被肢解以便节省空间。尽管有证据表明准军事集团与省长办公室、市长办公室、保安部队的官员、检

察官和立法人员存在联系，但是却没有任何防范性停职或制裁的消息。

32. 另有收到的指控表明，在塞萨尔和普图马约省，军队人员实施了强迫失踪。此外还有人指控准军事集团在博利瓦尔、梅塔和考卡山谷等地实施强迫失踪，有指控说国家应由于其行为或不行为对此负责。另外有报告说，卡萨纳雷和瓜伊尼亚省内这种行径特别严重。应当指出，并不是所有强迫失踪的申诉都有注册备案的；在许多情况下，这种事件被注册为绑架事件。国家失踪人士委员会承认，联合国工作组记录的所有案件都仍然没有加以惩处。这一问题已经越来越严重，使得辨认被起出尸体的工作日益困难。

33. **酷刑和虐待。**已收到了一系列涉及到警方、军方和拘押中心人员实行酷刑和残忍、不人道或有辱人格待遇的指控(安提奥基亚、纳里尼奥、北桑坦德、考卡山谷)。这些行为有许多还没有记录。在尸首上发现的伤痕表明处决受害者之前经常施以酷刑。另有报告指出，在审讯被抓获或被拘押的人士期间施行了酷刑。另收到指控表明有过度使用武力的情况，尤其是警察的机动镇暴队(ESMAD)成员过度使用武力。在5月1日波哥大举行的示威中就有一人死亡。卡里也是这样，9月在考卡山谷大学举行的示威中也有一人死亡。10月份在托利马举行的土著人 *mingas* (传统社区集会)中，注意到警方过度使用武力。这些行动影响到言论自由与和平集会自由。

34. **任意拘留。**关于这类拘留的指控(尤其是在安提奥基亚、博亚卡、阿劳卡、北桑坦德、纳里尼奥、梅塔、卡萨纳雷、考卡、卡克塔和苏马帕地区)，还包括大规模拘留的情况，表明了这种做法还在继续。人们指控一些事件是军队士兵干的，在一些情况下，是由警察、国家保安部(DAS)和海军干的。有些拘留是在没有拘留证的情况下进行的。有时，军队是以法警的身份行事的。在另一些情况下，使用武装集团退伍人员提供的情报和假想或者信息来作为发出拘留证的唯一依据，这就使人提出质疑。人们还指责，在一些情况下拘留证是在拘留之后发出的。在考卡山谷的第3山地作战营被指控经常在拘押期间施行虐待。

35. 似乎有必要根据高级专员的建议，审查现场逮捕的概念。据国家警察的报告，在2005年的最初九个月里，仅有20%的逮捕是根据法院的逮捕证实行的，而其余80%都是依据犯罪现场逮捕的。据称，现场逮捕的概念适用于涉及长期犯罪或被怀疑属于非法武装集团的人员。值得注意的是宪法法院的裁决，据此已经宣布，新的

《刑事诉讼法》中允许司法部长不发出逮捕证便实行例外逮捕的规定是不符合宪法的。<sup>5</sup>

36. **性暴力。**有越来越多的指控表明政府人员(尤其是保安部队人员)对妇女和女童实行性暴力行为。据指称,包括强奸和对妇女施以酷刑在内的性暴力是由警方和军方人员干的,有时候还有集体实行性暴力的行为。这些行为的对象是土著妇女,许多事件甚至没有调查过。

37. **非法或任意搜查。**驻哥伦比亚办事处的记录表明,在安提奥基亚和考卡山谷,有人指控军方的士兵,少数情况下还有警察,从事此类侵权行为,其中包括在考卡山谷省海军所犯的案件指控。这些行为的对象是被指控与游击队保持联系的人,其中包括人权维护者。在一些情况下,人们对没有提供任何准许证件或准许证并非以足够证据为依据的情况提出了质疑。据指控,在有些搜查行动的同时,还发生了威胁、虐待、破坏财产和偷窃。

38. **有罪不罚及违反正当程序。**据观察,许多对侵犯人权负有责任的人逍遥法外。根据记录,在判定有罪之前假设无罪、司法独立性、正当司法程序及司法的保障等诸方面都存在违反规定的情况。很明显,有罪不罚尤其影响到遭受基于性别的暴力的妇女诉诸司法公正。受害者、证人和司法机关工作人员在人身安全和保护方面存在的问题继续阻碍了诉诸切实有效的执法。这表现为对证人和司法机关人员、尤其是检察官的威胁和袭击。有罪不罚的结果在该国的一些地区十分明显。例如,在 San José de Apartadó (安提奥基亚)的和平社区近年来所遭受的暗杀和攻击情况至今尚未弄清。今年,据报告有八人被杀,其中包括两名社区领袖,另有一起为处决。另外据记载还对司法委员会实行了两次攻击。

39. 有罪不罚的另一因素就是第 782 号法律及 2003 年执行该法的第 128 号法令的适用问题,法令对复员军人规定了包括大赦在内的法律从宽处理。据称,在许多情况下,司法部长尚未采取适当行动调查案情并保证受到这些法律宽待者的受害者确实取得了解真相、公正和赔偿的权利之前,就已经向肇事者提供了这些从宽待遇。

40. 任意拘留和任意搜查违反了无罪推定的原则。经常向媒体人员介绍说,拘留或被抓获的人就是游击队部队的战士或普通的罪犯。这种污名威胁到受害者的生命。

41. 越来越多的申诉指出军方掩盖了犯罪现场。这在农村地区实行的法外处决案件中尤为多见。军事人员将尸首搬离现场常常会向军事刑事法院提交此类案件以

进行调查的数量。而军事法院似乎有系统地一概拥有管辖权。司法部长曾几次将案件转交军事刑事法院本身，或未能承担司法管辖权。但是，值得注意的是，由于一些检察官的主动行动和坚决态度，案件被转交到普通法院。根据司法机关高级理事会提供的资料，在 2005 年 8 月以前发生的所有引起司法管辖权冲突案件中，据说决定只将一起案件转交军事法院实行司法管辖。这应当表明对军事司法管辖权作限制性解释的判例得到了进一步的尊重。

42. **对言论自由的侵犯。**继续有报告指称，对于见解和言论自由实行威胁和压力，受影响的尤其是记者、人权维护者和政治领袖。这往往会造成舆论界的自我检查限制以及对提出见解和信息的自由实行限制。根据观察到的案例，每当发表的信息或统计数据显现出在公共秩序方面的不利情况以及地方政府机构的不良状况，政府当局就不加容忍。例如，这种情况就影响到了阿劳卡、库库塔(桑坦德北部)和卡塔赫纳(博利瓦尔)的记者。人们谴责政府对发表有关贫困的报告和数据施加压力。

43. **被迫失踪和其他限制。**使行动自由和住所自由受到影响的情况有：家庭和社区的内部流离失所、导致社区处于孤立境况的威胁和限制、以及政府当局不顾相关居民的安全状况和人格尊严，也不顾这些人的愿望而为了促使其回归原居住地施加了压力。有一些情况不仅说明了与准军事集团有联系的政府人员所采取的行动，而且还说明了这种关联性的持续存在，以及政府当局所采取的不容忍态度。根据所提交的新的申诉，准军事集团与博利瓦尔的警察和海上陆战队人员有关联，而且与乔科的陆军人员和纳里尼奥的警方人员也有关联。

## 经济、社会和文化权利<sup>6</sup>

44. **贫困。**贫困的状况仍然十分严重。该国人口的一半以上，即 2,200 万哥伦比亚公民的收入水平低于贫困线。特别受到影响的人包括少数族裔群体、妇女和儿童。如何计算贫困线的问题引起了公众的广泛辩论，对于应当采用何种方式来确定处境贫困或赤贫潦倒的人数，议论纷纷。有时候所采用的一项指标就是“满足基本的需要”。根据这一方法，由于政府对教育、保健和基本卫生增加了开支，贫困程度有所下降。

45. **不平等。**哥伦比亚仍然是高度不平等的国家。从收入上看，62%的收入归属该国 20%最富裕的居民，而 20%最贫穷的居民只赚取全部收入的 3%。根据基尼指

数，近年来不平等的情况没有减少。与 1996 年相比，该国基尼指数有所扩大(从 0.544 增加到 2004 年的 0.56)。经济不平等还反映在经济状况最贫困的人很难得到某些物品和服务。而且城乡之间的不平等也很明显。城市地区的人均收入几乎是农村地区的两倍半。

46. **就业。**根据国家统计局(DANE)的官方数字，2005 年底，总的失业率下降到 10%，接近 1997 年的水平。失业的人数中妇女多于男子。就业不充分的比率仍然为 31%左右，并没有减少。

47. **教育。**据估计，仍然有 160 万儿童被排挤在教育体制之外，占年龄为 5 至 17 岁全部少年儿童的 13%。此外，城乡之间还有明显的区别。城市地区儿童受教育的比率为 93%，而农村地区所有学龄儿童中仅 77%上学。公立学校学生留级的比率比私立学校高出两三倍。但另一方面，近年来男女生辍学率有所下降。

48. **保健。**“一般健康保险计划”尚未提供普遍保险。不参加这一计划的哥伦比亚人多达 33%。由于公立医院网络的医疗机构关闭，又由于提供的病床数量减少，这些不保险的人缺医少药的情况就更加严重了。

49. **住房。**该国仍然存在严重的住房短缺。据估计，还需要 200 多万新的住房单位来弥补短缺。尽管如此，2005 年政府补贴的住房建筑数量仍然很少。与此相比，社会最上层的住房建筑数量依然在增加。关于取得基本卫生设施问题，74%的住房有污水排除设施，88%的住房有饮用水。

## 国际人道主义法的一般状况

50. 驻哥伦比亚办事处继续注意到非法武装集团、尤其是哥伦比亚革命武装力量——人民军(FARC-EP)和哥伦比亚联合自卫军(AUC)的人员严重违反人道主义法的行为。这些集团继续实施袭击和威胁、滥杀无辜、谋杀、屠杀、劫持人质和恐怖主义行动。它们继续对强迫失踪、招募未成年人、对妇女和女童的性暴力负有责任，而且对医疗服务人员和单位毫不尊重。平民百姓，尤其是少数群体，因其对运输食品、医药和旅客交通实行限制而受到影响。其他行动也使社区受到孤立。游击队继续使用杀伤人员地雷。

51. 要使用官方的统计数据来得出有关受保护人员在内部武装冲突中被暗杀的准确指数，以便将其与一般犯罪导致的死亡加以区分，仍然很不容易。

52. 另有记录表明保安部队人员也有犯罪行为，尤其是违反区分对象、行动有所限制和行动与目标相称的人道主义原则。一些指控就表现了这一点，指控提到了受保护人员被谋杀、受威胁、不分青红皂白地攻击、强迫失踪和违反平民百姓豁免原则。这种行为还造成社区被封锁，粮食和医药的运输受封锁，妇女和女童遭到性侵犯。

## 游击队

53. 游击队部队，尤其是哥伦比亚革命武装力量——人民军(FARC-EP)继续完全无视并践踏人道主义义务，同时继续犯下严重侵权行为。其中包括杀人、大屠杀、对平民百姓的袭击和威胁、不分青红皂白的袭击、恐怖主义行动及劫持人质。另外还有强迫失踪、无视平民百姓的安全、使用杀伤人员地雷、招募儿童和对医疗人员和单位的袭击行动。

54. 办事处的记录表明，哥伦比亚革命武装力量——人民军(FARC-EP)实行了一些暗杀，尤其是对农民的暗杀。其中包括对议员、市长和政治领袖及土著人有选择的暗杀，而在考卡、卡克塔、乌伊拉、纳里尼奥和金迪奥情况尤其严重。在 Tame (阿劳卡)，有 16 人被杀，其中包括妇女儿童，另外在 Bajo Cauca (安提奥基亚)还有 14 人被杀，在卡克塔有六人被杀，其中包括 4 名议员。哥伦比亚革命武装力量——人民军(FARC-EP)而且还对平民百姓实行死亡威胁，在阿劳卡、北桑坦德和普图马约特别严重。在一些情况下，这些威胁导致了强迫失踪。民族解放军(ELN)从事暗杀包括对考卡山谷地区从革命武装力量——人民军(FARC-EP)复原后重新定居者以及在北桑坦德对包括两名牧师在内的四名平民的暗杀，以及对平民百姓的各种死亡威胁。

55. 在考卡的 Caldonó 和 Toribío 市区、以及在 El Tarra (北桑坦德)和 Puerto Guzmán (普图马约)发生的袭击是应归咎哥伦比亚革命武装力量——人民军(FARC-EP)的攻击平民百姓和不分青红皂白袭击的典型行动。尤其严重的是，在有些案件中，由于学校邻近所攻击的目标，便将学校用作作战基地，从而牵连到儿童。这种情况曾在考卡和 Arauquita (阿劳卡)的上述市区发生过。人们指称，民族解放军(ELN)在纳里尼奥用汽油燃烧弹袭击平民。

56. 办事处仍然收到更多的报告，指出革命武装力量——人民军(FARC-EP)从事恐怖主义行动，使用爆炸装置，有些装置被安装在自行车或马车上。这类事件曾在 Gigante (乌伊拉)和 Puerto Toledo (梅塔)发生，造成了包括一名孕妇和一些儿童在内

的平民伤亡，另外在 Cumbitara (纳里尼奥)也曾发生此类事件，使许多马匹受伤，马车被毁。据报告，在阿劳卡，革命武装力量——人民军(FARC-EP)曾经与 ELM 联合行动，使用自行车载运爆炸物。

57. 社区领袖和政治人物、人权维护者、宗教领袖和土著人是最容易遭受革命武装力量——人民军(FARC-EP)劫持人质行动的对象，而在较少的情况下，民族解放军(ELN)也对其实行人质劫持。在这类事件中，Jiguamandó (乔科)的教会间正义与和平委员会五名成员和 Dabeiba (安提奥基亚)的一名记者被劫持，据说是革命武装力量——人民军(FARC-EP)采取的行动。另一方面，据指控民族解放军(ELN)在 Samaniego (纳里尼奥)劫持了一名社区领袖和前议员为人质。游击队继续无视其允许在武装冲突中被剥夺自由者得到人道待遇的义务。据指控，革命武装力量——人民军(FARC-EP)对于他们在 Urrao (安提奥基亚)、科尔多巴和纳里尼奥所劫持的人质死去负有责任，而 ELM 对在纳里尼奥和金迪奥发生的类似事件负有责任。

58. 游击队参与的威胁和作战导致个人、家庭和社区的大规模流离失所。据指控，由于革命武装力量——人民军(FARC-EP)的威胁，在 Cocorná (安提奥基亚)有 320 人流离失所，而科尔多巴有 500 多人流离失所。同时由于民族解放军(ELN)的压力，在 Dibulla (瓜希拉)另有 110 人流离失所，其中包括儿童和 Wiwa 土著社区的领袖。在一些情况下，这些行动并伴有掠夺和抢劫。革命武装力量——人民军(FARC-EP)在 Toribío (考卡)的袭击造成 5,000 多人流离失所。

59. 革命武装力量——人民军(FARC-EP)和民族解放军(ELN)继续经常使用杀伤人员地雷，造成了除士兵以外的许多平民受害者(包括儿童)。据记载，革命武装力量——人民军(FARC-EP)在 Urrao (安提奥基亚)招募儿童，并在 Ricaurte (纳里尼奥)招募了一名九岁的土著男童。据报告，在 Teteyé (普图马约)杀死了一名男童情报提供者，据称革命武装力量——人民军(FARC-EP)应对此负责。妇女也是这一非法集团强奸行为的受害者。医疗服务人员和单位继续受到革命武装力量——人民军(FARC-EP)的威胁、袭击和暗杀，而在阿劳卡、博利瓦尔、卡克塔和北桑坦德情况尤其严重。其他一些案件据称是民族解放军(ELN)所犯的。在乔科南部，革命武装力量——人民军(FARC-EP)及哥伦比亚联合自卫军(AUC)的行动造成大约 900 名农民的生活用品紧缺。

## 准军事集团

60. 包括那些承诺停止敌对行动的集团在内的准军事集团继续严重违反协议，其违约行为包括暗杀、威胁、袭击平民百姓、劫持人质、施行酷刑和有辱人格或羞辱性待遇、强迫失踪、招募儿童和性暴力行为。

61. 据称，准军事集团负有罪责的行为包括个别杀害、有选择杀害及大规模杀害，所涉对象尤其是社区领袖、土著人领袖、政治人物和地方政府官员。这方面的实例包括，在 Baranoa (大西洋省)暗杀了一名地方领袖和 Polo Democrático 党的党员，并在 San Miguel 和 Orito (普图马约)暗杀了两名社区领袖。另外还有在 Cauca 暗杀 Paez 土著领袖和在 San Juan del Cesar (瓜希拉)暗杀 Wiwa 领袖的案件。记者是准军事集团威胁的受害者。其中的一起严重案件涉及到已复原的准军事部队头目“Don Berna”，据报告他对谋杀 Córdoba 省的一名代表及其姐妹和在邻近集中区(*Zona de Ubicación*)的 Tierralta 的另一人负有责任。<sup>7</sup>

62. 哥伦比亚联合自卫军(AUC)据说对屠杀 Maní (卡萨纳雷)的一家四口人负有责任，并对屠杀 Barrancabermeja (桑坦德)的另一家庭及其他 7 人负有责任，还在 San Miguel (普图马约)导致四人失踪。据称，暗杀 12 名非洲裔哥伦比亚青年的事件是在 Buenaventura (考卡山谷)的已遣散的 Bloque Calima 准军事集团人员所为。另外还有指称准军事集团对平民百姓实行袭击和威胁的报告，尤其是针对北桑坦德土著社区的袭击和威胁。准军事集团劫持土著居民、人权维护者和农民为人质，例如在安提奥基亚、纳里尼奥、梅塔和普图马约就有此类事件发生。根据收到的报告，在考卡山谷，哥伦比亚联合自卫军(AUC)已遣散的 Bloque Calima 准军事集团人员劫持了七名人质。据报告，这些人质被交送给毒品贩运者，后者则杀害了他们。

63. 据指控，在安提奥基亚、考卡和塞萨尔等地，发生了酷刑和有辱人格或羞辱性待遇。青年和儿童继续是准军事集团招募军人的受害者，这在 Medellín (安提奥基亚)的 Comuna 13 区以及 Tame (阿劳卡)特别严重。在卡尔曼的 Motilón Barí 土著人保留区(北桑坦德)也有同样情况。这不符合其中一些集团遣散部队和停止敌对行动的承诺。

64. 非法武装集团的存在以及哥伦比亚联合自卫军(AUC)与革命武装力量——人民军(FARC-EP)成员之间的交战致使 San José del Palmar (乔科)的家庭持续流离失所。并造成 Barbacoas (纳里尼奥)的 60 个非洲裔哥伦比亚家庭以及 San Pablo (博利瓦尔)

42 个家庭大规模流离失所。2 月，这种交战致使 Bojayá (乔科) 的六个非洲裔哥伦比亚社区大约 2,000 人流离失所，这是最大规模的流亡之一。人们还谴责准军事集团封锁粮食、医药和燃料，限制人们的行动，从而严重影响到平民百姓，造成被迫流离失所和抢劫。这在 Bojayá 河(乔科)尤其多见，而且显然受到政府当局的容忍。还有报告指出在阿劳卡、乔科、科尔多巴和北桑坦德发生掠夺和抢劫。

65. 妇女和儿童依然是准军事集团的受害者，尤其遭受到性暴力行为。这方面的一个案件就是在纳里尼奥有一名人权维护者被劫持和强奸，而在 Teirralta (科尔多巴) 另有两名年幼姐妹被强奸，据指控肇事者是哥伦比亚联合自卫军(AUC) Bloque Catatumbo 的复原准军事人员。

### 保安部队

66. 继续有指控说保安部队人员、尤其是军队未能坚持作战行动区分对象的人道主义原则，从而影响到平民百姓及其财产。这种情况反映出军事领导人在计划和命令军事行动时未能适当考虑到人道主义原则。在一些情况下，由于政府当局对平民百姓的错误定性而有损区分原则。这方面的实例可以在卡克塔、San José de Apartadó (安提奥基亚) 和阿劳卡的事件中看到。

67. 使用学校和住房及这些设施附近的地点及其他公共场所作为作战基地，由于游击队的不分青红皂白地攻击而造成了平民伤亡。据观察，在建筑林立的地区中心构筑了军事设施，如 Toribio (考卡) 便是这样，同时军队在 Tibú 和 Teorama (北桑坦德) 以及沿 Bojayá 河(乔科) 的村庄里占据平民的住宅。这损害了加以区分的原则的运用，而且有可能使人们受到风险，尤其是鉴于游击队漠视这类人道主义原则。驻哥伦比亚办事处注意到哥伦比亚空军在计划其作战行动中未考虑平民百姓的风险作出了较大努力。

68. 另有指控表明，军队使用儿童刺探情报从而违反了这些原则。驻哥伦比亚办事处在普图马约目睹了这种情况，据称革命武装力量——人民军(FARC-EP) 杀死了一名 11 岁的儿童情报人员。另外还有报告指出，在 San Pablo (博利瓦尔)，另一名未成年人被迫运送军队，而被爆炸装置爆炸致死。另外还有一些报告指出，在 San José de Apartadó (安提奥基亚) 的军人和纳里尼奥的哥伦比亚空军从直升飞机上不分青红皂白地袭击。

69. 有人指控军人在军事行动中对妇女实行了性暴力事件。由于对旅客、医药、粮食和燃料运输限制和封锁，平民百姓受到影响。在一些情况下，导致了平民日常用品紧缺，以及被迫流离失所，这在阿劳卡、卡克塔和梅塔尤其严重。

### 三、复员遣散及其法律框架的挑战性问题

70. 根据官方资料，复员遣散进程从临近 2003 年底开始，至 2005 年 12 月 23 日，在 23 次复员遣散行动中，集体退伍的人数略高于 14,000。据估计，还得让 10,000 人解甲归田，然而，对此问题尚无官方数据。和平事务高级专员报告，总共上缴了将近 7,300 件重武器和 1,670 件轻武器，以及将近 5,760 枚手榴弹和将近 134 万发子弹。人们不妨注意到，退伍人数与上缴武器数量之间存在着相当大差距。

71. 关于规范上述情况的法律框架，2002 年通过了第 782 号法案并实施第 128 号法令加以管制。<sup>8</sup> 这就规定了准许非法武装集团中未犯过严重罪行的成员可得到法律上宽大优待，包括赦免。委员会注意到，该项法律一直未得到充分落实，从而有时会产生有罪不罚现象。2005 年 6 月，针对据称曾严重侵犯人权或严重违反国际人道主义法，不可享受第 782 号法案宽大优待的人，通过了第 975 号法案。然而，这项法案还尚未实施。

72. 这项立法规定对那些复员遣散、放下武器停止敌对行为的人，准予宽大优待，削减剥夺自由的刑期，最长刑期为 8 年。宽大优待的先决条件包括归还非法活动掠取的资产、交出征募的儿童和释放被绑架者。立法规定，就弥补措施而言，必须为寻找被绑架和失踪的人员以及受害者的尸体提供有效的配合。驻哥伦比亚办事处密切跟踪有关立法草案的辩论，并为当局提供咨询意见。高级专员在她走访哥伦比亚期间还利用机会发表了评论和建议。

73. 第 975 号法案提及受害者了解真相、伸张正义和得到弥补的权利，但是该立法条款未明确地规定，不遵循这些原则，就得不到宽大优待。由于没有鼓励认罪和查明真相的措施，产生了一些严重问题。因此，受害者的前景不明确。若真相不能查明，正义就得不到伸张，就不能给予充分的弥补；也不能有效地拆散准军事集团。截止至年底，委员会尚不清楚已复员遣散的人员究竟交出了多少儿童和多少由非法活动掠取的资产。委员会也不知道，复员遣散的人员是否协助了寻找被绑架或失踪人员下落的工作。为此，委员会难以衡量上述这些条款的积极影响。

74. 没有规则明确地规定遣散人员没有资格从事政治活动，这就有可能允许那些被解除武装的人员，在正义得到伸张和民族和解得到实现之前，就立即参与政治。此外，他们作为政治候选人的参与，或者对安全部队工作的支持，趋于长期维持公务员与非法集团之间的关系。

75. 2005年10月，司法机构高级理事会行政厅主席说，有9,000多名被解除武装准军事人员被列入了一份名单，核查是否正受到任何起诉，其中大部分没有任何调查的记录。除少数最知名且身份已确定的领导人之外，大部分针对被解除武装准军事人员提出的起诉不是已被封案，就是以赦免告终。这种情况带来了有罪不罚的重大挑战。

76. 总检察厅发现这些政策，尤其是涉及体制内部的协作和就复员人员(已经复员正在重新融入社会的人员)所作的承诺方面存在着缺陷和矛盾。另一些缺陷牵涉到对流离失所者和其他受害者的照顾问题。在获取信息和官方资料以及有关土地和赔偿前景方面也出现了一些困难。总检察厅指出有必要严格遵循必须用以指导此类程序的公开和透明度原则，并为各个有关机构制定建议。

77. 值得提及的是，以往几年来人们一再宣称并有事实证明，公务员特别是治安部队成员与准军事集团之间维持着千丝万缕的关系。由此而来的问题是，这些调查将如何就上述这些集团所犯的许多罪行追查国家的责任。国家未设立起有效的机制来处置这个问题或打破这些暗中联系，包括得到公务员或国家机构支持的这些类关系。

78. 在哥伦比亚各地仍能感觉到这些准军事集团通过压力、威胁和暗中协议控制地方政治、经济和社会利益的影响力。据称，在国家层面上，长期存在着与国家代表，包括政客和议会议员建立的关系。据称，共和国总统办公厅属下的文职情报机构——国家安全局的局长被指控支持与准军事人员携手搞情报。在哥伦比亚的若干省，准军事集团合法和非法地控制着相当大部分的贸易以及其他活动，并在许多情况下通过挂名代理人拥有大片土地和许多资产。<sup>9</sup>

79. 与此同时出现了一些不遵守停止敌对行动协议事件的报告。此外，一些准军事集团一直维持着军事结构，甚至征募了新成员并组建了新集团。在诸如卡塔通博(北桑坦德省)、考卡山谷省、纳里尼奥省和科尔多巴省等地均出现了这类情况。当局无法对退伍人员实行稳固的控制。据称，苏克雷省准军事人员自己下令谋杀其中一些退伍人员，是为了阻止向当局报告准军事集团过去所犯的严重侵犯人权行径。

80. 该国继续面临的挑战性问题是，清理整顿机构、消除和瓦解准军事组织和活动，并面对公众就涉及非法武装集团的问题和对受害人及其家庭造成的后果承担起责任。这只有在保障不再发生暴力情况下才可做到。另一个重要的挑战是，避免在这一领域无所事事，形成损害法制与民族和解的恶果。对不给予有效合作的解除武装人员缺少法律制裁以及对准军事集团所犯的大部分罪行不加追究的普遍现象是必须予以关注的问题。在不改变现行法律的条件下，惟有司法机构采取主动行动的态度，拿出强有力的政治意愿和提供充分的资源才可有效地遏制长期的法不治罪现象。

#### 四、特别弱势群体的境况

81. 在武装冲突背景下，一些属于弱势群体的人们和社区受到了侵犯人权和违反人道主义法行为的伤害。非法武装集团继续无视人道主义原则。各弱势群体还遭到某些公共政策和公务员行为的伤害。大部分伤害行为未受到惩罚。

82. 鉴于侵害这些弱势群体事件的严重性，本文附件四将深入探讨此问题。

83. **人权维护者**，妇女组织和受害者组织的成员、社区领导人、流离失所者和工会会员仍然是主要可归因于准军事集团等所犯谋杀、威胁以及攻击言论自由行为的受害者。同时，上述人员也蒙受公共官员行为之害，尤其是任意拘留、言论及类似诬陷行为。

84. 一些**流离失所者**和许多面临遭受攻击或背井离乡风险的社区，以及受封锁影响的人们所处的易受害境况依然有增无已。尽管在照管流离失所人口方面取得了一些进展，实现社会经济的稳定依旧是主要的挑战任务。为防止暴力侵害流离失所妇女所采取的措施依然不足。各族裔群体，尤其是**土著人**和**非裔哥伦比亚人**遭到一直可归因于非法武装集团及有时可归咎于治安部队成员的一些法外处决、谋杀、威胁、任意逮捕和性暴力行为之害。

85. **儿童**境况出现相当大的恶化，部分原因是高度严重的凌辱和性虐待行为以及和流离失所联在一起的贫困致使儿童易遭受伤害。非法武装集团继续推行招募儿童的做法。30%左右被杀伤人员地雷炸伤的平民受害者是儿童。同时，对那些已脱离了武装冲突的儿童处境，仍需要采取更有效的措施。一些男孩被用于从事情报活动，充当军队的情报员或向导。

86. 尽管在实现**妇女平等**领域取得了一些进展，但仍存在着暴力侵害，尤其在收

入、就业、参与和保健方面顽固的不平等现象。偏远社区、流离失所或处境极端贫困的土著、哥伦比亚非裔妇女尤其易遭伤害，尤其面临沦为卖淫和成为人口贩运受害者的更大风险。许多妇女继续遭受法外处决、谋杀、威胁和性暴力的风险。**女同性恋者、男同性恋者、双重性恋和性别转换者**，一直是社会“清洗”、法外处决、谋杀和任意逮捕的受害者。

87. 发表有关武装冲突和人权的信息或见解致使**记者**遭受污蔑和面临风险。2005年期间，威胁记者的事件数量几乎翻了一番，<sup>10</sup> 造成了记者逃亡和加强了自我新闻检查。两名记者遭到暗杀。据报告，还有些记者遭到公共官员的压力，而大多情况下，这些官员不受任何惩罚。**各政治党派成员和领导人**一直遭受袭击和谋杀的危害。各次大选临近时，此类袭击和威胁行为加剧。

88. **被监禁者**的一个主要问题是羁押条件过度拥挤。无公共服务、难以探访和寻找羁押地点以及无充分的工作和教育方案，侵犯了这些被拘留者的权利。

89. 非法武装集团扣押人质的行为危害到许多人。目前有几千人被扣押。<sup>11</sup> 对一些人员失踪案件长期不予治罪。尽管在立法方面取得了进展，却未开展过令人满意的调查。

90. 在**地方政府**中，地方议员，而且在较低程度上一些市长和前任市长遭受谋杀和威胁，与此同时**检察官、法官、代诉人和市监察专员**一直是武装冲突的受害者，而且尤其在对非法武装集团成员开展调查期间，会遭到袭击和威胁。有时不得不出于安全原因将他们调迁。

## 五、公共政策及执行建议的情况

91. 过去三年来，高级专员针对政府的三个权力分支以及负责监督保护人权的机构、民间社会的各代表阶层、国际社会和非法武装集团提出了一些具体的重点建议。

92. 这些建议是根据分析和系统地观察以及同政府和民间社会各组织对话并从这些方面征集资料得出的结论形成的结果。驻哥伦比亚办事处一直支持并随之跟踪这些建议的执行情况。

93. 人权委员会经协商达成一致，由委员会主席于2005年4月21日发表声明，呼吁哥伦比亚政府继续“努力，尽快取得进一步成果”，并确保“高级专员的建议充分、协调地纳入公共政策的所有领域”。<sup>12</sup>

94. 哥伦比亚政府、国际社会、尤其是签署了 2003 年 7 月《伦敦宣言》和 2005 年 2 月《卡塔赫纳宣言》的一些国家，和作为伦敦—卡塔赫纳进程后续委员会一部分的民间社会组织着重指出了高级专员建议的重要性。2005 年 12 月，委员会制订了 2006 年工作计划，阐明“国际合作是”人权事务高级专员办事处“编撰建议的补充工具”。各方同意，将着重推进后续行动以落实建议、全国人权行动计划、保护面临风险的社区和处理法不治罪问题。

95. 为落实以上所述的建议，对 2005 年开展的各项活动进行的分析如下。截至年底，总体落实情况差异甚大。一些政府机构加紧了努力以推进落实进程。在另一些情况下，没有采取及时、相关或一致的措施。因此，就建议的执行情况而论，还有许多问题有待解决(见第六章和附件一)。

## 预防和保护

96. 高级专员注意到，为规范机构间预警委员会的某些程序以及为解释向安全部队人员发出警告的性质而颁发了一些通函和规程。这些措施构成了必要和积极的步骤，但并不取代为制定规范预警委员会组建和职能的某些规则而提出的建议。<sup>13</sup> 预警委员会的消息来源是它的几个机构，而监察专员办公厅的预警系统<sup>14</sup> 则依然几乎完全依赖于国际合作。从预警系统颁布风险报告，到预警委员会采取行动，期间仍有相当程度的时间差。当许多风险报告通报了指称的一些侵犯人权行为案情后，预警委员会未以预警方式采取跟进行动。迄今为止，关于对不听从预警委员会发出警告的公务员实行制裁的建议，一直未得到落实。

97. 关于内务部保护方案的可持久性，高级专员满意地注意到，2005 年主要由国家预算为该方案提供资金。她注意到 2006 财政年度已同意增加预算。然而，与风险评估拖延和效率差相关的问题依旧存在；同时还必须克服对国家安全部所采取行动的不信任感。<sup>15</sup>

98. 主管官方实体内部检查事务的政府咨询委员会下发了 2005 年第 5 号通函，敦促政府各执行部门公务员对人权维护者的个人和集体工作给予应有的尊重。通函还主张对构成严重侵犯人权的行为适用《统一的纪律守则》。然而，并未提及必须根据这一《守则》第 48 条第 53 节，对不遵从总统关于人权维护者工作问题各项法令的行

为实行制裁。总检察厅第一次对有可能构成违反第 07 号总统法令的行为提出了纪律整肃程序。

99. 高级专员注意到，就她在上一份报告中所提及的 12 个濒临灭绝风险社区中的两个社区采取了某些特别和紧急措施。既无报道称对其他 10 个社区表明采取了预防性或保护性措施，也没有就高度风险状况作出任何评估。对于在这一方面未制订出确保上述社区得到紧迫关注的综合公共政策，给予了应有的注意。

100. 高级专员欢迎政府针对 11 个社区落实用于面临风险的其他社区的项目活动。她注意到通过了照管流离失所人口的全国行动计划，并提请注意宪法法院关于遵行 2004 年 T-025 号裁决的调查结果。法院 2005 年 8 月 29 日下达的 3 项裁决指出，政府的努力<sup>16</sup> 尚未能满足这项关于提供最低程度保护的规定。法院虽认为在预算问题上已作出了重大努力，取得了明显成果，但还须取得逐步、循序渐进和有效的进展。政府采取的一个积极步骤是，11 月份应法院要求通过了一项全国经济及社会政策委员会的政策文件。<sup>17</sup>

101. 哥伦比亚尚未提供有关监察专员办公厅和总检察厅在全国扩大活动范围的计划的资料，总检察厅报告，总检察厅将开展内部评估，以便明确扩大的需要，以期向各主管当局提出相应的要求。

102. 关于审查国防部有关人权维护者的情报档案问题，尽管总检察厅作出了努力和承诺，但未看到明显的进展。迄今为止，国防部未能解释记录情报档案所采用的标准和参数、情报将保留多久及其他细节。

103. 高级专员赞赏 2005 年 11 月驻哥伦比亚办事处与国防部按两年多前的建议，签署了双方合作协议框架。这项协议包括展开一项研究，探讨安全部队内部以综合、系统和可运作方式，在国际人权法和国际人道主义法教育方面取得的进展。

## 国内武装冲突

104. 整个 2005 年期间，各非法武装集团(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)继续从事构成严重侵犯国际法行为的活动。这就意味着，这些非法武装集团仍未遵从高级专员的建议，未摒弃对平民人口，包括妇女、儿童，族裔和其他弱势群体成员的袭击行为。

105. 各非法武装集团未遵从立即和无条件地释放所有被扣押人质的建议。这些

集团也没有尊重国际人道主义法的规定保障由于与武装冲突相关的原因被剥夺自由的人。这些非法武装集团继续使用自制的爆炸装置，任意埋设在学校、农田、住房和社区通道上。

106. 保安部队在实施作战行动，收复领土控制权和打击非法武装集团期间，有时无视关于有节制、有区别、相称和保护平民人口的人道主义原则。

107. 高级专员注意到哥伦比亚政府尚未考虑是否可撤销对《罗马规约》第 124 条有关战争罪问题的保留。

108. 尽管已宣布从 2002 年 12 月起停止敌对行动，但是准军事集团仍不恪守这项承诺。由于这些准军事集团与公务员串通勾结形成的局面，尽管暴力行为记录比前几年有所减少，然而，这些军事集团应为严重违反国际人道主义法以及侵犯人权的行径承担责任。

109. 高级专员注意到 2005 年第 975 号法案获得了批准，建立了非法武装集团成员重新融入社会的法律框架。这项法案批准了某些法律上的宽大，包括对那些犯有严重罪行的人在符合一定条件的情况下，可将监狱刑期缩短为五至八年。尽管驻哥伦比亚办事处发表的一些意见已列入了这项法案，但这项法案并不具备一些可使之符合国际义务和避免有罪不罚现象的基本要素。法案未包括适当的机制以确保退伍者协助保障了解真相、伸张正义和得到弥补的权利。法案未能充分解决妇女、儿童和少数民族的具体境况。<sup>18</sup>

### 法制和有罪不罚现象

110. 国会按通过的《法规法》规定了《宪法》确立的人身保护权。随着这项法案的颁布，哥伦比亚遵循了相关的国际建议。国会通过的 2005 年第 984 号法案批准了《消除对妇女一切形式歧视公约任择议定书》，突出体现了一种积极的发展动态。<sup>19</sup>

111. 国会批准了规范紧急查寻强迫失踪受害者机制的 2005 年第 971 号法案。人们希望，这项机制将能查明失踪者的下落，克服发掘和辨认尸体的障碍。同时国会还批准了关于打击贩运人口的 2005 年第 985 号法案和为受害者及其家庭采取保护措施 的 2005 年第 986 号法案。国会正在就一些法律草案展开辩论，这些法案若经国会批准将会增强对人权的保护。<sup>20</sup>

112. 高级专员着重阐述了已经批准的若干条约，尤其是国际劳工组织《关于禁止和立即行动取缔最有害的童工形式公约》(第 182 号公约)、《关于人员强迫失踪问题美洲公约》、《反对劫持人质国际公约》和《儿童权利公约关于儿童卷入武装冲突问题的任择议定书》。

113. 高级专员密切地跟踪重新提出的有关携带和销售武器、弹药和炸药问题法律草案。该法案允许个人和法律实体纯粹为了使用保安力量拥有和持有武器。同时还提出了一项法律草案以期确立起一个特殊的程序修订无效或不完备的资产权。但是，这并不保证法律程序可使流离失所者收回其原先被侵占的资产。

114. 关于打击法不治罪现象，驻哥伦比亚办事处得悉，特别委员会在增强某些调查侵犯人权行为和违反国际人道主义法现象的程序方面所取得的进展。这主要是在颁发逮捕证和起诉书方面取得的进展。在追究国家工作人员责任方面，极少有人被定罪，而且实效极低，这种现象仍是一个令人关注的问题。该年期间，特别委员会未举行会议审查进展情况和调查结果。委员会集中分析了导致通过打击有罪不罚现象公共政策文件的提案。委员会希望，该项政策将奉行一条考虑到有罪不罚现象各个结构性和环境因素的综合方针。

115. 关于总检察厅公共官员和雇员的职业发展，值得注意的是宪法法院第 T-131 号裁决，责令在 2006 年 6 月前落实整体职业体制，以确保职业前途的稳定性。负责公诉专职职业事务的全国委员会批准了一系列有待实施的条例。

116. 2005 年 11 月才开始审查驻哥伦比亚办事处和副总统办公厅 2005 年 6 月提交的对检察厅人权事务股的评估报告。委员会希望，很快将采取必要的体制性措施，将这些建议列为首要事项并着手予以实施。

117. 2005 年，部分由于资金不足，检察厅保护受害者和证人的方案面临着风险。在上半年期间，制订了有关保护方案和相关条例的法律草案。新任总检察长必须分析、讨论并增强该法律草案，以便确立起保证方案实效的法律框架。

118. 高级专员注意到当局向治安部队下发了若干有关拘留和其他有关人权和国际人权主义问题的指示和通函。然而，有些人指控治安部队成员执行的一些拘留不符合上述指导规则。未曾收到过任何有关责任者受到了惩处的资料。对现行犯概念还需紧迫地进行审查，以避免目前的滥用和曲解现象。

119. 无迹象表明国防部运用了 2003 年第 836 号法案第 164 条，该条规定针对严

重侵犯人权案，可采取停职的预防措施。军事法庭仍不按规定越权接手调查归因于安全部队成员的侵权行为。有若干起案件，检察官要么将本应属他们处置的案件拱手交给军事法庭，要么不提出司法管辖权的要求。大部分因司法管辖权引起的冲突，由高等司法委员会根据宪法案例和高级专员的建议，裁定归属于普遍法庭。

120. 关于主张由总检察长优先行使纪律整肃权的提议，<sup>21</sup> 驻哥伦比亚办事处观察到，尤其对一些本该由总检察长优先行使纪律整肃权的严重侵权案件未照此处置。最近，总检察厅表示有意审查此类案件，并在相关时，行使司法裁判权。

121. 国家感化和监狱研究所仍不愿承认监狱中存在着违反或威胁被剥夺自由者基本权利的情况。办事处在合作框架内提出的全国管教学校教育方案仍未得到实施。将人权融入监狱机构的条例和做法的任务还尚未得到贯彻。尽管全国感化和监狱研究所发表了一些官方言论，执行与驻哥伦比亚办事处合作项目建议的结果仍然令人失望。

122. 在总检察厅建立负责调查公务员与非法武装集团之间关系的专设分股已有一年多了，却仍不能确定该分股的性质、职能和主管职权范围。此外，该分股也未获得投入运作所需的资源。为此，该分股未曾办理过一个案件。同时，总检察厅尚未变革向安全部队及其他安全机构派驻检察官的体制，以期确保检察官更大程度的独立性，避免检察官置身于治安部队驻扎地或其他保安机构内的现状。

123. 委员会注意到保安部队总司令 2005 年 5 月公布的一份通函，重申颁布命令以确保保安部队与自卫部队之间断绝一切关系的重要性。然而，没有资料阐明对这一份通函的遵循情况。在切实解除准军事结构方面，并无重大进展的记载。

## 经济和社会政策<sup>22</sup>

124. 不平等和普遍贫困仍是哥伦比亚在经济、社会及文化权利方面面对的主要挑战问题。不仅在富人与穷人之间的不平等，而且城镇与乡村人口、男性与女性之间，各个省与区之间也存在着不平等。土著和非裔哥伦比亚社区也存在着不平等。经济不平等仍普遍存在。旨在减轻贫困的国策并未发挥充分实效。在减贫方面未取得显著进展。

125. 贫困状况未得到缓解。一半以上的人口仍然贫困。这就意味着，2,000 万哥伦比亚人的生活处境无法保障其应有的一些权利。显然，该国必须加强努力，以建设

性方式着手面对贫困问题。2004 年，政府在全国计划部内设立了贫困问题工作团。然而，迄今为止，各部门之间未能够就贫困测量方法达成一致。

126. 根据官方统计数字，全国近几年失业率有所下降，然而就业不足率则极高(超过 30%)。就业领域的公共政策未成功地创造新的、稳定的、质量良好的工作。长期存在着男女之间就业率上的不平等现象。

127. 全国有认字阅读能力的人数稍有增长。文盲率从 2002 年 8% 下降至 2004 年 7%。然而，一些社会处境最不利阶层的文盲率则有所增长，从 1993 年的 4% 增长至 2003 年的 6%。在一些提供公共教育的地点有认字阅读能力的人数显著增长，但是，推广普遍免费小学教育的建议仍未得到实施。

128. 在健康领域，加入健康照顾补贴制和缴款保健方案的记录人数有所增长。然而，被排斥在保健照顾和社会保障福利制度外的人数极高(超过 30%)。显然，获得健康照顾仍是一项重大的挑战问题。

129. 为社会最贫困部分人口建造低成本住房的资金缺口扩大。政府没有制定保障住房权的公共政策。住房部门的现行补贴仍然首先照顾最富裕的阶层。

130. 2005 年 3 月，国家经济和社会政策委员会经批准的第 91 号文件<sup>23</sup> 载有哥伦比亚关于《千年发展目标》的承诺，因此构成了一项积极的发展动态。然而，迄今为止，在一些具体领域如贫困、免费教育、孕妇死亡率和性别平等方面未取得充分成果。该年期间，政府提出了题为“展望 2019 年哥伦比亚”的讨论文件，探讨了直至 2019 年即独立 200 周年纪念之际的预期公共政策。该文件未完全融入政府就《千年发展目标》所作的承诺。在此，未列入诸如消除饥饿、免费小学教育、性别平等和性健康以及生殖健康等方面的承诺。

## 增进人权文化

131. 高级专员指出，必须加紧努力实现政府与人权机构之间稳定对话论坛的体制化。当局与民间社会之间就促进长期和建设性对话协商达成的会晤议程未得到遵循。这些会议一般仅限于探讨人权情况的一些具体问题或方面。内务部和副总统办公厅创建了一些省级机制，以便将人权和国际人道主义法融入各区市级的发展计划。然而，尚未制订出一项全面性的政策，限制了上述主动行动的实效。

132. 全国人权行动计划的实施未达到预期的希望。在该年前几个月期间，政

府、某些民间社会组织<sup>24</sup>和哥伦比亚办事之间处举行了一些工作会议。5月期间工作会议被中断。办事处提出为解决某些分歧展开斡旋。将近年底时，对话重新恢复并扩展至其他社会部门。

133. 教育部和驻哥伦比亚办事处推行的人权教育计划取得了显著进展。教育部在通过这项计划的同时，为使此项有待实施的计划投入运作而签订了机构间协议。2006年7月，政府承诺最后确定并宣传此项计划。

#### 高级专员驻哥伦比亚办事处提供的咨询服务和技术合作

134. 高级专员注意到在组建官方统计系统方面未取得进展，无法充分处置侵犯人权和违反国际人道主义法的问题。政府报告，已与某些政府实体进行了初步接洽，以期制订出一项工作计划。这样做的目标在于研订一项关于某些人权和国际人道主义法情况的标准化信息系统。副总统办公厅的人权观察处未涵盖法外处决和任意拘留问题，或某些违反国际人道主义法的行为类别。

135. 在2005年上半年结束时，副总统向驻哥伦比亚办事处提出了一个落实高级专员建议的时间表。为了贯彻这项时间表并便于采取后续行动，办事处提出了一个明确认定执行行动和指数的拟议方法，得到了接受。该年下半年期间未能迅速地完成对建议的审查。直到11月份才开始举行关于执行进程的后续会议。

136. 有些机构表示有兴趣利用驻哥伦比亚办事处的咨询作用和技术合作。另一些机构，特别是政府执行部门内的机构并没有充分利用这些服务，对此，联合国人权委员会主席2005年4月发言强调这些是必要的服务。

## 六、建 议

137. 高级专员指出，按照2005年4月人权委员会主席的发言，落实建议的进程必须继续下去。2005年某些国家机构所取得的进程应当推动2006年作出更大的努力。这就需要在行动、专题和时间框架方面采取一贯的方针。关于2006年的建议全文载于附件一。

138. 为了深化执行建议的进程，高级专员鼓励缔约国特别关注下述建议。

139. 高级专员鼓励政府与民间社会广大部门联合制订并通过包含性别观重点在内的全国人权行动计划。这项计划应列入任何为圆满执行尚未落实建议的必要内容。

140. 高级专员鼓励政府执行部门采取有效措施预防和调查任意处决和强迫失踪罪行。

141. 高级专员请政府和国会对有关解除非法武装集团成员武装及其重新融入社会问题的立法实行必要的改革，从而确保立法更为符合有关受害者了解真相、伸张正义并获得赔偿权利方面的国际准则和原则，对妇女、儿童和少数民族特殊情况给予应有的关注。她还鼓励共和国总统采取必要措施，切断公务员与准军事集团成员之间的一切关系，切实拆除准军事结构。

142. 高级专员鼓励政府采取和执行打击有罪不罚现象的公共政策，包括审查关于家庭和性别暴力问题的立法。她还告诫司法机构和总检察厅以充分和及时的方式，调查并制裁侵犯人权和违反国际人道主义法的行为。

143. 高级专员敦促国会和政府在经济和社会领域奉行适当的政策，以实现《千年发展目标》，尤其缩小不平等的差距，处理极端贫困问题并保障有效的保健、教育、就业和住房权。

144. 高级专员敦促该缔约国以协调、一贯和有效的方式落实她提出的所有建议，鼓励共和国副总统运用高级专员派驻哥伦比亚办事处的咨询服务和技术援助，于2006年5月前颁布一项实施建议的时间表，包括行动和进展指标。

145. 高级专员继续特别强调对非法武装集团提出的下列要求：

146. 高级专员敦促人民军、民族解放军、联合自卫军和其他游击队和准军事集团领导人及其他成员尊重所有受害者的生命权、人身健全权和个人自由权。高级专员尤其敦促上述各方在任何时候都不对平民人口进行袭击和肆意的袭击、不诉诸于绑架、征募儿童、性暴力等不可接受的做法以及恐怖主义行为。为此，她要求非法武装集团领导人对其全体成员下达明确的命令，确保必须遵从人道主义准则。

147. 高级专员敦促人民军、民族解放军、联合自卫军以及其他非法武装集团立即并无条件地释放所有被劫持的人质。她还敦促各非法武装集团毫无限制地承认根据人道主义准则为出于国内武装冲突相关原因被剥夺自由者确立的保障。

148. 高级专员敦促人民军和民族解放军领导人及其他成员全面履行国际义务，禁止使用、储存、生产和转让杀伤人员地雷。

149. 高级专员认为，克服国内武装冲突具有至关重要的意义。为此目的：

150. 高级专员呼吁非法武装集团宣布并切实停止敌对活动，政府也应相应地停

止敌对行动。她呼吁在政府与非法武装集团间的对话和谈判进程中争取进展，以便克服境内武装冲突并达成持久和平。她重申在上述这些对话中必须将国际人道主义法和人权置于优先地位。

**151.** 高级专员坚信，只要以一贯和全面方式执行了这些建议，人权和国际人道主义法状况就会出现显著改善。**2005** 年取得的某些进展应鼓励在 **2006** 年及今后作出更深入的努力。高级专员建议，在驻哥伦比亚办事处的当前任务授权于 **2006** 年 **10** 月结束之前，充分延长这一任务授权。

## ANNEXES

### Annex I

#### 2006 RECOMMENDATIONS

##### **Prevention and protection**

1. The United Nations High Commissioner for Human Rights encourages the Government to elaborate and adopt, in conjunction with broad sectors of civil society, a national plan of action on human rights, which should include a gender focus. This plan should incorporate whatever elements are necessary for the satisfactory implementation of outstanding recommendations.
2. The High Commissioner reiterates the need for the Government to develop a public system of statistics to adequately cover, according to international standards, the different kinds of human rights violations and breaches of international humanitarian law.
3. The High Commissioner urges the executive branch to take effective measures to prevent and investigate the perpetration of extrajudicial executions and enforced disappearances.
4. The High Commissioner encourages the Government to adopt norms regulating the functions of the Inter-institutional Early Warning Committee (CIAT) and appropriate responses to risk reports, and imposing sanctions when alerts are not acted upon. She also encourages the Government and Congress to provide timely budget allocations in order to ensure the efficient operation of the Early Warning System (SAT) of the Ombudsman's Office.
5. The High Commissioner encourages the Government to enforce the Constitutional Court's ruling No. T-025 of 2004 and to devote the necessary resources to finding lasting solutions to the displacement problem. She reiterates the need to take special and urgent measures to defend indigenous communities at risk of extinction, within the framework of a comprehensive policy offering them adequate prevention and protection. She also encourages the Procurator-General and the Ombudsman to ensure their presence among communities at risk, in particular in areas inhabited by indigenous, Afro-Colombian or displaced populations.
6. The High Commissioner encourages the Government to promote legislation that adequately regulates the use of military intelligence records, including a procedure for annual review by the Office of the Procurator-General. She urges the Ministry of Defence to cooperate with the Procurator-General in order to identify criteria, parameters and relevant methods in order to exclude from the records all erroneous or tendentious data concerning human rights defenders and organizations.
7. The High Commissioner urges the Government and the Office of the Procurator-General to make sure that public servants who fail to pay due respect to the work of human rights defenders are prosecuted and penalized. She also encourages the Government to take suitable measures to deal with the problems of delays and inadequate risk assessment in programmes for the protection of human rights defenders and other groups.

8. The High Commissioner encourages the Government to guarantee the full exercise of political rights and fundamental freedoms of opinion and expression during the 2006 elections. She also encourages the authorities to ensure that those taking part in the elections have duly clarified their legal status.

### **The internal armed conflict**

9. The High Commissioner urges the leaders and other members of the FARC-EP, ELN, AUC and other guerrilla and paramilitary groups to respect the right to life, personal integrity and individual liberty of all civilians. They are especially urged to abstain at all times from attacks on the civilian population and indiscriminate attacks, the unacceptable practices of kidnapping, recruitment of children, sexual violence, and acts of terrorism. To that end she demands that the leaders issue clear orders to all members of their groups to ensure obligatory observance of humanitarian norms.

10. The High Commissioner urges the FARC-EP, ELN, AUC and other illegal armed groups immediately and unconditionally to free all persons held hostage. She also urges them to recognize, without restrictions, the guarantees established under humanitarian norms for persons deprived of their liberty for reasons related to the internal armed conflict.

11. The High Commissioner urges the leaders and other members of the FARC-EP and ELN to fulfil international obligations prohibiting the use, storage, production and transfer of anti-personnel mines.

12. The High Commissioner urges all those directly participating in the hostilities to fully observe the humanitarian principles of limitation, distinction, proportionality and protection of the civilian population, and to guarantee humanitarian access to exposed populations.

13. The High Commissioner calls upon all the illegal armed groups to declare and implement an effective cessation of hostilities, to be reciprocated by the Government. She also calls for progress in the process of dialogue and negotiations between the Government and the illegal armed groups, in order to overcome the internal armed conflict and reach a lasting peace. She reiterates the need to give priority in these dialogues to international humanitarian law and human rights.

### **The rule of law and impunity**

14. The High Commissioner invites the Government and Congress to introduce the necessary reforms in legislation on the demobilization and resettlement of members of illegal armed groups so as to make such legislation more compatible with international principles and norms regarding victims' rights to truth, justice and reparation, paying due attention to the special situation of women, children and ethnic minorities. She also encourages the President of the Republic to adopt the necessary measures to sever all links between public servants and members of paramilitary groups and to effectively dismantle paramilitary structures.

15. The High Commissioner urges Congress and the Government fully to comply with Colombia's obligations as State party to international instruments on human rights, humanitarian

law, criminal law, labour law and the law on refugees, to ratify related treaties that have not yet been incorporated in the Colombian legal system, and to refrain from introducing changes in internal legislation that are incompatible with international norms.

16. The High Commissioner encourages the Government to adopt and implement a public policy to combat impunity, including a review of legislation on domestic and gender-based violence. She also urges the judiciary and the Office of the Procurator-General to investigate and sanction human rights violations and breaches of international humanitarian law in an adequate and timely manner.

17. The High Commissioner calls on the Ministry of Defence and the Attorney-General to fully comply with international norms prohibiting illegal or arbitrary arrests.

18. The High Commissioner urges the Attorney-General to implement a career system for public officials and employees of his office, to prioritize and implement the recommendations made in the assessment of the National Unit on Human Rights and International Humanitarian Law, to promote the adoption of a legal framework ensuring effective and efficient implementation of the Office of the Attorney-General's programme for the protection of victims and witnesses, and to take the necessary normative, regulatory and financial measures to ensure that the special sub-unit in charge of investigating links between public servants and illegal armed groups may continue functioning.

19. The High Commissioner urges the Government to issue instructions ensuring that officials of the military criminal justice system do not claim jurisdiction in cases of human rights violations and breaches of international humanitarian law. She also urges the Attorney-General to issue clear instructions for prosecutors to act in accordance with the international principle that military and police personnel suspected of human rights violations or breaches of international humanitarian law should always be tried in the ordinary courts.

20. The High Commissioner calls on the Ministry of Defence and armed forces commanders to ensure that in all cases of disciplinary investigations of members of the security forces involved in serious human rights violations or war crimes, suspension from service should be applied as a preventive measure, as required by article 164 of Act No. 836 of 2003.

21. The High Commissioner urges the Minister of the Interior and Justice and the Director-General of the National Penitentiary and Prison Institute (INPEC) to implement the recommendations put forward in the framework of the project of her Office in Colombia, to approve the programme of training for their officials that includes human rights, and to incorporate the international norms and principles pertaining to the rights of persons deprived of liberty in national legislation.

### **Economic and social policies**

22. The High Commissioner urges Congress and the Government to apply appropriate policies in the economic and social field in order to achieve the Millennium Development Goals, and in particular to reduce the inequality gap, to deal with extreme poverty and to guarantee the rights to health, education, employment and housing effectively.

### **Promoting a human rights culture**

23. The High Commissioner invites Congress and the Ministers of Education and Finance to provide the necessary resources to launch the national plan for education in human rights. She also urges the Ombudsman to continue supporting this plan, and to develop the task of promoting, exercising and disseminating human rights throughout the country.

24. The High Commissioner encourages the Government to create stable and permanent forums for dialogue with organizations of human rights defenders and other sectors of civil society, at both national and regional level, in order to achieve greater understanding and respect.

### **The Office's advisory and technical assistance services**

25. The High Commissioner urges the State to implement all her recommendations in a coordinated, consistent and effective manner, and encourages the Vice-President of the Republic to publish a timetable for the implementation of the recommendations, including actions and progress indicators, by May 2006, making use of the advisory services and technical assistance of her Office in Colombia.

26. The High Commissioner invites the branches and organs of the State and civil society organizations to benefit fully from the technical cooperation and advisory services offered by her Office in Colombia. She also invites the international community to provide the necessary financial and technical support to enable State institutions, non-governmental organizations and her Office to contribute effectively to the implementation of her recommendations. She recommends that the present mandate of her Office in Colombia be extended sufficiently in advance of its expiry date in October 2006.

## **Annex II**

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

1. 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, promotion and dissemination, for which it received significant financial support from a number of countries in 2005.<sup>25</sup> The Office's headquarters are situated in Bogotá and its three regional sub-offices in Bucaramanga, Cali and Medellín.
2. Through analytical and systematic observation, the Office in Colombia contributes to the understanding and objective assessment of the country's situation as regards human rights and international humanitarian law. It uses that knowledge to cooperate and assist towards strengthening the capacity of the Colombian State and civil society to improve the protection and promotion of human rights, to reinforce the rule of law, to reduce impunity, to implement consistent public policies in the economic and social field, to promote a culture of human rights and to encourage a negotiated solution to the internal armed conflict.
3. The Office in Colombia maintains constant contact with State authorities, Colombian civil society organizations, international non-governmental organizations (NGOs), churches, the media and diplomatic representatives.
4. The United Nations High Commissioner for Human Rights visited Colombia in May. During her visit she held meetings with the President and senior government officials, Congress, the Constitutional Court, the Procurator-General, the Ombudsman, civil society organizations, the Church, the diplomatic corps and the United Nations system. She visited the southern zone of Bogotá and made a trip to Chocó, where she conferred with several local community authorities and representatives, NGOs and the Quibdó diocese.

#### **Observation**

5. The Office in Colombia entertains constant, fluid contact with State institutions and civil society organizations at national and regional level. Its frequent and systematic observation missions in the field gather information and contribute to the important task of prevention and the protection of vulnerable populations, local human rights organizations, trade unionists and journalists, among others.
6. Through its field visits, communication with different sectors, complaints received and processed, and mission statistics and thematic and geographical reports, the Office is able analytically and systematically to monitor the situation of human rights and international humanitarian law in the country. Through a better understanding of the regions and their situation, patterns and tendencies can be identified and analysed in order to put forward recommendations for the Colombian State and demands for the illegal armed groups.
7. In 2005, the Office carried out around 300 observation missions, amounting to almost 660 days in the field. It received 2,403 complaints, which were recorded in the

database. Among these, 1,789 complaints about violations of human rights and/or breaches of international humanitarian law were selected for action and follow-up. The Office recorded more complaints than in 2004.

### **Advisory services**

8. The Office in Colombia stepped up its advisory work in support of public policies, essentially on legal issues and international agreements. It therefore continued its dialogue with the authorities, particularly with the Vice-President's Office, ministries, Congress, the judiciary and control bodies. Particular attention was paid to the legislative agenda of Congress, as well as to State policies, programmes and mechanisms related to human rights and international humanitarian law. The Office provided advice to several State institutions and civil society organizations on the application and interpretation of international instruments related to those areas.

9. Analytical documents were prepared to evaluate government policies and programmes, to guide their formulation so that it is compatible with international principles, and to encourage the adoption of appropriate measures. The main issues addressed in this advisory work are the rule of law, the administration of justice and the fight against impunity, women's rights, the situation of children, and economic, social and cultural rights. Particular emphasis was placed on the basic principles of truth, justice, and reparation applicable in a context of transitional justice. Several advisory documents were issued during the discussion and drafting of the so-called Justice and Peace Act.

10. Through regular participation in seminars, workshops and discussion and analysis activities, the Office in Colombia was able to promote knowledge of basic human rights concepts, international jurisprudence and the recommendations of international bodies, especially those made by the High Commissioner.

11. Through workshops the Office in Colombia internally strengthened the inclusion of a gender perspective in its observation and analysis of the human rights situation. With support from the United Nations Development Fund for Women (UNIFEM), the Office reviewed its technical cooperation projects in order better to integrate the gender perspective.

12. The Office in Colombia, through its Geneva headquarters, contributed to the preparation of reports and analyses on legislation pertaining to abortion and the implementation of resolution 48/3 of the Commission on the Status of Women on the release of women and children taken hostage. It also produced documents to provide thematic and legal support for the institutional capacity of the Office of the High Commissioner on issues concerning the rule of law, peace and security, transitional justice, non-discrimination, women and gender.

### **Cooperation and technical assistance**

13. The cooperation and technical assistance provided by the Office in Colombia focuses on supporting the action taken by Colombia's State institutions to implement the High Commissioner's recommendations.

14. In November 2005, the Defence Minister and the Director of the Office in Colombia signed a cooperation agreement to produce an analytical and independent assessment of the progress achieved and difficulties encountered with the inclusion of human rights and international humanitarian law in the training of security forces.

15. During the year, both in State institutions and in civil society organizations, a series of training projects and activities were organized to improve knowledge of the main concepts and instruments of human rights and international humanitarian law. Institution-building programmes were continued to make the State's response in terms of promotion and prevention in the area of human rights and international humanitarian law more effective.

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

16. The Office in Colombia attended joint work meetings with the Presidential Programme for human rights and representatives of the Alliance of Social and Related Organizations (Alianza de Organizaciones Sociales y Afines), the Colombia-Europe-United States Coordination and the Colombian Platform for Human Rights, Democracy and Development in order to achieve progress and consensus on the national plan of action. The meetings considered the main themes that the plan would address and the assessment methodology required. The work was interrupted in May and resumed in November with greater participation by civil society organizations. During the year, the Office in Colombia used its good offices to help overcome several difficulties that emerged in the discussions between the Government and human rights organizations.

### **B. National plan of action on human rights in the educational system**

17. With the technical advice of the Office in Colombia, the technical committee composed of the Ministry of Education, the Office of the Ombudsman and the Presidential Programme for human rights succeeded in drafting a national plan. The plan contains the specific purposes, objectives, operating strategies, indicators and goals relating to the inclusion of human rights in educational curricula. The plan now needs to be officially adopted by the Ministry of Education and agreements arrived at among institutions to make it politically, technically and financially viable.

### **C. Institution-building**

#### **1. The Office of the Attorney-General<sup>26</sup>**

18. A project was launched in 2005 with four components: (a) the National Unit for Human Rights and International Humanitarian Law and the special sub-unit on links between public officials and illegal armed groups; (b) the protection programme for victims and witnesses; (c) the career system for prosecutors; and (d) the School of Criminal Investigation and Forensic Science. The development of this project was interrupted at the time of the Attorney-General's replacement in August.

19. **The National Unit for Human Rights and the special sub-unit.** In June 2005 the assessment prepared by the Office in Colombia and the Office of the Vice-President's

programme to combat impunity was handed to those in charge of the National Unit. Meetings are currently being held to discuss the assessment. The Office in Colombia has given the special sub-unit advice on how to analyse cases of links between members of the security forces, civilian officials, private individuals and paramilitary groups. It has also given it advice on the nature, functions, competence criteria and resources needed for its operations.

20. **The protection programme for victims and witnesses.** The Office in Colombia provides advisory services to the programme for the implementation of the recommendations contained in the Office's 2001 diagnosis. A plan of action was agreed and is currently being implemented with the new management. An inter-institutional round table took place in the first half of 2005 in order to draft a bill giving the programme a permanent regulatory framework. This must be reviewed and internal rules of procedure developed in order to unify its implementation processes and procedures.

21. **The career system for prosecutors.** In 2005, pursuant to the Constitutional Court's ruling No. T-131, the Attorney-General must implement the whole career system by July 2006. The Office in Colombia is helping the National Commission on the Administration of the Career System for Prosecutors to develop a regulatory framework for the career system, its procedures and all the steps required for its implementation. The Office also takes part in an institutional round table on the development and review of the different profiles for each duty of the Attorney-General's Office, and in defining a system to assess performance. In October 2005, the National Commission on the Administration of the Career System for Prosecutors approved regulations for the system, and analysed the related budget forecasts and implementation timetable.

22. **The School of Criminal Investigation and Forensic Science.** The Office in Colombia advises the school on how to relate its training programmes to the career system. In that context, it recommended that the subjects of human rights and international humanitarian law be made an integral part of initial and further training courses. The project provides technical assistance for the consolidation of the network of instructors in human rights and international humanitarian law, consisting of prosecutors and investigators drawn from the institution. The Office in Colombia also provides advice on setting up a special training plan for the school's officials.

23. An intensive training course was held for 38 prosecutors and officials in order to widen the network of instructors. It included issues of gender and equality, and focused on international instruments for the protection of women's rights. Training in international humanitarian law was given to court prosecutors and 84 prosecutors of the Human Rights Unit. An assessment was made of the impact of training in human rights and international humanitarian law, which showed that there was an imperative need for an institutional policy to encourage officials of the Attorney-General's Office to implement international instruments.

## **2. Inter-institutional project on the human rights situation of persons who have been deprived of their liberty<sup>27</sup>**

24. The Office in Colombia continues to work towards the strengthening of institutions in charge of drafting and implementing penitentiary policy and of the control bodies that monitor

the situation and promotion of prisoners' rights, in conjunction with the National Penitentiary and Prison Institute (INPEC), the Ministry of the Interior and Justice, the Office of the Ombudsman and the Office of the Procurator-General. Civil society organizations are also encouraged to participate in the search for alternative solutions to the critical situation of the prison system.

25. With respect to control bodies, the project focuses on strengthening the capacity of the Procurator-General's Office and of the Ombudsman's Office to respond effectively to the protection needs of individuals deprived of their liberty and to deal with widespread crisis situations. During the years the action taken under the project and the main concerns regarding the rights of people deprived of their liberty were discussed in meetings that took place with the Deputy Minister of Justice and INPEC.

26. Academic Days on Prison in Colombia were organized in conjunction with the National University of Colombia in November 2005. The occasion brought together academics, students and public servants to discuss issues such as criminal policy, disciplinary control and the functioning and administration of justice.

27. **The National Penitentiary and Prison Institute (INPEC) and the National Penitentiary School (EPN).** In 2005, the Office in Colombia visited seven pilot prison centres<sup>28</sup> to assess progress on the implementation of its recommendations. INPEC's commitment to implement the general and specific recommendations has not been followed up by appropriate measures and programmes. The Office made observations and recommendations on inspection procedures and building projects for the new prison and penitentiary centres. It also prepared a document on the importance of the High Council on Criminal and Penitentiary Policy for achieving a comprehensive and secure/effective policy. Those documents have strengthened the control bodies' power to intervene in relation to the Ministry of the Interior and Justice and INPEC and to influence the latter's priority agendas.

28. In 2004, the Office in Colombia submitted an educational programme to the National Penitentiary School (EPN) aimed at incorporating the human rights perspective. Although the Office promoted it throughout 2005 among the highest authorities of INPEC and of the Ministry of the Interior and Justice, the programme still has not been officially recognized. In conjunction with EPN personnel and INPEC, some 270 prison staff have been trained in human rights. It is worth noting that a network of 18 instructors trained by the project was set up at the Institute. The instructors attended the same human rights courses as the six regional divisions of INPEC. The aim is to leave the Institute with sufficient capacity when the project is finished.

29. **Office of the Ombudsman.** A document was prepared on institutional policy on prison establishments as well as technical guidelines on the State's observance of international obligations in this respect. It is hoped that the two contributions will facilitate institutional management based on planning and on the identification of priorities and allow the assessment of the way Colombian prisons operate. Also worth noting is the development of a scheme for monitoring human rights committees, providing the Ombudsman's Office with a tool for assessing their performance and management, and introducing institutional measures to strengthen them.

30. **The Office of the Procurator-General.** The Procurator-General approved the document on Preventive Policy of the Procurator-General's Office concerning the Rights of Persons Deprived of Their Liberty. This document was produced as a result of a nationwide survey of the institution's officials, with the Office in Colombia's advice. It serves as a tool for guiding institutional action in the area of prisons.

31. A general framework for preventive control procedures relating to the rights of persons deprived of their liberty was prepared with the help of the prison affairs group of the Procurator-General's Office. Technical advice was also provided on public announcements of alerts and the legal concepts mentioned by the Procurator-General when defending the rights of prisoners. Altogether 39 visits were made to prisons and police stations and training was provided for staff of the Procurator-General's Office.

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

32. During 2005, the Office in Colombia continued to encourage the institutionalization of training in human rights and international humanitarian law in State institutions and in other sectors. Training is an essential element of the Office's capacity-building strategy in this field.

33. The human rights training programme for **municipal ombudsmen**<sup>29</sup> ended in January 2005, after benefiting 90 per cent of the country's 1,098 ombudsmen. An external evaluation of the programme concluded that the strategies used had been the right ones. In resolution No. 287 of 2005 the Procurator-General officially set up a subcommittee in charge of following up the programme, to which the Office of the Ombudsman also belongs. The further training of ombudsmen has been taken over by the Institute for Studies of the Public Affairs Ministry. During the year, 12 workshops were held, in which about 300 ombudsmen took part. The assessment of the workshops was positive.

34. In 2004, the Office in Colombia and the **Office of the Ombudsman** put together a Manual for classification of conducts that violate human rights. The Office of the Ombudsman adopted the manual for the purpose of dealing with and processing complaints.<sup>30</sup> The resolution also orders the manual's dissemination throughout the Office of the Ombudsman, and promotes its use among other State institutions and NGOs. The Office in Colombia and the Office of the Ombudsman conducted an initial training programme on the use of the manual, which was attended by more than 100 officials, university professors and consultants.

35. Workshops were held with the **Procurator-General's Office** on the use of the Practical guide for evidence in disciplinary investigations regarding violations of human rights and breaches of international humanitarian law.<sup>31</sup> Some 150 officials took part in these training sessions, including regional, provincial and judicial procurators, ombudsmen and special investigators.

36. Training courses in human rights and international humanitarian law were also conducted with the Colombian Family Welfare Institute, the School for Judges and Procurators of Medellín, the Vicarage of San Vicente del Caguán, and college teachers of the archdiocese of Cali. About 500 people attended the courses.

37. The Office has trained 90 members of the coordinating committees of the **Development and Peace Programmes** of Oriente Antioqueño, Meta and Montes de María in the basic concepts of human rights and international humanitarian law. These activities were carried out in conjunction with the “Networks” programme of the United Nations Development Programme (UNDP).

38. Six projects to promote human rights locally in several regions of the country took place within the programme **Assisting Communities Together (ACT)**. At the end of 2005, a new series of ACT projects was launched, to be implemented with the help of UNDP.

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

39. In the context of “Action 2”, the inter-agency plan of action for the integration of the human rights dimension, the country follow-up group implemented the workplan proposed by the technical team<sup>32</sup> and coordinated by the Office in Colombia.

40. Six basic courses in human rights and international humanitarian law were given for employees of the system in several parts of the country. Members of the technical team also designed and conducted two specialized courses on the human rights focus in development, taking into consideration the gender dimension. More than 200 employees - managers and coordinators of programmes and projects of the system’s agencies - attended these courses. The Office also offered an advanced course for agency chiefs, delegates and focal points on the integration of the human rights dimension in the elaboration of the CCA/UNDAF (Common Country Assessment/United Nations Development Assistance Framework).

41. With regard to gender, the Office took part in inter-agency meetings of the Round Table on Gender and the network against sexual harassment and violence. It is worth noting the activities organized to promote the inclusion of the gender perspective in public policies aimed at meeting the Millennium Goals. The Office also worked on preparing a guide on how to incorporate that perspective in inter-agency missions and projects of the United Nations system.

#### **Information, promotion and dissemination**

42. In 2005, the Office in Colombia issued 55 press releases and 19 reports and organized 8 press conferences. It granted more than 30 interviews to national and international media on the High Commissioner’s recommendations and human rights in the country. A total of 1,300 press articles were published and the website was visited some 250,000 times.

43. A press conference was held during the visit to Colombia of the Working Group on Enforced or Involuntary Disappearances. Field missions were organized with a United Nations press group to supply information on the Office’s work and the country’s situation.

44. The Office’s publications include 10,000 copies in Spanish and 1,000 in English of the High Commissioner’s Recommendations for Colombia; 2,500 copies of the High Commissioner’s annual report on the human rights situation in Colombia in 2004; 10,000 handbooks on the Universal Declaration of Human Rights adapted for children;

and 20,000 copies of a new pamphlet introducing the Office. Ten thousand copies of the 2005 calendar were also printed and distributed, as well as more than 77,000 copies of publications, including books, articles, recommendations, reports and press releases.

45. In order to make children acquainted with the Universal Declaration of Human Rights, drawing workshops were organized in different parts of the country for which Prismacolor donated more than 52,000 pencils.

46. A book of photographs, Colombia: Images and Realities, based on a 2003 photography competition on human rights, was published in two languages, Spanish and English. A photographic exhibition of those pictures was opened in Bucaramanga, in cooperation with the local Chamber of Commerce. A free concert was given in Bogotá with the singer Ilona to celebrate International Human Rights Day and another with local artists in Medellín.

47. The Office contributed to the preparation of the monthly bulletin, *Red de Gestores Sociales* (Social Action Network), published by the Office and the First Lady to disseminate human rights among the country's civil servants.

### **Annex III**

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

### **I. HUMAN RIGHTS**

#### **Civil and political rights**

##### **A. Right to life**

1. In 2005, a series of extrajudicial executions took place, which were directly attributed to members of the security forces. The military were blamed for executions of civilians, who were portrayed as guerrilla fighters killed in combat. Several cases were attributed to the army's fourth brigade (Antioquia). They included the collective execution of three peasants in May in Dabeiba (Antioquia), which was attributed to members of the Pedro Justo Berrío infantry battalion of that brigade, as well as the killing of three youths in Caldas (Antioquia) in November, attributed to the brigade's Unified Action Group for Personal Liberty (GAULA).

2. In several executions attributed to members of the brigade, the crime scene was reportedly arranged to simulate combat, for instance by dressing up the victims in military clothing and giving them weapons. That was the case for several executions that took place in Medellín and its metropolitan area, as in the rural areas of several municipalities of Antioquia. One case was the execution of a person in March attributed to the Pedro Justo Berrío Battalion, on the road between Medellín and Bello. The extrajudicial execution of two young people, one of whom was mentally disabled, in Quibdo (Chocó) in February was attributed to members to the Manosalva Flores Battalion. The Office also recorded the extrajudicial execution in the rural area of Urao (Antioquia) in March of a woman and her 14-year-old son, which was attributed to members of the Cacique Nutibara Battalion. The military reported the event as "guerrillas killed in combat".

3. Similar situations occurred in other parts of the country, such as the extrajudicial execution in March of two men, reported as guerrillas killed in combat, attributed to the El Carmen de Bolívar Marine Corps (Bolívar). In May, the arrest and subsequent execution of three people in Almaguer (Cauca) was attributed to personnel of the Alta Montaña Fourth Battalion. The victims were portrayed as guerrillas killed in combat. The same month, two people were reportedly executed by troops of the Ricaurte Battalion of the fifth army brigade in La Esperanza (North of Santander). The victims were presented as members of the AUC killed in combat. The Alta Montaña Battalion based in Sumapaz (Bogotá) was accused of the execution of three young peasants, sons of UP (Patriotic Union) militants, described as guerrillas killed in combat. Four civilians presented by the authorities as suspected paramilitaries were reported killed in Monterrey (Casanare). Several of these victims, including an elderly person, were relatives of a paramilitary commander. Likewise, two displaced people were executed in the municipality of El Castillo (Meta). According to witnesses, the peasants had just gone through a military roadblock. Members of the twenty-first Vargas Battalion allegedly dressed them up in camouflage clothes and presented them as guerrillas killed in combat.

4. Other extrajudicial executions involved members of the indigenous communities. They included that of a Kankuamo indigenous person and of a pregnant Wiwa indigenous girl, which took place on 9 February in the rural area of Atanquez (Cesar) and was attributed to members of the tenth army brigade. The Kankuamo people has been granted provisional measures by the Inter-American Court of Human Rights and the Wiwa people precautionary measures by the Inter-American Commission on Human Rights. The execution of an indigenous person in the Pueblo Viejo reservation of Ricaurte (Nariño) was attributed to a soldier of the Cabal Motorized Infantry Battalion.

5. The Office also received complaints of extrajudicial executions in the course of social cleansing operations attributed to members of the security forces. In the metropolitan area of Medellín, six cases showed a similar pattern. One example was the extrajudicial execution in June of a person taking drugs, attributed to members of the Special Urban Forces Group (Agrupación de Fuerzas Especiales Urbanas, or AFEUR). Another example was recorded in April in the municipality of Caldas (Antioquia), attributed to the rural GAULA of the fourth brigade. Members of the fourth army brigade were also accused of the extrajudicial execution of two young people in Quibdo (Chocó) in February. The victims, one of whom was disabled and the other displaced, were found in the municipal rubbish dump.

6. Cases of coordinated action were reported, in which paramilitary groups were said to have handed over victims to army personnel, who then allegedly killed them and reported their deaths as having occurred in combat. There was also the case in August of a street vendor who had been taken from his house in Medellín's Commune 13 (Antioquia), presumably by a paramilitary. Hours later, members of the Urban Anti-Terrorist Platoon (Pelotón Antiterrorista Urbano) of the army's fourth brigade reported he had been killed in combat. In March, again in Medellín's Commune 13, men dressed in civilian clothes reportedly took a young man out of his house; hours later, a patrol of the same brigade reported that he had been killed in combat.

7. An extrajudicial execution attributed to members of the Bloque Central Bolívar-Libertadores del Sur was said to have taken place in Los Andes (Nariño) with the acquiescence of members of the National Police in February. The victim was allegedly tortured before being executed. Also in Nariño, in the municipality of Sotomayor, the AUC's Bloque Libertadores del Sur allegedly executed a person in February with the consent of members of the National Police.

8. In Sonsón (Antioquia), members of the AUC reportedly apprehended a person in a very busy street in town and passing by a police checkpoint only some 10 meters away from the police station, they allegedly led him out of town and executed him. The victim was helping the Attorney-General's Sectional Office of Sonsón to elucidate two murders, committed by members of the AUC, which he had allegedly witnessed. Even though the victim had been threatened and had requested protection, he was executed without having been granted protection.

9. Members of the National Police reportedly executed a person in Florida (Valle) in February. A witness to the killing was allegedly threatened by the same police officers and members of a paramilitary group.

10. In April, in San Pablo (Bolívar), a shopkeeper was reportedly executed by presumed members of the Central Bolívar Unit a few meters away from the police station, without any attempt having been made to prevent the execution or arrest its perpetrators. The event led to protests by the inhabitants of the municipality in April, who complained of ties between the local police and members of the AUC's Central Bolivar Unit.

11. Several people reportedly received death threats, in particular human rights defenders. These included complaints of death threats against the president of the José Alvear Restrepo Lawyers' Association and her family. The victim is covered by the Interior Ministry's protection programme, while the Lawyers' Association comes under the precautionary measures of the Inter-American Commission on Human Rights. Likewise, the Regional Ombudsman of Valle del Cauca reportedly received death threats, which were also directed against a congressman, trade unionists and human rights defenders.

12. Reports were received of several attacks against political leaders. The situation deteriorated in the last months of the year, which coincided with the beginning of the electoral campaign. One attack took place in Bogotá in October against congressman Germán Vargas Lleras of the Radical Change Party (Partido Cambio Radical). There was also a case of housebreaking and intimidation against a human rights defender and candidate to the Chamber of Representatives of the Social and Political Front (Frente Social y Político) party.

### **B. Right to personal integrity**

13. The Office in Colombia followed up reports of violations of the right to personal integrity resulting from acts of torture and cruel, inhuman or degrading treatment or due to the excessive use of force by members of the security forces.

14. A labour leader was reportedly tortured after being arrested by unidentified persons in the town of Pasto (Nariño). It was said that the victim was tortured, interrogated and threatened after giving a speech at the May Day march, and that members of the police were allegedly involved. A complaint was also filed against agents of the Judicial Investigation and Intelligence Service (SIJIN) in Nariño for arbitrary arrest, torture and death threats against a trade unionist in April in Pasto, who was accused of assisting the guerrillas.

15. The extrajudicial executions of several victims were reportedly preceded by torture and ill-treatment. For example, in San Luís, Oriente Antioqueño, the body of a peasant, victim of an execution attributed to army personnel, showed several marks on the head, chin, lips and right temple of cuts made with a short, sharp object. In another case in May, in the municipality of San Francisco (Antioquia), members of the "Batalla de Barbula" third battalion of the fourteenth army brigade allegedly shot a peasant in the right leg and let him bleed to death, having denied him medical assistance for eight hours.

16. Persons detained in jails or police stations also reported having been subjected to torture or cruel, inhuman and degrading treatment by State agents, in particular by members of the National Police, the SIJIN and INPEC. Reports included the case in January of a prisoner, who was tortured with a plastic bag over his head and brutally beaten when he was recaptured by

INPEC staff after escaping from the Ibagué (Tolima) prison of “Picaleña”. Several complaints were received of acts of torture perpetrated by members of the National Police on a person held at the police station of Junín in Cali (Valle) in September. The detained person was allegedly beaten and subjected to electrical shocks and death threats. The Office was also informed that 25 pregnant women prisoners at the women’s prison of Bucaramanga (Santander) had not received medical attention during their pregnancy.

17. The Office received reports of the use of excessive force by members of the security forces, especially the Mobile Anti-riot Squadron (Escuadrón Móvil Antidisturbios or ESMAD). During the peaceful May Day march in the town of Pasto (Nariño), several people were allegedly beaten with sticks and a student was said to have had his leg broken by the impact of a gas grenade. The same day in Bogotá, a child died after having reportedly been beaten by ESMAD members. In September, a student died during the quashing of a public demonstration against the Free Trade Agreement (FTA) that took place in the University of del Valle in September. Several students were reportedly injured after being beaten by ESMAD agents who entered the university campus. According to another report, ESMAD agents violently suppressed a peaceful demonstration by Pasto indigenous people against the mayor of Córdoba (Nariño) in April. In the course of those events, several demonstration leaders were allegedly beaten by men of the security forces.

18. The Office also received complaints about acts of torture, ill-treatment and sexual violence allegedly perpetrated against women by State agents. A woman was reportedly raped by a soldier of the second group of the Batalla de Boyacá armoured vehicles battalion, based in Pasto (Nariño), who was said to have used his military uniform and authority to arbitrarily raid the victim’s home without showing a warrant. After these events took place in August, the soldier was arrested and handed over to an ordinary court.

19. A young indigenous girl was allegedly subjected to a violent sexual attack by a member of the third artillery battalion in Purace (Cauca) in August. Another case of rape was reported in February, involving an Arhuaca woman and was attributed to army personnel based in Magdalena. In May, a woman was arrested in Saravena (Arauca) and taken to the Reveiz Pizarro Battalion, where she was subjected to sexual violence. The rapes of two women in El Zulia (North of Santander), reported in February, were also attributed to militaries. The Office was informed that the indigenous governor of the Junta community in Dagua (Valle) was beaten, insulted and threatened by a member of the military when she asked to see a court order. The event, which took place in Dagua in May, was attributed to members of the Pichincha Battalion of the third army brigade. Also in May, members of the military allegedly aggressed a displaced widow when she asked to see an arrest warrant during her detention in Dagua.

20. Lesbians, homosexuals, bisexuals and transsexuals have also allegedly been the victims of ill-treatment attributed to State agents. There is a report that police officers, in October, forced the legal representative of the “Casa de Eventos Mango” establishment in Barranquilla (Atlántico) to undress and insulted him.

### **C. Right to individual liberty and personal safety**

21. The Office in Colombia received a number of complaints of enforced disappearance of people in various parts of the country allegedly involving public servants. One example was the case in January of the disappearance of a peasant in Puerto Caicedo (Putumayo) reported to have been arbitrarily detained by members of the army. Since his arrest there has been no information on his whereabouts, though the army apparently reported him killed in combat.

22. There were also reports of the enforced disappearance of two peasants in the rural area of Puerto Guzmán, where members of the thirteenth mobile brigade are conducting military operations. Two other peasants were reported missing in March in Puerto Lleras (Meta). These actions are attributed to members of the Centauros unit of the AUC, who maintain a permanent presence there, and occurred despite the fact that the Inter-Institutional Early Warning Committee (Comité Interinstitucional de Alerta Temprana - CIAT) had issued an early warning and recommended bringing more security forces into the area.

23. Reports were also received of the disappearance of a person in June in Quibdó (Chocó), attributed to members of the Manosalva battalion. In 2005, unmarked mass and individual graves were found, including some in San Onofre (Sucre). Exhumations began in February, thanks to information provided by the community. The first remains were found in the village of Pajonal in March. The exhumations are being carried out by CTI personnel from Barranquilla, Cartagena, Bogotá, Pereira and Manizales, and an interdisciplinary team of dentists, forensic doctors, anthropologists and photographers. Most of the bodies were found at the El Palmar farm. A significant number of corpses were found in graves containing one or two dismembered bodies buried less than a metre below ground. A number of bodies showed signs of torture. Among these were recent victims who seemed to have been killed less than a year ago. This demonstrates the persistence of this practice, which is generally underreported.

24. The Office continued to receive reports of mass arrests, with or without a warrant, by members of the security forces, the DAS and judicial employees, mainly from the Office of the Attorney-General. There were doubts concerning the lack of thorough investigation in most of these cases, which were said to be based solely or mainly on intelligence reports, information from resettled former members of armed groups, or mere suspicions.

25. Examples include allegations of house searches and mass arrests carried out in May by the prosecutor with the Special Anti-terrorist Command (CEAT) against 13 students from the University of Antioquia, in Medellín. A number of irregularities were apparently committed in the course of these events, notably violations of the presumption of innocence and of due process for children: three of the detainees were under 18 but were allegedly treated as adults. The Office also received allegations regarding the mass arrest of 29 people in August by members of the Attorney-General's Office and the DAS in Argelia, Marinilla, Santuario and Medellín (Antioquia). Apparently, the arrests were made without individual warrants. There were also reports of a mass arrest of 16 people in July in a joint operation by the Attorney-General's Office, the DAS and the CTI in Uribe (Meta), based on thin statements by resettled persons.

26. Another allegation involved the mass arrest of more than 30 people in February, in Labranzagrande (Boyacá), without arrest warrants. These were allegedly issued after the event. According to information received, the intelligence report that led to the arrests was based on the testimony of eight allegedly resettled persons, and was not cross-checked or compared with other evidence.

27. The Office also received information on the arrest of five people in August, on the basis of conjecture and suspicion derived from intelligence reports and uncorroborated testimony from resettled persons in Cartagena del Chairá (Caquetá). A few days later, the prosecutor decided not to issue a detention order, upon finding that the arrests were not duly substantiated. Other allegations involved the mass arrest, in April, of 27 people in the municipalities of Barbacoas, Mallama and Ricaurte (Nariño), 20 of whom were then apparently released because the evidence against them was so flimsy. In May, six people were reported arrested in San Calixto (Norte de Santander). Even though an arrest warrant had been issued, the prosecutor did not order their detention for lack of consistent evidence. In April, six villages from Anzoátegui (Tolima) were arrested. They were released 15 days later, apparently due to inconsistencies in the assessment of the evidence. Similarly, the Office was informed of violations by members of Sumapaz battalion No. 39 in the course of several arrests, covered up by the Attorney-General's Office in Fusagasugá. In one case, two people were detained in San Juan de Sumapaz in November and taken to battalion No. 39, where they were allegedly interrogated without attorneys. Fifteen days later they were handed over to the Attorney-General's Office. The municipal criminal court accepted a motion for habeas corpus on behalf of the detainees, who were released on 1 December. That same day they were detained again by Guala agents for illegally carrying arms and involvement in an assault that day.

28. Human rights defenders were also the victims of illegal arrests: Joel Sierra, a member of the Human Rights Committee, for example, was arrested in March in Saravena (Arauca). He was allegedly detained for several hours and transferred to the Revéiz Pizarro military unit in Saravena, without an arrest warrant.

#### **D. Right to due process**

29. The Office continues to receive allegations of violations of due process in the form of attacks on judicial independence, improper exercise of jurisdiction by military criminal tribunals, irregularities in the handling of evidence and violation of the presumption of innocence.

30. The Office has noted a pattern of allegations regarding the systematic takeover by military criminal tribunals of investigations of human rights violations or breaches of international humanitarian law attributed to members of the security forces, particularly the army.

31. In a number of the cases of extrajudicial execution referred to in the section on the right to life, the prosecutors refrained from claiming jurisdiction. In others, the prosecutors themselves referred the investigations to the military courts jurisdiction. In certain cases,

however, prosecutors' efforts made it possible to keep investigations within the ordinary justice system. Cases of both types were reported in Antioquia and Chocó. In addition, when prosecutors were able to gather evidence at the scene of the events, especially in urban areas, the cases were not referred to the military criminal courts but remained within the ordinary justice system. Examples include investigations of executions attributed to members of the military in Santa Rosa de Osos, and in the Manrique neighbourhood of Medellín (Antioquia).

32. Reports were received of manipulation of evidence at the crime scene, particularly in extrajudicial executions attributed to members of the army. This pattern was reflected in most of the allegations regarding executions attributed to army personnel, the victims of which had apparently been described as killed in combat.

33. There were allegations of obstruction of the work of the justice system through attacks and threats against witnesses and judicial employees. Two attacks were reported against the commissions of inquiry investigating the massacre of eight people on 21 February in San José de Apartadó (Antioquia). Threats were also reported against prosecutors investigating paramilitaries in La Hormiga (Putumayo), and one of them was executed.

34. There were reports of individuals being portrayed in the media as members of guerrilla groups, in violation of the presumption of innocence. One example is the mass arrest of 16 people in Uribe (Meta) who were photographed and presented to the media as alleged guerrilla members, yet most of them were released a few weeks later.

35. The impunity surrounding most of the cases affecting the community of San José de Apartadó, as well as the authorities' stigmatization of a number of its members, have aggravated their vulnerability. In 2005, there was a report of a massacre in February of eight members of the community, four of them children, in the villages of Mulatos Medio and La Resbalosa, and of the death of another in November. The judicial authorities are investigating these incidents, which some members of the community attribute to counter-guerrilla battalion No. 33 of the 17th brigade. However, the security forces attribute them to FARC-EP guerrillas.

### **E. Right to freedom of movement and residence**

36. Violations of the right to freedom of movement and residence observed by the Office consisted mainly in unlawful impediments to movement and free transit, as well as forced displacements in various parts of the country. A number of such cases, related to the armed conflict, are described in the section on breaches of international humanitarian law.

37. There were reports of irregular control of the population by means of arbitrary restrictions at checkpoints. In May, the Office in Colombia witnessed displays of disrespect towards the civilian population at various army and Marine Corps checkpoints in Caquetá, along the Caguán river. This was especially the case at river checkpoints on entering and leaving (La Hacienda checkpoint) Cartagena del Chairá and at the Peñas Coloradas checkpoint. The lack of uniform criteria apparently allowed the arbitrary imposition of restrictions on the movement of persons and basic commodities.

### **F. Right to privacy and inviolability of the home**

38. The right to privacy and inviolability of the home was infringed by searches and raids, which were arbitrary or lacked a legal basis.

39. The Office received complaints of arbitrary house searches in joint operations by members of the military forces, the Attorney-General's Office, the CTI and the DAS. A number of people were reported detained in Fortul (Arauca) in April, and were said to have been photographed and verbally abused before being released. Also in April, soldiers from the Cabal Motorized Battalion were reported to have forced their way into several homes in the neighbourhood of Carrizales, in the urban district of Ricaurte (Nariño), firing in the air, kicking doors, upsetting the furniture, going through personal papers and insulting residents. They allegedly did not produce a legal search warrant.

### **G. Right to freedom of opinion and expression**

40. There were reports of violations of the right to freedom of opinion, expression and information through killings, threats and arbitrary arrests of journalists and media contributors. The Foundation for Press Freedom (FLIP) recorded an increase in the number of threats, which rose from 34 in 2004 to 60 in 2005.

41. The Office received information concerning threats against a number of Bogotá journalists well known for providing news and comment viewed as independent and even critical of the Government.

42. Examples include the cases of journalists Daniel Coronell, Holman Morris and Carlos Lozano, who were sent funeral wreaths and threats in May. Coronell, director of the Noticiero Uno news broadcast and a columnist with *Semana* magazine, was forced to leave the country after revealing that a politician was behind the death threats against him and his family. The Office was told of the attempted murder of a Reuters correspondent, which was made to look like attempted robbery. It also recorded the deaths of two journalists in the departments of Bolívar and Norte de Santander.

43. Five journalists went into exile in 2005 on account of their work as compared with three in 2004.

44. Reports were received of the arbitrary arrest, by members of the National Police, of a press photographer from the newspaper (Nariño), *Diario del Sur* who was taking pictures in the Plaza del Carnaval. The policemen, thinking they were being photographed, allegedly took him to a police station and exposed his film. There were also complaints of pressure being put on journalists in Cúcuta (Norte de Santander) and in the departments of Arauca and Caquetá. Such actions impair the right to provide free and independent information and encourage the self-censorship already practised by a number of media professionals.

## II. INTERNATIONAL HUMANITARIAN LAW

### A. Assassinations and threats targeting protected persons

45. Assassinations of protected persons continued to be carried out on a systematic basis by illegal armed groups. Also, there were reports of killings of protected persons by members of the security forces. In other cases, deaths attributed to public officials involved breaches of the humanitarian principle of distinction.

46. The Office also received reports of various massacres attributed to the FARC-EP, such as one that took place in Río Negua (Chocó) in August, when four miners died. A massacre of eight people in Riohacha (Guajira) in July was also attributed to this group. A number of other massacres were reported in Antioquia, including those of 3 peasants in Anorí, 5 woodcutters in Mutatá, and 14 coca field workers in Valdivia.

47. The Office continued to receive reports of massacres attributed to paramilitary groups, such as one in March in Barrancabermeja (Santander), in which four members of the same family were killed. Three other people were killed in July in the municipality of Aguachica (Cesar).

48. There were reports of selective killings attributed to guerrilla groups. The FARC-EP assassinated a local councillor and former mayor in Hobo (Huila) in April. Reports also came in of the assassinations of a Paez leader in January, a member of the *cabildo* (indigenous council) of La Cilia (Cauca) and a peasant leader from southern Bolívar, in Morales. These actions were also attributed to the FARC-EP. In March, three assassinations resulted in the displacement of 20 families from Salitral in the rural part of Ovejas (Sucre). The FARC-EP were blamed for the death of a politician in the department of Huila, in December, whose family they had taken hostage in 2001. The sons were released in 2004 after paying a ransom, but the wife is still in captivity.

49. The Office received a number of complaints against paramilitary groups with respect to killings of protected persons, such as the assassination in January of the court administrator of Tame, who was advocating the removal of the mayor for his alleged links with paramilitary groups. The AUC were blamed for the assassination of the prosecutor in La Hormiga and the commander of the National Police (Fifth District) in La Hormiga (Putumayo) in April. Reports were also received concerning the assassination of the president of the Merchants' Association of the municipality of San Miguel (Putumayo), who was leading a civil resistance campaign against the paramilitaries.

50. During 2005, selective killings targeting local authorities intensified. In April, two members of Congress were assassinated: Orlando Benítez Palencia in Córdoba and José Oscar González Grisales in Manizales (Caldas). Both crimes were attributed to paramilitary groups. For their part, the FARC-EP were blamed for a massacre on 24 May during an attack on the municipal council of Puerto Rico (Caquetá), where four councillors, the council secretary and a passer-by were killed. The group was also alleged to be responsible for the deaths of other councillors in Puerto Rico, San Vicente del Caguán and El Paujil (Caquetá). A similar attack against councillors in Campoalegre (Huila) cost the lives of four civilians and another six, including two councillors were injured.

51. Reports continued to be received of killings of members and leaders of indigenous communities. The FARC-EP were blamed for the assassination of an Awa indigenous leader who had been taken hostage, despite the issue of a press release by the Office in Colombia urging his captors to let him go and spare his life.
52. The Afro-Colombian population continued to be the target of individual and mass killings. The assassination of an Afro-Colombian leader on the Barbacoas (Nariño) community council was attributed to paramilitaries; it also resulted in the displacement of almost 400 persons. Two further massacres were reported in Buenaventura (Valle), one in April, the other in July, in which a total of 18 young Afro-Colombians lost their lives; these were attributed to demobilized members of the Calima unit of the AUC.
53. In October, two members of the network of informers received threats and were the victims of an attack attributed to the FARC-EP. This happened in Buenaventura and the victims were obliged to leave the area.
54. The Office was told of the deaths of journalists Rafael Prim, in Magangué (Bolívar), and Julio Hernando Palacios Sánchez. Both assassinations were attributed to paramilitary groups.
55. Reports were received of threats against a lesbian couple by members of the AUC in the department of Tolima in May; the women had to move away.

#### **B. Attacks on the civilian population and indiscriminate attacks**

56. Illegal armed groups continued to mount attacks, including indiscriminate attacks, on the civilian population, in violation of the immunity of civilians and civilian property.
57. The Office received reports of several indiscriminate attacks attributed to the FARC-EP. On 14 April, guerrillas attacked the town of Toribío (Cauca). During the attack, gas cylinders were fired and the school was used as a base to attack the police. The attack left two children dead and five people severely injured, and totally or partially destroyed a number of homes. In a visit to the area, the Office noted that the Office of the Ombudsman had earlier warned of an imminent attack, but that the Inter-Institutional Early Warning Committee (CIAT) had not taken action.
58. In July, the FARC-EP attacked the town of Caldono (Cauca) with gas cylinders and other explosives, injuring three civilians and causing damage to property.
59. There were reports of a gas cylinder attack by the ELN in February on the civilian population of Cumbitara (Nariño), injuring three civilians, including a child.
60. In Cúcuta (Norte de Santander), in April, members of the “Motilón” task force allegedly fired indiscriminately at the civilian population at a night-time checkpoint, causing the deaths of four civilians and a soldier.
61. The Office also received information regarding indiscriminate attacks by army helicopters, including one on 22 February in the rural area of San José de Apartadó (Antioquia),

close to the villages of Bellavista, Alto Bonito and Buenos Aires. More than 200 peasants living in the villages were endangered by the machine-gun attacks. Other complaints were received of indiscriminate machine-gun attacks in the rural area of Puerto Asís (Putumayo) in September, when a phantom aircraft of the Colombian Air Force allegedly shot indiscriminately at villagers in Camelias and Las Rosas prompting a number of displacements.

### **C. Acts of terrorism**

62. Despite the prohibition on acts of terrorism under international humanitarian law, illegal armed groups continue to carry out such acts in order to intimidate the civilian population.

63. The Office noted several acts of terrorism attributed to the FARC-EP. In January, they were blamed for exploding two bombs in the centre of Gigante (Huila), badly injuring a child and causing damage to property. In February, they were accused of exploding a bomb at the Hotel Acapulco in Puerto Toledo (Meta), killing six people including a small child.

64. In May, the same group was held responsible for setting off a bomb strapped to a horse in the centre of Cumbitara (Nariño), which injured 2 civilians and damaged 25 houses. The attack was allegedly directed at the local police station, 30 metres from where the bomb exploded.

65. In June, the 27th front of the FARC-EP harassed the village of La Palestina, in the municipality of Vista Hermosa (Meta). The next morning, when the villagers met at a football field to assess the damage, the guerrillas detonated an explosive device, which led to the deaths of 3 civilians, including a child, and left 15 others injured, including 4 children.

66. Other breaches of this principle by the FARC-EP include causing an explosion during a student demonstration in Arauca, and setting off bombs, one placed in a metal pot during a circus show in Saravena and another strapped to a bicycle in the main square of Arauca. All of these occurred in the department of Arauca, and the bicycle bomb, attributed jointly to the FARC-EP and the ELN, left 4 people dead, including a pregnant woman, and 27 injured, including 4 children.

67. The Office in Colombia was also informed of a car bomb attack on RCN radio on Sunday, 20 February, in the city of Cali. The FARC-EP claimed responsibility for the explosion, which injured two people who worked at the radio station.

### **D. Torture and other attacks on personal dignity**

68. The Office received reports of acts of torture by members of illegal armed groups; in some cases people were subsequently executed or died as a result of the torture. Members of the ELN allegedly tortured and killed an army corporal in July in Tame (Arauca). According to information received, the corporal was shot several times before he died, suffering bullet wounds from his fingers up to his head.

69. The Office also received allegations of torture and killings attributed to members of paramilitary groups, including one case of a peasant leader in Dabeiba (Antioquia), who in March was allegedly forced to get off a bus together with her 5-year-old child, and interrogated.

Her body was found the following day, bearing signs of torture. The child was handed over to the church authorities in Dabeiba by persons unknown. There was also a report regarding the death in September of a trade union leader in Valledupar (Cesar); he was stabbed 47 times and his body showed signs that he had been tortured.

### **E. Hostage-taking**

70. The practice of hostage-taking continues to be commonplace among illegal armed groups, especially guerrilla groups. In January, a journalist was taken hostage, allegedly by the FARC-EP, on the Dabeiba to Mutatá (Antioquia) road. In March, a group of armed men, who identified themselves as members of the FARC-EP, went to two communities in Jiguamiandó (Chocó), and took five members of the Inter-Church Commission for Justice and Peace hostage. On 8 April they were released on the Murrí river (Chocó).

71. Information was received in July regarding an unknown number of indigenous, Afro-Colombian and mestizo woodcutters who were allegedly taken hostage by the 57th front of the FARC-EP in Riosucio (Chocó). A few days later, 17 of them were released, but the fate of the remaining 5 remains unknown. The FARC-EP also took 22 people hostage in San José del Guaviare (Guaviare) in November; they subsequently released 14 of them, but 8 are still captives.

72. The Office received information on the deaths of hostages in captivity. One person allegedly taken hostage by the FARC-EP in July in Tierralta (Córdoba) was reported to have died in captivity in October. Also, in January, the 29th front of the FARC-EP notified authorities in the indigenous Awá reservation in the municipality of Ricaurte (Nariño), of the death of Efrén Pascal, the reservation Governor, who had been taken hostage in October 2004. The guerrilla group described the killing as a “regrettable error”. Likewise, Ancízar López López, former Governor of Quindío and a former Congressman, died in captivity in mysterious circumstances, allegedly at the hands of the Cacique Calarcá front of the ELN, which described the death as an error due to the conflict.

73. In the department of Nariño, there were two cases involving human rights defenders in Pasto. In the first, a human rights defender and three other persons were allegedly taken hostage in February. In the other, in July, the victim was the son of a well-known human rights defender. In yet another case attributed to paramilitaries, a merchant and civic leader in La Dorada (Putumayo) was taken hostage, provoking protest action by the community. The leader of the protest was allegedly killed by the same paramilitaries two weeks after the merchant was released.

74. The Office also received reports of hostage-taking followed by killing by demobilized members of paramilitary groups. The most important cases include that of a flower grower, attributed to demobilized members of the Héroes de Granada and Héroes de los Montes de María units, whose body was found in the municipality of El Retiro (Antioquia) in October. Similarly, demobilized members of the Calima unit took a number of adolescents hostage in Buenaventura (Valle), and killed them a few days later.

## **F. Forced displacement**

75. All the groups involved in the hostilities are blamed for forced displacement as a result of clashes, pressure and threats. The Office also received reports of displacement provoked by massacres, indiscriminate machine-gun attacks and aerial spraying of illegal crops.

76. The Office received reports of clashes between guerrilla groups and the AUC in the rural area of Barbacoas (Nariño) and in the Alto del Telembí area, which caused some 60 Afro-Colombian families to move to the town of Barbacoas. There were also reports that 42 families moved to the municipality of San Pablo (Bolívar) in May, following clashes between the FARC-EP and the AUC's Central Bolívar unit.

77. Since February, some 2,000 people from six Afro-Colombian communities along the Bojayá river have been displaced, moving to Bellavista and Vigía del Fuerte because of the possibility of clashes between paramilitaries and guerrillas, who have openly declared their intention to take possession of the Bojayá river basin (Chocó). According to information received by the Office, the ELN was responsible for the mass displacement of approximately 100 indigenous Wiwa in Dibulla (Guajira) in March.

78. In April, around 4,600 people were displaced from the municipality of Samaná (Caldas). The reasons were said to be pressure by the FARC-EP and spraying in the region. The FARC-EP were blamed for the mass displacement of more than 70 families from the municipality of Cocorná to the town of San Francisco (Antioquia). This displacement reportedly followed threats by members of the FARC-EP.

## **G. Children victims of the armed conflict**

79. Children continue to be among those worst affected by the armed conflict, falling victim in particular to anti-personnel mines and unexploded munitions, recruitment, displacement, killings and sexual violence.

80. The Office received information that a 15-year-old girl and her 5-month-old baby were injured after stepping on an anti-personnel mine in the rural area of Tierradentro (Córdoba). The girl lost her right leg and the baby suffered shrapnel wounds to various parts of its body. Responsibility was attributed to the FARC-EP's 58th front.

81. The Office also received complaints that the armed groups continued to recruit children into their ranks. Despite the demobilization of the AUC, the Office was told of young people being recruited, allegedly by paramilitaries, in Comunas 8 and 13 of Medellín (Antioquia) in June and August. Similarly, in the neighbourhoods of Canta Claro, Rancho Grande and El Paraíso in Montería (Córdoba), the AUC allegedly recruited 30 youngsters for the department of Arauca. Reports were received indicating that at least four boys were allegedly recruited by members of the AUC in Arauca in April.

82. There were allegations that the FARC-EP recruited a 9-year-old indigenous Awa boy at the Pialapi reservation in the municipality of Ricaurte (Nariño). Reports were also received that

a number of indigenous children were recruited by the FARC-EP in the department of Putumayo after the end of the armed strike in August. This situation allegedly forced the displacement of a number of families who feared further recruitments.

83. The Office was informed that a 10-year-old boy and his father were executed, allegedly by members of the 48th front of the FARC-EP, in Puerto Asís (Putumayo) in October. The boy is presumed to have been induced to provide information to the army, in violation of the principle of distinction that prohibits the involvement of children in military activities.

#### **H. Women victims of the armed conflict**

84. Women and girls were the victims of various forms of violence and their rights continued to be affected by the armed conflict. Sexual assaults and killings were the most common forms of violence against women noted by the Office during 2005, and the majority of those targeted were peasant, indigenous, Afro-Colombian and displaced women, who had returned to their places of origin or were living in blockaded communities.

85. A number of cases involving the FARC-EP were recorded, among them that of a 17-year-old girl killed in September in Arauca (Arauca), allegedly because of her relationship with a member of the security forces. Two other girls aged 14 and 16 were killed by the FARC-EP in Arauca (Arauca). A woman belonging to a network of army informers and collaborators was reportedly killed in Urrao (Antioquia) in April.

86. The Office received a number of complaints of sexual violence of various kinds by members of illegal armed groups. Several cases were attributed to members of the security forces. In June, three armed men in military attire sexually abused two girls in front of their family, including the children, in Tierralta (Córdoba).

87. Reports were received of killings and other violations directed at community leaders: one indigenous Wayú woman, who fell victim to alleged members of a paramilitary group, had witnessed a massacre, which apparently made her a military target. There were also allegations that a community leader in Putumayo had been tortured by members of paramilitary groups. These events took place in September in the village of Puerto la Vega, in the municipality of Teteyé, where the army maintains a permanent presence.

#### **I. Attacks on health workers and medical units**

88. Guerrilla groups, particularly the FARC-EP, were blamed for most of the harassment, attacks and threats against health workers and medical units. Two volunteer firemen were reported to have been killed in Urrao (Antioquia) in April while retrieving the body of a hostage who had been held captive by the 34th front of the FARC-EP.

89. The Office received reports that a nurse had been subjected to threats and ill-treatment and a surgeon taken hostage in Abejorral (Antioquia) in September, apparently by an unidentified guerrilla group which needed medical care for a wounded hostage they were holding. In March, the FARC-EP reportedly captured and held hostage a commission of officials from the department of Caquetá Institute of Health in the town of Florencia. Also in

Florencia, a terrorist attack on the María Inmaculada hospital was reported in November, when a device exploded on the premises. This criminal act left 1 person dead and another 19 civilians injured.

#### **J. Use of anti-personnel mines**

90. The Office has received information indicating that guerrilla groups continue to lay mines in strategic corridors and camps. A number of victims have been members of the army, but many have been civilians. Mine-laying has also been reported at schools, sources of water, common land, cultivated areas and paths to and from communities. Apart from the risk to people's lives, the use of mines also affects access to basic services.

91. In March, two children and an adult set off an anti-personnel mine allegedly placed by the ELN in the municipality of Los Andes (Nariño). The ELN was also blamed for mining the territory of an indigenous community in El Carmen de Atrato (Chocó) in April.

92. Two civilians were reported injured while working in a water inlet in Samaná (Caldas), when a mine went off in the inlet; this occurred in May and was attributed to the 47th front of the FARC-EP. In Ituango (Antioquia), two peasants were injured in April when an anti-personnel mine went off near a health centre, and a girl was severely injured by an anti-personnel mine planted by the FARC-EP in the rural area of La Gabarra (Norte de Santander).

#### **K. Principles of distinction, limitation and proportionality**

93. Illegal armed groups continued to flout the humanitarian principles of distinction, limitation and proportionality. In the case of the FARC-EP, the indiscriminate attack on the town of Toribío, on 14 April 2005, is the clearest evidence of disregard for humanitarian principles, particularly the principle of distinction, by this illegal armed group. In a number of cases, those principles were violated through the use of schools and other civilian installations, as occurred in Toribío, where the FARC-EP launched gas cylinders and used the school as a base to attack the police. The FARC-EP was also blamed for placing a cylinder bomb at a school in Puerto Asís (Putumayo) in March. The cylinder exploded just seconds after the children had left.

94. The Office received reports that 3 civilians had been killed and 26 injured during clashes between paramilitaries and FARC-EP guerrillas in the rural area of Valle del Guamuez (La Hormiga, Putumayo) in September. The paramilitaries wounded in the clashes were said to have been taken to the municipal hospital, from which they managed to escape, apparently with the connivance of members of the National Police.

95. Humanitarian principles were also flouted by police stations, army battalions and trenches being located in centres of population, very close to dwellings and other protected properties such as schools. One example of this is the National Police trenches dug near the village school of Ospina Perez in the municipality of Ricaurte (Nariño). In Toribío (Cauca), the Office observed that security forces' installations should not have been built in the middle of a civilian zone.

96. The same applies to the stationing of troops near protected properties such as schools and houses. An example is the army camp next to the Pedro Nel Jiménez School in Panamá

de Arauca, which guerrillas attacked with explosives in September. It was observed that in several communities in the municipalities of Tibú and Teorama (Norte de Santander) army troops are living in civilian houses.

#### **L. Principle of immunity of the civilian population**

97. Reports were received of threats and restrictions by illegal armed groups on civilians' freedom of movement and the transport of merchandise. Many of these situations had serious consequences for the civilian population and for access to basic commodities. In some cases, such actions led to blockades of the communities involved.

98. In March, the FARC-EP were reported to have threatened 300 peasants in Pogué, on the Bojayá river, and prevented them from moving away to safety. There was also information indicating that the FARC-EP ordered armed strikes in Putumayo in July and August, and in Arauca in October, causing a shortage of supplies and threatening the population if they disregarded their orders. The Office received information that the FARC-EP restricted humanitarian missions and impeded the free transit of goods destined for the civilian population of Toribío (Cauca).

99. There were reports that demobilized members of a paramilitary group provoked a public transport strike in Medellín in May, by intimidating the managers and drivers of the transport companies. This strike was a reaction to the arrest of the paramilitary spokesman known as "Don Berna". In March, a paramilitary group was blamed for the occupation of the village of Corazón de Jesús and later of Caimanero (Chocó), where they installed two checkpoints to control movements along the Bojayá River, threatening the region's inhabitants with rape or death if they refused to provide information about the guerrillas.

100. There were reports of cases of alleged arbitrary restrictions on the transport of persons and goods such as food, medicines and fuel by members of the security forces. These actions seriously limited the population's access to basic commodities and made those who remained in their communities more vulnerable.

101. In August, the Office received information on various restrictions on freedom of movement imposed by the security forces, for example in the community of El Dieciocho in the municipality of El Carmen de Atrato (Chocó), where members of the Alfonso Manosalva Flores battalion cut the cable that serves as a bridge to cross to the left bank of the Atrato river, where the indigenous people's plantain and maize crops are located. This action produced a food crisis and put the community at risk of displacement.

102. Reports were also received that, in August, members of the army's new Mobile Brigade No. 13 allegedly carried out operations in the rural area of Puerto Guzmán (Putumayo), preventing the villagers from leaving their settlements and threatening their personal integrity if they did not provide information on the FARC-EP guerrillas in the area. In March, peasants from El Castillo (Meta) were reported to be the victims of restrictions on the movement of food imposed by members of the 21 Vargas battalion in an attempt to cut off the guerrillas' supplies. This situation limited local villagers' access to basic commodities.

### **M. Pillage**

103. The Office received information on various cases of pillage. In April, members of the ELN and the Revolutionary Guerrilla Army (ERG) reportedly stole 46 head of cattle from peasants in Carmen del Atrato (Chocó). In addition, the guerrillas mined the terrain, leaving the community under siege and causing a humanitarian crisis.

104. The Office also received information that, in October, some 30 soldiers belonging to No. 1 demolition platoon of the Calibío battalion of the 14th brigade allegedly entered the town of Remedios (Antioquia) and stole property, harassed the civilian population and made death threats.

105. There were also reports of pillage and arson by members of the army in the course of raids and arrests of suspected FARC-EP members in Cartagena del Chairá and San Vicente del Caguán (Caquetá).

## Annex IV

### SITUATION OF ESPECIALLY VULNERABLE GROUPS

1. A number of groups and communities have proved particularly vulnerable as a result of the armed conflict and the actions of illegal armed groups. They have also been affected by public measures and policies or by the lack of them. Those most affected by the situation include human rights defenders, members of ethnic minorities, displaced or blockaded communities, journalists, children and women, detained persons, sexual minorities, local authorities, political leaders, hostages and disappeared persons.

#### Human rights defenders

2. Human rights defenders, trade unionists, members of women's and victims' organizations, community leaders and leaders of displaced groups were exposed to assassinations and threats. The departments most affected were Antioquia, Valle de Cauca, Arauca, Nariño, Santander, Putumayo, Bogotá, Atlántica and Bolívar. Most cases were attributed to paramilitary groups. Accusations have also been brought against the FARC-EP. Some cases involved members of the security forces. There was an increase in the number of cases attributed to members of the Mobile Anti-Riot Squadron (ESMAD), owing to their operations on the occasion of public demonstrations, which equally affected the exercise of the rights to freedom of assembly, expression and opinion. Human rights defenders have also been affected by arbitrary arrests and accusations of rebellion based on sources of dubious reliability, such as statements of informants or resettled former combatants or unconfirmed intelligence reports.

3. Some cases of threats that were recorded indicate that the perpetrators had gathered a considerable amount of information concerning their victims.<sup>33</sup> In various instances, the victims had in common the fact that they had questioned the negotiations being carried out with the paramilitary groups or the implementation of the "democratic security" policy. In others, they maintained links with the Movement of Victims of State Crimes (made up of a large group of NGOs).

4. Some authorities publicly questioned the nature and legitimacy of the work of human rights defenders, including that of several international non-governmental human rights organizations.<sup>34</sup> The statements were made by officials following the publication of reports by NGOs criticizing negotiations with the paramilitary groups. Such stigmatizations violate Presidential Directive 07 and increase the risk exposure of human rights defenders.

5. The budget of the protection programme of the Ministry of the Interior and Justice was substantially increased compared with a year earlier. The programme continued, however, to suffer from certain shortcomings, such as the problem of bodyguards, which has been particularly highlighted in view of the accusations brought against high-level officials of the DAS regarding their alleged relationship with paramilitaries. Complaints have also been reiterated by representatives of programme beneficiaries regarding studies which underestimate risks and the seriousness of the threats to which complainants are exposed. In December 2004, the Temporary Protection Programme was set up for the benefit of demobilized persons within the framework of policies to promote dialogue, negotiations and peace agreements.<sup>35</sup> This

programme responds to the need to provide protection for persons who are likely to be at risk in the course of their reintegration in society. It is worth noting, however, that ways of protecting victims who are also in a situation of extreme vulnerability have not yet been improved.

### **Communities at risk**

6. According to official figures, there has been a decline in the number of new displacements,<sup>36</sup> although the total number of displaced persons continued to grow. Enforced displacements, both on an individual and on a collective basis, continued in 2005. There were more cases of enforced displacement in Caquetá, Cauca, Chocó, Meta, Nariño, Putumayo and Norte de Santander.<sup>37</sup> The FARC-EP and the ELN were directly responsible for several mass displacements.<sup>38</sup> Other cases were the result of fighting between guerrillas and paramilitary groups<sup>39</sup> or fighting between the security forces and illegal groups.<sup>40</sup> Some of these departments were the scene of major military operations, such as Operation JM (for “Jorge Mora”) and Operation Emperador, in Caquetá and Meta.

7. Better assistance was provided for the displaced population, particularly in terms of resources to deal with the crisis,<sup>41</sup> in the design of policy instruments<sup>42</sup> and in the creation of spaces for the participation of displaced communities.<sup>43</sup> These efforts, however, still do not guarantee the effective exercise of the displaced people’s fundamental rights, especially in the areas of housing, land and income generation. There has not been an appropriate response, either, to the situation of displaced women, who in many cases have to assume the role of head of household and who are more often the victims of violence. The application of restrictive criteria for the inclusion, exclusion and withdrawal of the status of displaced person has resulted in underrecording that limits access to humanitarian assistance for those involved and leads to an underestimation of the magnitude of the phenomenon for the purpose of developing appropriate policies.

8. Reports continued to be received of communities being isolated in various regions of the country<sup>44</sup> as a result of fighting and restrictions imposed on the transport of persons, food, medicines and fuel. The FARC-EP and the AUC have been responsible for some of these cases, which caused serious humanitarian distress for the communities involved.<sup>45</sup> It was alleged that members of the communities suffered either expulsion or death because they had not obeyed orders by these groups not to move. Other cases of blockades on the movement of food are due to arbitrary decisions by the security forces in their efforts to cut off supplies to the guerrillas, which places the civilian population affected in a situation of extreme vulnerability, particularly at military checkpoints along the Caquetá river.

9. There were reports of communities, particularly indigenous or Afro-Colombian, in which there has been no State presence of any kind for a number of years, or in which there have been only sporadic appearances by the security forces. These communities are extremely unprotected and vulnerable.

10. In terms of prevention and protection, the Early Warning System (SAT) continues to produce disappointing results, especially from the operational point of view. It is worth noting that the response by the Inter-institutional Early Warning Committee (CIAT) to alerts has essentially focused on the military aspect, leaving aside other types of measures aimed at the

prevention of risks.<sup>46</sup> Whatever protection is provided is almost exclusively concentrated on leaders and not on the displaced population as a whole.<sup>47</sup> The system does not acknowledge the possibility that risk factors may originate in operations of the security forces.

### **Indigenous and Afro-Colombian communities**

11. The indigenous and Afro-Colombian communities have traditionally suffered from marginalization and discrimination; this is also the case with other minorities such as the Raizal<sup>48</sup> and Roma.

12. In 2005 the humanitarian situation of a number of indigenous communities was seriously affected. Enforced displacements, acts of terrorism, threats and attacks against the civilian population, and restrictions on the passage of food, medicines, fuel and persons occurred in several regions. The indigenous communities most affected were the Paez (Cauca), Wayuu (Guajira), Kankuamo and Kogui (Cesar), Guahíbo (Arauca) and Awa (Nariño). It was also recorded that the humanitarian situation of the indigenous communities of the department of Vaupés is critical and that the above-mentioned restrictions have particularly affected the communities of Sierra Nevada de Santa Marta, Caquetá, Amazonía, Cauca and Chocó.

13. Official figures show a decrease in the number of indigenous people killed up to October (from 71 to 42). However, the Office continued to receive information concerning assassinations, executions and sexual violence that affected members of indigenous and Afro-Colombian communities. The assassinations were attributed chiefly to the FARC-EP and to paramilitary groups,<sup>49</sup> although the massacres of Afro-Colombians in Buenaventura (Valle) have been attributed to demobilized paramilitaries. The FARC-EP were blamed for some cases of sexual violence. The security forces, on the other hand, were blamed for extrajudicial executions and arbitrary detentions, illegal searches and accusations against indigenous communities, particularly in Nariño, Sierra Nevada de Santa Marta, Cauca and Valle. A number of cases of sexual violence against indigenous women were attributed to members of the security forces.

14. The lands inhabited by indigenous and Afro-Colombian communities have been seriously affected owing to the fact that they are particularly rich in natural resources and because they are strategically located for the illegal armed groups. Several communities in Chocó were seriously affected by the private exploitation of commonly owned lands. The Afro-Colombian and mestiza communities of the Jiguamiandó and Curvaradó basins have been under pressure on account of the African palm project in Cacarica and deforestation in the lower Atrato region. Several indigenous peoples of Amazonas, Putumayo, Caquetá and Guaviare continue to be at risk of extinction.

### **Children**

15. The child population is particularly vulnerable in situations of poverty, displacement<sup>50</sup> or when their communities are affected by restrictions on the supply of food and medicines and the movement of persons. The armed conflict continues to affect minors in different ways. Children have been the victims of anti-personnel mines and unexploded and abandoned munitions.<sup>51</sup> The recruitment of children by illegal groups has continued. The data concerning the demobilization of these minors or their participation in the demobilization of paramilitary groups show

inconsistencies and lack of transparency. A number of children were allegedly handed over directly to their families, without passing through the Colombian Family Welfare Institute (ICBF), the State institution responsible for receiving and assisting them. Poor results have been achieved with the policies pursued to reincorporate children in their families and communities or to apply appropriate controls to ensure that demobilized groups comply with the obligation to hand them over to State institutions. There have been reports of cases in which the security forces have used children for military intelligence activities, disregarding their special condition and putting their lives and personal integrity at risk.

16. The children's development is also affected by the fact that many are involved in sexual exploitation, domestic work, street trading, small-scale mining and illegal activities<sup>52</sup> and by the increase in the number of pregnancies among teenagers, particularly among the poorest and least-educated sector of the population.<sup>53</sup>

## Women

17. Progress has continued in 2005 in the area of the education and political participation of women in the executive branch at national level. The Office of the Mayor of Bogotá issued an equal opportunities plan for the city. Despite this, violence<sup>54</sup> and inequality persist, particularly in terms of income and employment,<sup>55</sup> health<sup>56</sup> and participation.<sup>57</sup> The country's goals and international commitments with regard to gender equality are not adequately reflected in public policies, particularly in the document containing the proposal for projected policies until the year 2019 (2019 Visión Colombia) presented by the national Government for public debate. The State's response to domestic violence is unsatisfactory. This is due, amongst other reasons, to the dispersion of competent authorities, the lack of coordination among institutions and services, and the fact that regulations do not favour the prevention and punishment of this type of conduct.<sup>58</sup> In the area of health, there continue to be a high number of maternal deaths caused by complications from abortions,<sup>59</sup> which are always illegal under Colombian law. The Constitutional Court declined to issue a ruling on the merit of a petition aimed at finding punishment in certain exceptional cases unconstitutional. The court referred to substantive errors in the petition but left the possibility open of reconsidering the case in the light of a new petition. In this respect, there have been recommendations to the Colombian State by the Human Rights Committee and the Committee on the Elimination of Discrimination against Women.<sup>60</sup> The lack of statistics disaggregated according to gender tends to weaken the impact of the institutional response as well as efforts to combat impunity.

18. The armed conflict affects women in different ways. They have been the victims of executions, assassinations, physical aggressions and intimidation, especially in cases where they are the companions or relatives of persons allegedly linked to those taking an active part in the hostilities. Many of these acts have been attributed to illegal armed groups. A number of allegations of cases involving members of the security forces have also been recorded. In addition, women have been the victims of threats that have at times forced them into displacement, frequently accompanied by their children. The threats are made by illegal armed groups, both paramilitaries and guerrillas. Most of them are directed against women in positions of leadership or responsibility, such as the leaders of civil organizations or women occupying public office or political positions. The State's response to gender-based violence, including domestic and sexual violence, continues to be unsatisfactory.

19. The Office in Colombia has received complaints of sexual violence attributed mainly to members of the public security forces. Other complaints have been made against members of the paramilitary groups and the FARC-EP, as well as against persons demobilized from the paramilitaries. In a number of these cases, the victims have been children, young women or indigenous women.

20. There has been special concern for the growing number of complaints concerning child prostitution, in many cases linked to networks of human trafficking that specialize in girls and young women. According to a recent study, in many cases the figures bear a direct relationship to conditions of extreme poverty, which in turn tend to be associated with the precarious living conditions of displaced persons.<sup>61</sup> The increase in prostitution has been accompanied by an increase in the rates of sexually transmitted diseases, including HIV/AIDS, pregnancies, abortions, alcoholism, drug addiction and mental health problems. Very few complaints reach the courts and the degree of impunity is practically total.

### **Persons deprived of liberty**

21. The situation of human rights in prisons continues to be critical and even worse than that observed in previous years. The rate of overcrowding, which is reflected in cruel, inhuman or degrading treatment, is currently 40 per cent, since the prison population is now in excess of 69,500 inmates, including 65,000 men and 4,500 women. The prison system has enough capacity for 49,800 inmates. In the prisons of La Modelo in Bogotá and in Bucaramanga, of Villahermosa in Cali and Bellavista in Medellín, overcrowding is in excess of 200 per cent. Of the 69,500 inmates, 27,500 have not been convicted. Only 25,800 have been convicted in the first instance. And of the total prison population, only 16,000 have received a final sentence. A further negative factor is the inadequate and in some cases non-existent separation of inmates according to categories (such as accused as opposed to convicted, or low, medium and high security prisoners).

22. Detention centres are not equipped with sanitary conditions or health-care services that ensure respect for the dignity of detainees. There is a lack of medicines and insufficient medical staff. The provision of health-care services outsourced to a private company has been inadequate and access to this right has been significantly restricted. Persons suffering from HIV/AIDS have been doubly affected by the situation. Food is frequently inadequate. Most of the inmates do not have work or proper training. Limitations are imposed on prison treatment and specialized care. These conditions apply particularly in recently built jails such as those of Girón (Santander) and Cóbbita (Boyacá).

23. Prison conditions for women in many cases do not take into consideration their specific needs. The Ombudsman's Office asked for the women's annex of the high and medium security prison of Valledupar to be closed. This request was based on existing conditions of overcrowding, lack of basic hygiene, inadequate infrastructure and sanitary installations, and the lack of facilities for children under the age of 3, among other factors. The decision had a positive effect and led to some improvement. Nevertheless, in many women's prisons the situation continues to be such that it does not ensure dignified living conditions for the inmates.<sup>62</sup> Also there is no differentiated prison policy for ethnic, sexual or religious minorities and persons suffering from HIV/AIDS.<sup>63</sup>

24. It has been found that some persons accused and convicted are being held in National Police stations.<sup>64</sup> Apart from this irregular aspect, the conditions there are subject to serious overcrowding, lack of adequate infrastructure, lack of health care and food, and no separation between men and women, amongst others.<sup>65</sup>

### **Journalists**

25. The Office in Colombia continued to record allegations of threats against journalists in different towns in the country, in connection with the publication of information or opinions concerning the armed conflict and human rights. The frequency of threats and exiles of journalists increased.<sup>66</sup> Assassinations of and attacks against journalists continued, as well as obstructions to freedom of the press. These actions were to a great extent attributed to paramilitary groups and to the guerrillas. A proportion of the complaints about threats and obstructions were attributed to public officials. Persistent impunity with respect to violations of freedom of expression affected the exercise of this right.<sup>67</sup> In many cases investigations have made no progress or have produced very few results, and in other cases they have not even begun, which increases the intimidation effect of such events.

26. Self-censorship has arisen not only as a result of deliberate acts directed against the journalists, but also owing to statements and pressures by some public officials. Because of this intimidation, many journalists abstained from visiting places personally, preferring to echo official figures; alternatively they would leave facts out and some even gave up journalism altogether.<sup>68</sup> Groups of journalists in several regions of the country reported that they were prevented from issuing information on certain aspects of the Colombian situation, especially on topics related to the armed conflict, human rights and public policies in those areas. The places most affected by pressures and self-censorship in 2005 were Buenaventura, Norte del Valle, Neiva, Arauca, Cúcuta, Santa Marta, Cartagena, Barranquilla, Caquetá, Putumayo and Córdoba.<sup>69</sup>

### **Sexual minorities**

27. Lesbians, homosexuals, bisexuals and transsexuals were exposed to murder and threats in the name of "social cleansing". Generally speaking the results of investigations into the identities of perpetrators are very inadequate.<sup>70</sup> Those groups were the victims of arbitrary arrests and cruel, inhuman or degrading treatment by members of the police force.<sup>71</sup> There have also been allegations of harassment of homosexuals by members of illegal armed groups. There are no specific public policies to prevent or penalize such actions or to eliminate discrimination against those groups, especially in educational establishments, in the field of employment, in the police force and in detention centres.

### **Kidnapped and disappeared persons**

28. According to official figures, the number of kidnappings fell during the first half of the year.<sup>72</sup> There are believed to be approximately 5,420 persons currently in captivity.<sup>73</sup> According to the Office of the Vice-President, in the first nine months of the year 76 per cent of the victims were men, 24 per cent women and 12 per cent children. Out of the total, 1,140 people are believed to be held by the FARC-EP and 671 by the ELN. It is estimated that 474 are being held by the AUC, despite the fact that the latter have been negotiating with the Government for the

last three years and are supposed to provide information on kidnapped or disappeared persons. It must be remembered that official statistics currently record only cases reported to the prosecutors delegated to the Gaula (Unified Action for Personal Liberty Groups).<sup>74</sup> This means that cases which have not been reported for various reasons are not included, or those which are difficult to register because of the circumstances (for instance, kidnappings lasting a few hours or a few days, in the course of which victims may be forced to transfer property or withdraw money). According to data supplied by the Fundación País Libre, there are some 2,500 cases for which those responsible have not been identified and the fate of the victims remains unknown. A number of cases recorded as kidnappings are confused with enforced disappearances, forced recruitment or human trafficking, amongst others. The departments most affected by kidnappings for purposes of extortion are Antioquia, Valle, Meta, Bolívar and Cauca.<sup>75</sup> Nevertheless, occurrences are tending to remain the same or become worse in Meta, Huila, Cauca, Valle, Nariño and Tolima, while there appears to be a consolidation of alliances between organized crime and illegal armed groups.<sup>76</sup> One improvement has been the adoption of a law that provides benefits for victims and their families, including the postponement of expiry dates on certain obligations.<sup>77</sup>

29. Despite the progress made with legislation on enforced disappearances, the implementation of these new laws has been disappointing.<sup>78</sup> The Government's efforts through the National Commission on Disappeared Persons and the introduction of a National Register have still not succeeded in preventing disappearances, or in finding the whereabouts and identity of victims. In November, Decree No. 4218 was adopted for the purpose of designing, implementing and regulating the National Register of Disappeared Persons, which was created under Act No. 589 of 2000. The discovery of clandestine graves (such as those of San Onofre, Sucre and in localities of Norte de Santander) reflects the magnitude of this phenomenon and the importance of making progress in consolidating the National Register of Disappeared Persons and the introduction of a mechanism for urgent searches.

### **Public servants**

30. In 2005 local authorities and other public servants continued to be exposed to murders, hostage-taking, attacks and threats. The victims were mayors, former mayors and councillors and State employees connected to judicial investigations, particularly employees of the Attorney-General's Office, the Procurator-General's Office and magistrates. According to the Monitoring Centre of the Office of the Vice-President, the 21 assassinations of councillors recorded up to October 2005 represented an increase of 33 per cent in comparison with the same period of 2004. Half of these cases were recorded in Caquetá, and others in Valle, Cauca, Huila and Sucre. While up to October the number of mayors and former mayors assassinated during the year fell from 14 to 7, the number of councillors killed rose from 15 to 20.<sup>79</sup> In most cases of attacks on mayors and councillors, responsibility was attributed to the FARC-EP. Some cases were also attributed to paramilitary groups. In Florencia (Cauca), the entire municipal administration was threatened and paralysed, allegedly by a gang led by a demobilized paramilitary operating with the connivance of members of the municipal police force. Also in Florencia (Caquetá), all the councillors of the 16 municipalities enjoy the benefit of the State protection programme. Judicial staff have been exposed to threats and attacks, particularly in connection with investigations they have been undertaking against members of illegal armed groups. They include prosecutors, procurators and judges, as well as some municipal

ombudsmen. This situation was particularly serious in Putumayo, owing to threats against prosecutors and the murder of a woman prosecutor, as well as in San José de Apartadó (Antioquia), where two attacks against judicial commissions were reported. Some judges were transferred as a result of these threats.

### **Political leaders**

31. A number of political leaders and activists have been the victims of attacks, threats and assassinations. Particularly affected were persons belonging to the Unión Patriótica, the Communist Party and the Polo Democrático. Another serious event was the new attack in Bogotá in October against Senator Germán Vargas Lleras, the leader of the Cambio Radical party. Towards the end of the year and at the beginning of the pre-electoral period, such attacks intensified, increasing the vulnerability of these leaders, including candidates and representatives of various groups, particularly leaders and candidates of the Social and Political Front, as well as the conservative leader, former senator and former governor of Huila, Jaime Losada, who was fell victim to an assassination attributed to the FARC-EP.

## **Annex V**

### **THE CHALLENGES OF DEMOBILIZATION AND ITS LEGAL FRAMEWORK**

1. The High Commissioner has recommended that discussions and negotiations be held between the Government and the illegal armed groups with a view to overcoming the internal armed conflict. All efforts made in this respect should bring about a substantial improvement in the basic rights and freedoms of the Colombian population. It is worth reiterating the need for negotiations to be undertaken within the framework of Colombia's international commitments with respect to human rights and international humanitarian law. Particular attention must be given to addressing requirements in terms of combating impunity and victims' rights to truth, justice and reparation. These requirements also include guarantees of non-repetition. The Office in Colombia has been following up these issues, within the framework of its mandate of observation and advice, analysing the effects of demobilization on human rights. The impact of demobilization on the free exercise of the civil and political rights of the population, as well as on the rule of law, deserves particular analysis.

#### **Demobilization of paramilitary groups**

2. The paramilitary groups of the AUC had undertaken a commitment to demobilize all their personnel by 31 December 2005. Three units ("bloques") were demobilized at the beginning of the year, after which the process remained suspended pending approval of a legal framework to regulate the process of collective demobilization and the more serious cases. In June Congress approved Act No. 975 of 2005, known as the Justice and Peace Act. The process continued with several interruptions. The High Commissioner for Peace and the AUC agreed to extend the deadline for demobilization until 15 February 2006.

#### *Clarification of the truth*

3. The data concerning demobilization show a number of inconsistencies and gaps. No official information has been released regarding the approximate number of members of paramilitary groups who are represented at the negotiating table. Some published estimates have varied by over 100 per cent over a period of two years. The same was true with regard to the changes in the numbers and persons representing paramilitary groups at the negotiating table. Occasionally even the names of the units themselves have changed. Such inconsistencies make it very difficult to attribute responsibilities, to clarify the truth and to implement effective justice.

4. According to several allegations and reports, more people were recruited just before several groups were demobilized. Accusations were also made that persons had been added who did not belong to the paramilitary groups. A substantial gap could be observed, moreover, between the number of persons demobilized and the quantities of weapons and ammunition handed over. On the other hand, after units had been demobilized, the security forces discovered storage areas belonging to them containing military material and weapons.

5. The quantity of illegally acquired goods handed over by the paramilitary groups is insignificant. It should be pointed out that the clarification of crimes and the determination of property belonging to the paramilitaries depend on the full cooperation of persons who have actually been connected with the violations and breaches committed by these groups. This situation also has an impact on the guarantees of non-repetition.

*Guarantees of non-repetition*

6. Repeated non-compliance with the cessation of hostilities has been observed since it was declared more than two years ago. Violent actions have occurred in several regions of the country which have constituted violations of human rights and breaches of international humanitarian law. Both commanders and members of groups which have already been demobilized have been involved in non-compliance. Paramilitary leaders have generally denied any responsibility for the actions they have been accused of.

7. A number of demobilized persons have apparently been co-opted by drug-traffickers, paramilitaries who have not been demobilized and common criminals, particularly in Valle del Cauca and Catatumbo (Norte de Santander). Demobilized persons have been accused of being the perpetrators of extortive kidnappings, attempted murders, threats and displacements and have been linked to the organization of new groups.

8. It has been observed that the military structures of a number of officially demobilized units have been maintained and continue to operate, for example in the departments of Nariño and Córdoba. At the same time, groups that have not been demobilized have expanded their territorial coverage, particularly the Norte and Elmer Cárdenas units.

9. There have been reports of weaknesses and problems arising with the policies implemented to support the resettlement of demobilized persons, which could adversely affect measures taken to prevent the latter from returning to criminal activities. Faced with a total lack or insufficiency of sustainable productive projects, the measures are basically limited to the monthly payment of aid for 18 months. It has been observed that offers of training, psychosocial support or employment alternatives either do not materialize at all or do so in insufficient numbers. The Procurator-General's Office, through the project for "Preventive Control and Follow-up of Public Resettlement and Demobilization Policies", has been able to identify some of these difficulties. The project has in particular highlighted problems related to the fulfilment of State commitments with regard to the resettlement of demobilized persons.

*Respect and protection for public rights and liberties*

10. Three years after negotiations began, it is striking to observe that children are still present in the ranks of the paramilitaries. Information gathered by the Office indicates that in some cases the paramilitaries have handed over children directly to their families. In this way no record is kept by the Colombian Family Welfare Institute (ICBF), the State institution to which the children should be handed over according to the law. This manoeuvre could give rise to impunity regarding the responsibility of these groups and also in terms of denying the basic rights of children who were the victims of recruitment. It means that the latter are left without State protection or the benefit of programmes to which they are entitled.

11. In addition, the State's presence continues to be insufficient in several areas which were exposed to the influence of demobilized groups. There are still a number of challenges that need to be overcome in order to meet the needs of communities at risk and vulnerable groups living in those regions of the country. In this respect, due attention must be paid to the need to adopt measures and policies for prevention and protection of the human rights of the civilian population.

12. The overall figure for homicides in Colombia has been falling in recent years, including those attributed to paramilitary groups. It should be noted that, over the last three years, there has been a change in the violent tactics used by the paramilitaries. These have been focusing their actions on selective assassinations rather than massacres. In view of the situation in areas of influence where major paramilitary groups have been demobilized, however, it cannot be said that any significant decrease occurred in the number of homicides from 2004 to 2005, especially in regions where the homicide rate was high, taking into account that more than 10,000 paramilitaries have been demobilized.<sup>80</sup> There are even municipalities where the homicide rate either remained the same, as in Cúcuta (Norte de Santander), or increased, as in Buenaventura (Valle), Turbo (Antioquia) and Tierralta (Córdoba).

#### *Rule of law*

13. The demobilization of a large number of persons who have taken an active part in hostilities requires monitoring and follow-up on the part of the authorities to ensure that the persons once demobilized fulfil their commitments and have no further impact on the fundamental rights of the population. In the course of the year it was observed that institutions responsible for key aspects of the process have not had sufficient capacity to provide a proper follow-up on the situation of demobilized persons.

14. There have been reports of measures and statements encouraging the involvement of demobilized persons in security-related work. In September, the Government put forward a plan to involve 2,000 paramilitaries in "activities aimed at reparation and the restoration of order", as a kind of civic police force. Considering the reiterated allegations and observations regarding the existence of links between members of the security forces and paramilitary groups, however, it is advisable to avoid the participation of demobilized persons in any activities related with security institutions.

15. Several leaders of paramilitary groups have stated their intention to become involved in the electoral process in 2006, either directly, through political groups that represent their interests, or indirectly, by imposing their own candidates or exercising pressure on other candidates. As a result of the extension of the demobilization period beyond 31 December 2005, paramilitary groups will be present in several areas during the electoral campaign. Since it is difficult to be sure that all paramilitary structures have been effectively dismantled, this raises challenges for the proper running of the electoral process.

16. The control exercised by paramilitaries over urban centres has not diminished, as might have been expected, despite the declaration of a cessation of hostilities, the demobilization process and military actions by the security forces against some of the paramilitary groups.

The latter have gradually penetrated and acquired control of municipal and departmental administrations in several areas of the country, as well as of illegal economic activities. In some cases land and other economic resources have been seized. Paramilitary groups and demobilized persons have continued to carry out extortions and have maintained close links with illegal activities, such as drug cultivation and trafficking or the smuggling of gasoline. This has led to a number of selective murders. Most of the deaths of demobilized persons so far have been due to either illegal activities or the settling of scores. A number of the latter cases were allegedly motivated by a wish to prevent the demobilized persons targeted from revealing information on human rights violations.

### **Legal framework applicable to demobilizations and measures to avoid impunity**

17. Since 2003, the provisions of Act No. 782 and its implementing Decree No. 128 (adopted in January of this year) constitute the legal framework applicable to demobilized persons, who are eligible to obtain legal benefits subject to certain requirements. The benefits are intended for those who are not accused of having committed serious human rights violations or breaches of international humanitarian law, and who moreover give up their weapons and contribute to the peace process. The benefits offered consist in a series of procedures to terminate or suspend criminal proceedings, which include pardons. It has been observed that in a number of cases the law has been unsuitably applied and could give rise to situations of impunity.

18. In June 2005, Congress adopted a new legal framework to cover demobilized persons who were excluded from the terms of Act No. 782 because they were identified as having committed serious crimes. According to the new Act No. 975, known as the Justice and Peace Act, benefits will be granted to members of armed groups who demobilize and contribute to the peace process. This law has not yet been applied.

19. The legislation establishes two standards of eligibility, one for the demobilization of individuals and the other for demobilization of groups. The Office in Colombia had disapproved of giving equal treatment to these two situations. Proper collective demobilization makes a better contribution to efforts to overcome the conflict.

20. The text of the new law has taken account of victims' rights to truth, justice and reparation, thus taking account of the observations made by the Office. Nevertheless, these provisions are not compatible with other terms of the law. Moreover, there are no suitable mechanisms to give effect to the rights to truth, justice and reparation. In particular, the Act does not include a requirement that demobilized persons should cooperate fully with the justice system. Nor does it require their effective assistance for the clarification of facts. Yet it is not possible to implement justice or to guarantee reparation without ascertaining the truth.

21. In view of the impunity that prevails for the great majority of crimes perpetrated by armed groups, the prospects of ensuring justice must be deemed uncertain. In the absence of the cooperation and information which should be provided by the demobilized persons, it is left for judicial officials to reconstruct the facts and attribute responsibilities. This is because the law does not provide sufficient incentives to ensure full cooperation, or penalties consisting in

non-entitlement or loss of benefits for holding back information. Since there is no requirement that crimes must be confessed before legal benefits may be obtained, the latter appear disproportionate in relation to the contribution required of demobilized persons. It also creates difficulties for reconciliation and effective resettlement.

22. In addition, the procedural deadlines and timetables laid down in the law are too short to allow enough time to overcome the difficulties, as a result of which many criminal proceedings have resulted in impunity. Even when the victims' right to reparation is specified in the law, there are still many difficulties to overcome before it can be made effective. On the one hand, the obligation for demobilized persons to hand over property acquired as a result of illegal activities depends almost entirely on their willingness to do so, because of the lack of any penalties for non-compliance. On the other hand, the use of front men and other methods for laundering assets in order to hide or disguise illegally acquired properties and goods pose considerable challenges.

23. A National Reparation and Reconciliation Commission has been set up by law with a very broad mandate, but is ill-equipped legally to take decisions. Although its terms of reference include preparing a public report on the reasons for the uprising and the development of illegal armed groups, the Commission does not provide a suitable response in terms of complying with international principles concerning the right to the truth. Its composition with a membership of 13, does not ensure sufficient independence because it includes senior government officials and because victims are underrepresented. In fact it began its operations without having appointed the two victims' representatives.

24. It is worth remembering that for years there has been evidence of links between some public servants and paramilitary groups, which have implicated the State's responsibility in a variety of crimes attributed to those groups. Yet neither the law nor the public statements of the Government make any reference to that situation. Nor have suitable mechanisms been created to examine a possible share of responsibility on the part of the State in relation to paramilitarism, or to adequately address the effective dismantling of its illegal structures.

25. In view of the situation of impunity in Colombia, the institutional weaknesses of the judiciary and the gaps in the Justice and Peace Act, the provisions of the law are believed to apply to only a small percentage of demobilized persons. Insofar as no charges have been brought against them, and the demobilized persons do not incriminate themselves, the way remains open for applying Act No. 782, including the concession of benefits such as pardons. It is worth noting that in the course of judicial proceedings the paramilitary units believed to be responsible are generally identified, or more specifically their leaders, so that the majority of demobilized persons remain free of all charges. This concern appears justified in the light of the statements made by the President of the High Council of the Judiciary, in October 2005, to the effect that no proceedings had been initiated against most of the demobilized persons. As a result, many cases could remain unpunished and the victims could be left deprived of their rights.

26. An issue which still remains unresolved is how the courts will address on the one hand the possible responsibility of government employees for those crimes and, on the other hand, the verification of compliance with legal requirements on the part of demobilized persons. With

respect to the latter problem, it has been reported that demobilized paramilitary groups have not complied with the obligation to hand over all children enlisted in their ranks. Nor have these groups released persons they have abducted. Also they have apparently failed to supply a proper list of illegally acquired goods and resources, or any useful information on the whereabouts of other hostages and disappeared persons. The discovery of several clandestine graves shows that forced disappearance is practised by the paramilitary groups. The State should ensure that these crimes are clarified within the context of the demobilization process.

27. These considerations illustrate the major challenges facing Colombia in its efforts to strengthen the rule of law, to achieve peace and reconciliation and to avoid impunity. Results will depend to a great extent on the measures implemented for the effective fulfilment of the victims' rights to truth, justice and reparation.

## 注

<sup>1</sup> 见联合国哥伦比亚毒品和犯罪办事处，古柯种植调查，2005年6月。

<sup>2</sup> 按照《罗马规约》，此类罪行是针对平民人口的大规模或有组织袭击的一部分，对于袭击知情。

<sup>3</sup> 按照《罗马规约》，此类行为是严重违反国际人道主义法行为，尤其是在执行某种计划和政策或实施大规模此类犯罪的过程中更是如此。

<sup>4</sup> 对于 Cajamarca 法外处决事件、Arauca 的工会会员被法外处决、Sierra Nevada de Santa Marta 土著社区的 Victor Maestre 被法外处决进行的调查证明了这种情况。见 E/CN.4/2005/10，第 86 段。

<sup>5</sup> 宪法法院第 C-1001/05 号裁决宣布，颁布新的刑事诉讼法的 2004 年第 906 号法令第 300 条违反宪法。见宪法法院 2005 年 10 月 3 日的新闻公报。

<sup>6</sup> 关于经济、社会和文化权利的统计数据主要涉及城市地区。关于整个国家情况的数据不多。但是，众所周知，最贫困的人生活在农村，除其他外，得到的卫生和教育服务也较差。因此，掌握关于这些地区的经常性统计数据并考虑到人口的民族背景和性别等方面，会是十分有益的。

<sup>7</sup> 这是为政府与准军事集团之间进行谈判而设立的特别地区。

<sup>8</sup> 第 782 号法案补充并修订了关于建立便利于同非法武装集团谈判并达成协议机制的 1997 年法案。2003 年 1 月通过了第 128 号执行法令。

<sup>9</sup> 见 2005 年 6 月 9 日共和国总检察厅的报告。

<sup>10</sup> 根据新闻自由基金会提供的统计数字。

<sup>11</sup> 根据新闻自由基金会提供的资料，大约有 5,400 人被扣押。

<sup>12</sup> 人权委员会主席的声明“哥伦比亚的人权情况”，日内瓦，2005 年 4 月 21 日，第 3 段。

<sup>13</sup> 预警委员会是一个文官当局与治安部队之间协调的机构，以发布警告和提出建议的方式，就预警系统的风险报告采取行动。

<sup>14</sup> 由监察专员办公厅主管的预警系统负责发表有关严重侵犯人权情况和违反国际法现象的风险报告。

<sup>15</sup> 见本报告第六章有关准军事集团渗透的指控。

<sup>16</sup> 诸如建立负责照管流离失所人口的全国委员会和各个市政委员会。

<sup>17</sup> 这是全国经济及社会政策委员会的 2005 年 11 月 28 日第 2400 号经济文件，题为“为哥伦比亚境内因遭暴力而流离失所人口提供照管的目标并优先为此拨出资源”。

<sup>18</sup> 此外，2005年第975号法案已引起了不符合宪法规定的申诉。

<sup>19</sup> 这项法案有待宪法法院按宪法进行审查，以便予以最后批准。

<sup>20</sup> 这些法案包括关于儿童和青少年的法规草案、关于对某些社会权利实行司法保护的法规草案，以及建立妇女事务监测中心的法律草案。同时还提交了一份有关建立哥伦比亚与国际刑事法院合作机制的法律草案。

<sup>21</sup> 若不主张总检察院行使对严重侵犯人权行为进行纪律调查的司法管辖权，则会由侵权嫌疑人所属的本单位机构进行调查，而这往往导致有罪不罚的现象。

<sup>22</sup> 由于缺乏有关经济、社会及文化政策方面的最新资料，以及数据传播的延误、方法的变更以及地理和人口覆盖面有限，阻碍了对经济、社会及文化政策的评估。

<sup>23</sup> 国家经济和社会政策委员会是负责国家规划的最高级机关并就所有涉及哥伦比亚经济与社会发展的问题，发挥政府咨询机构的职能。

<sup>24</sup> 社会和有关组织联盟、哥伦比亚 - 欧洲 - 美国协调事务处，哥伦比亚人权、民主和发展纲领。

<sup>25</sup> Belgium, Canada, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Morocco, Netherlands, New Zealand, Norway, Pakistan, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, and European Commission.

<sup>26</sup> Project co-financed by the European Commission.

<sup>27</sup> Project co-financed by the European Commission.

<sup>28</sup> The prisons of Riohacha, Guajira; Quibdó, Chocó; Villahermosa, Calí; women's prisons of "El Buen Pastor", Bogotá, and "La Badea", Pereira; high and medium security prisons of San Isidro, Popayán and Girón.

<sup>29</sup> Programme co-sponsored by the European Commission.

<sup>30</sup> Resolution 865 dated 31 December 2004, issued by the Office of the Ombudsman.

<sup>31</sup> Document published by the Office in Colombia of the UNHCHR in 2004 within the Cooperation Project with the Office of the Procurator-General.

<sup>32</sup> Technical team made up of UNHCR, PAHO, IOM, UNICEF, UNFPA, UNAIDS, UNIFEM, UNODC, Office of the Resident Coordinator, UNDP, under the coordination of the Office in Colombia of the United Nations High Commissioner for Human Rights.

<sup>33</sup> As in the cases of the President of the José Alvear Restrepo Lawyers' Association and one of the members of the Inter-Church Commission for Justice and Peace.

<sup>34</sup> Statements were made, for example, questioning the impartiality of the international NGOs Peace Brigades International (PBI), Human Rights Watch (HRW) and Amnesty International (AI).

<sup>35</sup> Decree No. 4200 of 14 December 2004.

<sup>36</sup> The number fell by 38 per cent during the first half of 2005, according to the Universal Registry System (SUR).

<sup>37</sup> According to the CODHES (Consulting Bureau for Human Rights and Displacement).

<sup>38</sup> The FARC were blamed for the cases of Toribio and Jambaló (Cauca), Vistahermosa (Meta), Tame (Arauca), Cocomá (Antioquia), Valencia (Córdoba) and Roberto Payáy (Nariño) and the ELN for that of Dibulla (La Guajira).

<sup>39</sup> Including those occurring on the Bojayá river and the Buey river (Chocó), in the municipality of San Pablo (Magdalena Medio), in the Alto del Telembí (Nariño) and in Carmen (Norte de Santander).

<sup>40</sup> As occurred in Argelia (Antioquia) and in Barbacoas (Nariño).

<sup>41</sup> See Constitutional Court ruling No. 176, of 29 August 2005.

<sup>42</sup> Including the formulation of the National Plan of the National System for Assistance to the Displaced Population, Decree No. 250 of 2005.

<sup>43</sup> Report by UNHCR to the Constitutional Court of 18 March 2005.

<sup>44</sup> The Office recorded cases in Antioquia, Caquetá, Chocó, Putumayo and Sierra Nevada de Santa Marta.

<sup>45</sup> For example, through actions by both groups in Chocó; and in the east of Antioquia, Caquetá and Putumayo by guerrillas.

<sup>46</sup> According to information provided by the CIAT, by August 2005 actions by the public security forces (39) were among the most frequent measures taken in response to reports of risk situations (compared to 17 humanitarian actions and 17 by security councils, amongst others).

<sup>47</sup> See UNHCR: "Considerations concerning compliance with decision T-025 of 2004", of 18 March 2005.

<sup>48</sup> The Raizal are the inhabitants of the San Andrés, Providencia and Santa Catalina islands, an English-speaking people of Antillean origin.

<sup>49</sup> According to the Monitoring Centre of the Vice-President's Office, the FARC-EP are believed to be responsible for 33 per cent of deaths, with 8 per cent being attributed to self-defence groups.

<sup>50</sup> Children account for 48 per cent of displaced persons, according to Acción Social of the Office of the President of the Republic.

<sup>51</sup> According to the Monitoring Centre for Anti-Personnel Mines, they make up 30 per cent of civilian casualties.

<sup>52</sup> Approximately 2 million children according to the press release at the ILO Meeting on the Situation of the Worst Forms of Ill-treatment of Children, Bogotá, Colombia, 18 October 2005.

<sup>53</sup> According to the National Survey on Demography and Health, 2005, the percentage of teenagers becoming pregnant rose from 19 to 21 per cent in the last five years. The greatest percentages of teenage pregnancies occurred in Caquetá, Meta and Cauca, followed by Cesar, Chocó and the headwaters of the Arauca and Guaviare rivers.

<sup>54</sup> For example, in the field of domestic violence, according to the 2005 National Survey on Demography and Health, 2 out of every 5 women who have at one time been married or have lived with a male partner reported having suffered physical aggression by the spouse or companion.

<sup>55</sup> The unemployment rate among women is almost 18 per cent, compared to 10.5 per cent among men (2019 Visión Colombia. Office of the President of the Republic, DNP (National Planning Department), 2005 discussion draft). Women's incomes are generally 20 per cent below those of men (National Report on the 2005 Millennium Goals).

<sup>56</sup> For example, the maternal mortality rate continues to be very high. In 2003 the average rate was 99 per 100,000 live births, but in Chocó it was as high as 409 per 100,000 live births (National Report on 2005 Millennium Goals).

<sup>57</sup> For example, only 6 per cent of governors are at present women, 7.5 per cent of mayors and 12 per cent of members of Congress (UNIFEM. Situation of women in Colombia, September 2005).

<sup>58</sup> The fact that investigations into domestic violence depend on complaints filed by the victims and that conciliation hearings must be held in a situation of inequality between the parties makes it difficult to protect victims or to punish those responsible.

<sup>59</sup> According to official data this is estimated to be the third highest cause of maternal death.

<sup>60</sup> Concluding Observations of the Human Rights Committee: Colombia, 26 May 2004. CCPR/CO/80/COL., para. 13; and Committee on the Elimination of Discrimination against Women: Colombia, 4 February 1999; A/54/38, paras. 337-401 and para. 393 respectively.

<sup>61</sup> See study by the Colombian Institute for Family Welfare and the Renacer Foundation in Cartagena.

<sup>62</sup> In the District Prison of Valledupar and in that of Bucaramanga, the inmates live in conditions of overcrowding and pregnant women receive no medical attention, except in cases of emergency.

<sup>63</sup> There is no assessment of the situation regarding vulnerable persons deprived of liberty.

<sup>64</sup> Detention cells run by the Metropolitan Police of Bogotá, Junín Station and El Guabal in Cali.

<sup>65</sup> For example, a Kankuamo indigenous person died in the prison of Valledupar, apparently for lack of medical care.

<sup>66</sup> See for example report No. 61 of the FLIP (Freedom of the Press Foundation), General Assembly of the Inter-American Press Association (Colombia). The FLIP recorded 60 cases of threats up to the beginning of November 2005, compared with 34 the year before.

<sup>67</sup> Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights. Analysis of freedom of expression in Colombia, August 2005.

<sup>68</sup> Ibid.

<sup>69</sup> According to the Committee to Protect Journalists, interviews with dozens of journalists show that the media and reporters all over the country practise self-censorship for fear of physical reprisals by all the armed parties of the conflict. The issues that are taboo are human rights abuses, the armed conflict, political corruption, drug trafficking and links between officials and the illegal armed groups.

<sup>70</sup> Cases were recorded in Bogotá, Pereira, Barranquilla, Cartagena and Campo Alegre (Huila).

<sup>71</sup> Cases were recorded in Medellín and Barranquilla.

<sup>72</sup> There have been 60 per cent fewer cases, according to the Monitoring Centre on Human Rights and International Humanitarian Law of the Office of the Vice-President.

<sup>73</sup> According to data supplied by the Fundación País Libre.

<sup>74</sup> Fundación Seguridad y Democracia. Special report: Uribe, three years. Bogotá, August 2005.

<sup>75</sup> According to the Monitoring Centre on Human Rights and International Humanitarian Law of the Office of the Vice-President.

<sup>76</sup> Kidnapping in Colombia: Receding but transforming, UNDP. Hechos del callejón, No. 10, December 2005.

<sup>77</sup> The law allows the extension of the implementation of certain obligations, such as tax relief, employers' obligations to continue paying salaries or the State's obligation to cover the health and education costs of victims' families.

<sup>78</sup> See Working Group on Enforced or Involuntary Disappearances. Press release, Mission to Colombia, 12 July 2005.

<sup>79</sup> According to data supplied by the Colombian Federation of Municipalities and the Monitoring Centre of the Office of the Vice-President.

<sup>80</sup> Comparative table of the rates of homicide for the years 2004 and 2005 within the areas of influence of each demobilized unit based on official police homicide statistics. The indicator used is the percentage of homicides for every 10,000 inhabitants based on the 1993 census, the most recent one carried out for the country as a whole. The five units listed were demobilized between December 2004 and June 2005.

Units or "bloques"	Demobilization date	2004	2005	Change in the homicide rate
Bloque Bananero	25 November 2004	5.21 homicides per 10,000 inhabitants within the unit's area of influence	8.11 homicides per 10,000 inhabitants within the area of influence	+56%
Cundinamarca self-defence forces	9 December 2004	2.72	2.01	-26%
Bloque Catatumbo	10 December 2004	9.45	8.17	-13.5%
Bloque Calima	18 December 2004	12.04	10.08	-16%
Bloque Córdoba	18 January 2005	2.08	1.57	-24%
Héroes de Tolová	15 June 2005	1.79	4.10	+229%

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