



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Fourth periodic reports of States parties due in 2001**

**Addendum**

**COLOMBIA<sup>\*, \*\*, \*\*\*</sup>**

[21 January 2008]

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\* For the initial report submitted by Colombia, see document CAT/C/7/Add.1; for its consideration by the Committee, see documents CAT/C/SR.36 and 37 and *Official Records of the General Assembly, Forty-fifth session, Supplement No. 45 (A/45/44)*, paragraphs 313-340. For the second periodic report, see document CAT/C/20/Add.4; for its consideration by the Committee, see documents CAT/C/SR.238, 239, 242 and 242/Add.1 and *Official Records of the General Assembly, Fifty-first session, Supplement No. 44 (A/51/44)*, paragraphs 66-83. For the third periodic report, see document CAT/C/39/Add.4; for its consideration by the Committee, see documents CAT/C/SR.575 and 578 and the conclusions and recommendations, CAT/C/CR/31/1.

\*\* The annexes to this report are available at the Committee secretariat.

\*\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation service.

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### LIST OF ACRONYMS

ACRONYMS	
ANTHOC	Hospital workers' association
AUC	United self-defence forces of Colombia
CNAIPD	National Council for comprehensive assistance to violently displaced persons
CIAT	Inter-Agency early warning committee
CONPES	National Council for Economic and Social Policy
CTI	Technical investigation unit (Office of the Public Prosecutor of the Nation)
DANE	National Administrative Department of Statistics
DIJIN	Criminal investigation department
DAS	Administrative Department for Security
ELN	National Liberation Army
FARC-EP	Revolutionary Armed Forces of Colombia – People's Army
FONDELIBERTAD	National Fund for the Defence of Individual Freedom
FATF	Group of Financial Action Task Force
INTERPOL	International Criminal Police Organization
INPEC	National penitentiary and prison agency
MAP	Anti-personnel mines
MASE	Abandoned unexploded ammunition
OEA	Organization of American States
NGO	Non-governmental organization
PGN	Office of the Solicitor General of the Nation
RUPD	National Registry of Displaced Persons
SNAIPD	National system for comprehensive assistance to violently displaced persons
SENA	National Training Service
SIVELCE	System of epidemiological vigilance in respect of injuries from external causes
USAID	United States Agency for International Development
UP-PCC	<i>Unión Patriótica</i> political party – Communist Party of Colombia
UAO	Guidance and assistance units for displaced persons Desplazada
UIAF	Financial Information and Analysis Unit

## I. GENERAL PART OF THE REPORT

### A. General considerations

1. Colombia signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 10 April 1985 and ratified it on 8 December 1987, subsequent to approval by the Congress of Colombia through act No. 70 of 1986. Under domestic law, the Convention is therefore obligatorily enforceable in respect of nationals, aliens<sup>1</sup> and, especially, the public authorities<sup>2</sup>.

2. Moreover, article 93 of the Colombian Constitution, which, in conjunction with article 214 (2), has laid the groundwork for the development of the concept of “constitutional corpus” by the Constitutional Court, provides as follows: “International treaties and agreements ratified by the Congress, which recognize human rights and prohibit their limitation in states of emergency, shall have priority domestically. The rights and duties mentioned in this Charter will be interpreted in accordance with international treaties on human rights ratified by Colombia”. Accordingly, the provisions of the Convention acquire constitutional rank and consequently prevail at the domestic level.

3. Colombia has presented three reports to the Committee against Torture. The initial report is contained in document CAT/C/7/Add.1; and its consideration by the Committee appears in documents CAT/C/SR.36 and 37 and *Official Records of the General Assembly, Forty-fifth session, Supplement No. 45 (A/45/44)*, paragraphs 313-340. The second periodic report is contained in document CAT/C/20/Add.4; and its consideration by the Committee appears in documents CAT/C/SR.238 and 239 and *Official Records of the General Assembly, Fifty-first session, Supplement No. 44 (A/51/44)*, paragraphs 66-83. The third periodic report is contained in document CAT/C/39/Add.4; and its consideration by the Committee appears in documents CAT/C/SR.575 and 578.

4. This fourth report submitted to the Committee for consideration reflects the progress made and the obstacles and challenges faced by the various State bodies in the period 2002-2006 in seeking to fully guarantee of rights enshrined in the Convention through concerted efforts involving the three branches of Government, each in its area of competence, and the Office of the Public Prosecutor, for a society based on the rule of law.

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<sup>1</sup> Article 4 of the Constitution provides as follows: “The Constitution shall be the supreme law. In all cases of incompatibility between the Constitution and the law or any other legislation or regulation, the constitutional provisions shall apply.

It shall be the duty of citizens and of aliens in Colombia to abide by the Constitution and the laws, and to respect and obey the authorities.”

<sup>2</sup> Article 4 of the Constitution provides as follows: “Every person shall be individually accountable to the authorities for violations of the Constitution and the laws. Civil servants shall be responsible for such acts and for omission or for acting “ultra vires” in the exercise of their functions.”

5. Colombia confirms its commitment to respecting, guaranteeing and promoting fundamental rights, fully abiding by the international instruments that it has ratified and honouring the commitments deriving from such instruments.

### **B. Fundamental characteristics of the Colombian State**

6. Colombia is a social State subject to the rule of law and organized as a unitary, democratic, participatory, pluralistic and decentralized Republic, with autonomous territorial units. It is founded upon respect for human dignity, upon the work and solidarity of the individuals constituting it and upon the primacy of the general interest.

#### **(a) Political organization**

7. The Constitution<sup>3</sup> establishes three branches of Government: The executive, the legislative and the judiciary. The President of the Republic is the head of State and Government and is elected by popular vote for a period of four years. Under legislative act No. 02 of 2004, reforming the Constitution, the President of the Republic may be re-elected for a second term. After four years in office (2002-2006), President Alvaro Uribe Vélez was re-elected in May 2006 for a new term ending in 2010.

8. The ministers and heads of administrative departments manage and regulate public administration. Their number and designation are determined by the law. The department governors and the mayors are elected by popular vote. The executive branch of Government includes the public establishments, industrial and commercial State enterprises, supervisory and special administrative units with a legal status, social enterprises, residential public utility enterprises, scientific and technological institutes and semi-public companies.

9. The legislative branch of Government consists of the Congress, which is bicameral and, *inter alia*, responsible for carrying out constitutional reforms through legislative acts; drafting, interpreting, amending and repealing laws and codes in any area of the legislation; politically monitoring the Government and the administration; and judging civil servants in special cases involving political responsibility.

10. Of the 102 senators constituting the Upper House or Senate, 100 are elected in respective national electoral districts and two are elected in special electoral districts for indigenous population groups. The Chamber of Deputies or House of Representatives consists of 241 representatives elected in territorial and special electoral districts. The senators and the representatives are elected for a period of four years.

11. The judiciary, responsible for the public administration of justice, renders independent and autonomous decisions, with exceptions legally determined and subject to substantive law. It consists of the Constitutional Court, which is responsible for the maintenance of the supremacy and integrity of the Constitution; the Supreme Court of Justice (with criminal, civil and labour chambers); the Council of State (the highest court dealing with administrative disputes and constituting a chamber for consultation and civil service matters); the Higher Council of the

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<sup>3</sup> Constitution, title V, “On the Organization of the State”, art. 113 *et seq.*

Judicature (supreme administrative and disciplinary organ of the judiciary); the Office of the Public Prosecutor of the Nation (the Public Prosecutor and designated prosecutors); higher district courts (usually located in departmental capitals); circuit courts; and municipal courts (which may have both civil and criminal jurisdiction).

12. There are also so-called special jurisdictions, such as the military criminal courts<sup>4</sup> and the indigenous community courts.

13. Public control bodies comprise the Office of the Comptroller General of the Republic and the Office of the Attorney General, which has the following responsibilities: Overseeing the Solicitor General of the Nation, who is elected by the Senate; ensuring compliance with the Constitution, laws, court decisions and administrative acts; protecting human rights; defending the interests of society and of the communities, especially in relation to the environment; monitoring the official conduct of public office holders, including elected officials; acting as main disciplinary authority; facilitating required investigations; and imposing appropriate penalties.

14. Under the authority of the Office of the Attorney General, the Ombudsman, elected by the Chamber of Deputies, ensures the promotion, exercise, dissemination and defence of human rights.

#### **(b) Territory**

15. In its political and administrative organization and structure, Colombia is decentralized into public service sectors comprising specialized agencies and into territorial units matching the basic division of the national territory into departments, districts, municipalities and indigenous territories.

16. Colombia is characterized by geographic, ethnic and cultural diversity. It has a surface area of 1,141,748 square kilometres, divided into the above territorial entities. The municipality is the fundamental unit of political and administrative division. There are currently 32 departments and 1,098 municipalities.

#### **(c) Culture and religion**

17. The Colombian population is predominantly racially mixed. Three major ethnic and social groups are geographically and culturally distinct from the bulk of the population: The Afro-Colombian communities and the mostly black English-speaking communities (*raizal*) of San Andres and Providencia (accounting for 10.5 per cent of the total population), the indigenous people (accounting 3.4 per cent of the population) and the Roma<sup>5</sup>.

18. Spanish is the national language, albeit with noticeable dialectal and regional variations. Moreover, the country displays considerable linguistic diversity in its indigenous communities,

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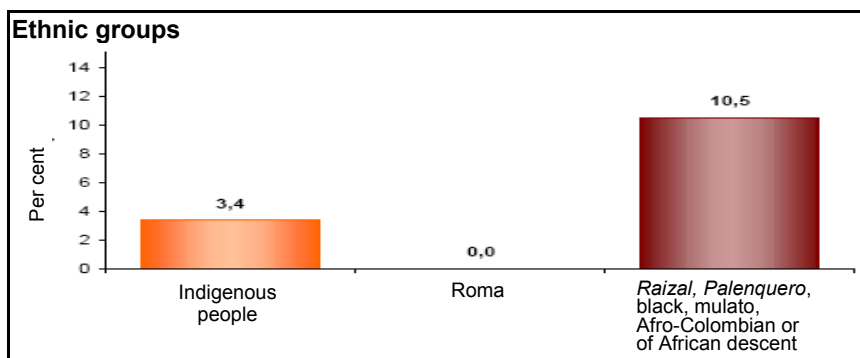
<sup>4</sup> Military criminal justice is responsible for hearing cases involving offences committed by members of the public security forces in the course of, and in connection with, active service.

<sup>5</sup> National Administrative Department of Statistics (DANE), 2005 Census.



where 64 languages, belonging to 22 families, have been identified. The afore-mentioned *raizal* communities belong to the Afro-Anglo-Antillean culture and use English as the standard language and San Andres Creole at home. The population of San Basilio de Palenque in the Colombian Caribbean inland speaks Palenquero, another Afro-Colombian Creole. The Rom or gypsy groups, of East European origin, speak their own tongue, the Romani language.

19. According to the most recent national census, conducted in 2005<sup>6</sup>, 10.5 per cent of the population resident in Colombia consider themselves as *raizal*, *palenquero*, black, mulatto, Afro-Colombian or of African descent and 3.4 per cent as indigenous.



Source: DANE, 2005 Census.

20. Under the Constitution, freedom of religion is guaranteed and every individual has the right to freely profess his/her religion and to disseminate it individually or collectively. Although approximately 1,000 religious bodies are currently officially registered, Christianity is Colombia's predominant religion and Catholicism the most widespread confession.

#### (d) Population

21. According to the 2005 Census, the country has 42,090,502 permanent residents<sup>7</sup>, ranking third in Latin America, after Brazil and Mexico, and 28th in the world. Women and men account for, respectively, 51.2 and 48.8 per cent of the population, 75 per cent of which lives in urban and 25 per cent in rural areas.

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<sup>6</sup> With regard to methodology, it should be noted that the initial data of the 2005 Census are currently being evaluated and adjusted by the following two indirect procedures: (1) Data compensation for inadequate geographic coverage and possible data shifts; and (2) data reconciliation (at the national and departmental levels) and adjustment on the basis of urban and rural area definitions (*cabecera-resto*) and of characteristic variables.

<sup>7</sup> Geographically compensated demographic statistics, 22 November 2006. DANE, 2005 Census.

<b>2005 CENSUS</b>	
<b>Population data corrected for geographic coverage omissions and for possible shifts</b>	
<b>Population</b>	<b>42 090 502</b>
Urban	31 566 276
Rural	10 524 226
Men	20 668 157
Women	21 422 345
<b>Households</b>	<b>10 731 044</b>
<b>Housing units</b>	<b>10 537 735</b>
<b>Economic units</b>	<b>1 591 043</b>
<b>Farming units*</b>	<b>1 742 429</b>
* Linked to rural housing units.	

Source: DANE, 2005 Census.

**(e) Overview of violence**

22. Organized paramilitary armed groups constitute a threat to the stability of Colombian society inasmuch as their elements generate violence by building a war economy based on kidnapping, extortion and drug production and trafficking. This situation has caused the nation great social, economic and political costs.

23. In fact, the continuation of illegal activities in 2006 reveals an approach incompatible or at odds with recognizing and respecting the principles and values crucial to guaranteeing and exercising human rights. It also reveals, in particular, the absence of a tangible commitment of the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) and of the National Liberation Army (ELN) to complying with international humanitarian law (IHL).

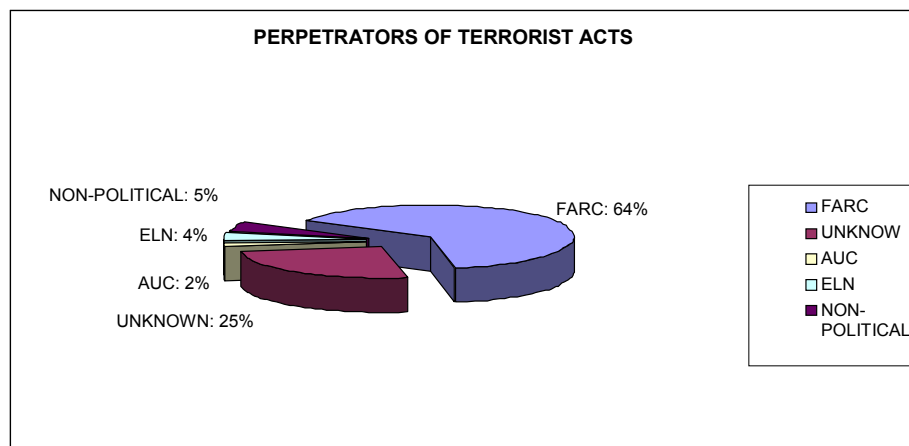
24. According to data of the Criminal investigation department of the National Police (DIJIN-PONAL), in 2006 the FARC-EP were responsible for 16.2 per cent of massacre cases<sup>8</sup>, 62.9 per cent of anti-personnel mine casualties<sup>9</sup>, 27 per cent of cases of kidnapping for extortion<sup>10</sup> and 72.4 per cent of terrorist attacks<sup>11</sup>. Moreover, all 16 cases involving attacks against the population in 2006 have been attributed to that insurgent group.

<sup>8</sup> There were 37 such cases, involving 193 reported victims. In 78.4 per cent of those cases, the offenders were not identified.

<sup>9</sup> There were 320 such accidents.

<sup>10</sup> There were 76 such cases.

<sup>11</sup> There were 401 such attacks, including instances of using potato bombs, propaganda petards and antipersonnel mines.



Source: National Police, 2005 Report on crime.

25. Regarding United self-defence forces of Colombia (AUC) groups, a collective demobilization process culminated, in 2006, with the surrender of the weapons of the combatants of those organizations. This process entailed the detention of the leaders, the prosecution of their collaborators and the enforcement of act No. 975 of 2005, known as the Justice and peace act, as a framework for ensuring the promotion of truth, justice and redress.

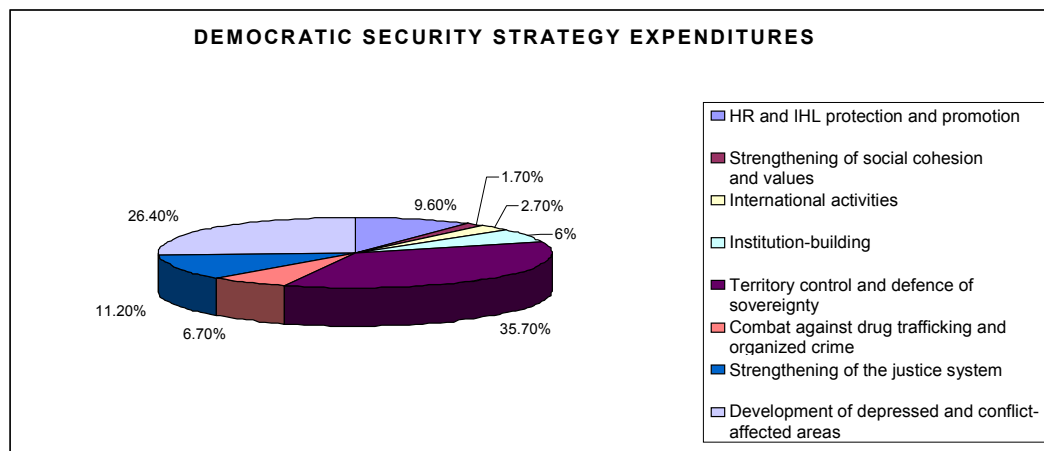
26. Moreover, ELN has entered a phase of diminishing military capacity, reducing its ability to undertake violent action against the population. It continues, however, to infringe IHL inasmuch as in 2006, according to Fondelibertad and the Anti-personnel Mines Observatory, it claimed responsibility for 15.6 per cent of extortive kidnappings and 3.9 per cent of anti-personnel mine casualties.

27. Furthermore, the groups in question have carried on their forced displacement tactics, which in the period 2002-2006 has resulted in causing a total of 1,245,378 persons<sup>12</sup>, or an average of 682 persons per day, to leave their homes.

28. Civilians, particularly ethnic groups, have been affected by restrictions on the transport of foodstuffs, drugs and persons, by sexual violence against women and girls and by the recruitment of children. Disregard for the principles of medical attention has become a recurrent practice aimed at the territorial control of strategic corridors and areas of influence.

29. This situation clearly constitutes a challenge for the State and requires the provision of human and economic resources with a view to effectively countering the insurgency in the interest of peace and the full enjoyment of rights by the citizens as a whole. In view of the Government's commitments in the area of human rights, 55 per cent of appropriations in the framework of State policy in the period 2002-2006 were earmarked for creating conditions of peace and development in depressed areas affected by violence, protecting and promoting human rights and IHL and strengthening justice, social cohesion and values and the bodies pursuing such objectives.

<sup>12</sup> National Registry of Displaced Persons (RUPD), February 2007 data.



*Source:* National Directorate of Planning (DNP) – Department of Evaluation and Public Policy (DEPP), Information and Management for Governability System (SIGOB).

30. Lastly, new illegal organizations or groups have emerged, obeying to criminal gangs, in areas where demobilization took place. They have sought out demobilized ringleaders, middle-level commandants and combatants to swell the ranks of the new lawless apparatus, which relies solely on criminal activities for financing and gain.

31. The emergent groups, consisting to a limited extent of demobilized self-defence members, revitalize organized crime by forming structures engaged mainly in drug trafficking, and in particular in cultivation, production, commercialization and distribution. Cultivation takes place in border areas to facilitate export.

32. In 2006, the public security forces arrested more than 900 demobilized persons who had relapsed into criminal activities.

### **C. Government policy on human rights**

#### **(a) Foundations of the policy**

33. Government policy on human rights in the period 2002-2006 was formulated in the framework of the National Development Plan, entitled “Towards a State for the community”, which was enacted by Congress in June 2003 and whose main objective was the restoration of democratic security, namely, the protection of all Colombians, thereby ensuring the viability of the Republic, the reinforcement of the legitimacy of the State and the promotion of the rule of law.

34. Strengthening the rule of law is a prerequisite for protecting all citizens, regardless of gender, race, origin, language, religion or political ideology, on the principle that all the citizens are equal before the law, have the same rights and therefore must be protected. Full democratic sovereignty and the State's capacity to ensure respect for legal order throughout the territory are keys to the enjoyment of human rights.

35. The rights of Colombians have been mainly endangered by the Colombian democracy's past inability to assert the authority of its institutions over the entire territory and to constantly and reliably protect the citizens against the threat of abuse by illegal armed organizations.
36. These threats, which must be countered by the institutions and society as a whole, have required the adoption of specific measures in order to guarantee and protect human rights.
37. Accordingly, the National Development Plan for 2002-2006 has provided for strengthening democratic authority as a precondition for respect for human rights, since their enjoyment depends primarily on full democratic sovereignty and on the State's capacity to ensure respect for the rule of law throughout the territory.
38. Within this framework for action, a human rights policy was formulated with a view to guaranteeing the free and full exercise of human rights by preventing human rights violations (including the crime of torture), combating impunity, providing care for victims and promoting the implementation of IHL.
39. The main objectives of the policy on human rights and IHL are the following:
- (a) Ensuring respect for the human rights of all residents through adequate mechanisms for effective control;
  - (b) Promoting the fundamental rights of Colombians in all relevant social bodies with a view to building a shared ethical code;
  - (c) Safeguarding the exercise of fundamental rights through protective measures taken by the authorities in order to deal with cases of threats to or violations of fundamental rights, and through the creation or restoration of conditions necessary for the full attainment of fundamental rights;
  - (d) Addressing the consequences of violations against fundamental rights regardless of who is responsible, and ensuring respect for all non-combatant civilians.
40. Moreover, strategic objectives, such as the following, are pursued:
- (a) Designing, coordinating and promoting human rights and IHL policies;
  - (b) Preventing human rights violations through concerted action at the national, regional and local levels;
  - (c) Strengthening cooperation with international human rights bodies;
  - (d) Contributing to drawing up a policy for following up on Government decisions in the light of ongoing information on the humanitarian situation in the country, through a strategy involving dissemination and the institutionalization of the Human Rights Observatory; and promoting the development of national measures for the implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention).

41. In view of the above objectives, a decentralization strategy has been developed with regard to public policy on human rights. The resulting regional activities in respect of human rights aim at averting human rights violations and IHL infringements through participatory planning processes carried out by the departmental, municipal and national authorities, public security forces, civil society and communities; and are adapted to every region's specific humanitarian profile, daily life, resources and situation in terms of violence.

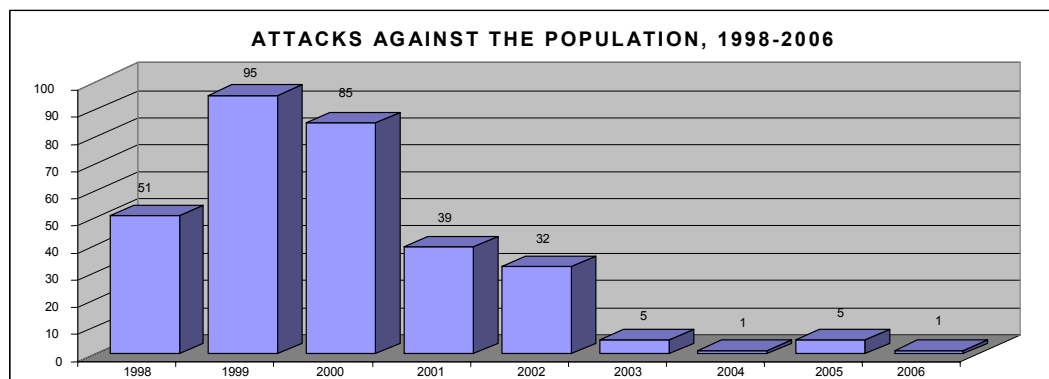
**(b) Results of the Policy**

42. The implementation and consolidation of the Defence and democratic security policy through more effective control over the national territory have enabled the Government to make significant progress towards the fundamental objective of human rights protection. In addition to guaranteeing such rights as the right to freedom of movement, the results achieved include a significant reduction in the number of attacks against the population, homicides, massacres, kidnappings and forced displacements.

43. In 2002, 168 municipalities lacked the continuous physical presence of public security forces. Such absence facilitated the activities of organized paramilitary armed groups, their control over extensive areas of the national territory and, consequently, intimidation and defencelessness of a significant part of the population. In February 2004, the recovery process culminated in reclaiming the Murindó municipality in the Antioquia department, thereby attaining full coverage of the country's municipalities.

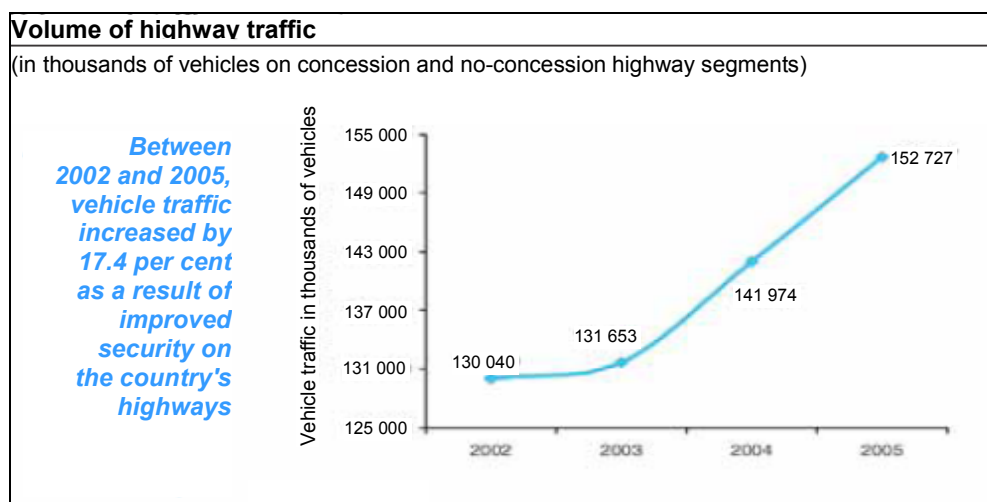
44. Strengthening the public security forces has allowed not only to regain control of extensive areas of the territory that had been unceasingly exposed to the threat of paramilitary armed organizations, but also, more importantly, to reduce the number of terrorist acts, including attacks against the civilian population and the economic infrastructure. The inverse relationship between the strength of public security forces and the number of terrorist acts was thereby demonstrated.

45. Notably, the number of reported attacks against the population by organized paramilitary armed groups decreased from 290 in the period January 1998 – June 2002 to 44 in the period January 2002 – June 2005, thus declining by 84.8 per cent.



Source: Ministry of National Defence. *DNP Report*.

46. Another positive development has been the revitalization of highway travel and traffic in the country. In fact, the right of Colombians to move freely on the national territory is better guaranteed to the extent the number of blockades on the country's main road network by organized paramilitary armed groups decreased by 92.7 per cent between December 2002 and December 2005 and vehicle traffic in that period increased from 130 to 152 million.

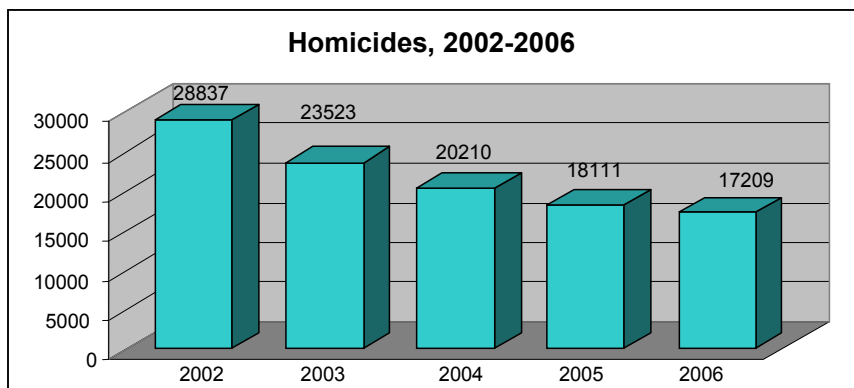


*Source:* National Highway Administration (INVIAS) – National Concessions Board (INCO).

47. The number of offences having a major social and economic impact, homicides and kidnappings in particular, has been reduced. The trend in homicides, which had been upward for more than a decade, has been reversed, as the annual number of such crimes declined by 37.4 per cent, from approximately 29,000 cases in 2002 to approximately 18,000 cases in 2005 or, for every 100 thousand inhabitants, from 66 homicides in 2002 to 39 in 2005, the lowest rate in 18 years. Massacres also display a downward trend, as the number of victims declined from 1,403 in 2000 to 1,044 in 2001, 680 in 2002 (-35 per cent), 504 in 2003 (-26 per cent), 259 in 2004 (-49 per cent) and 252 in 2005.

48. According to National Police data, in 2006 the rate of homicides was at its lowest in 20 years, as the number of violent deaths decreased from 17,450 in 1987 – and, in fact, from a stunning level of 28,837 homicides in 2002 – to 17,209 in 2006.

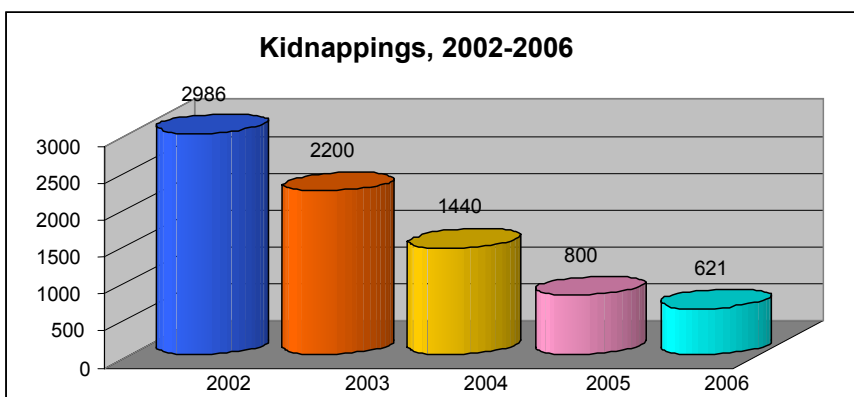
49. The above reduction has been largely due to the presence of public security forces in all of the country's municipalities and the creation of special units dedicated to ensuring safety for the citizens, have largely helped to reach this reduction



Source: National Police.

50. Through a comprehensive policy against the national scourge of kidnapping, concerted action by Government bodies and the cooperation of the citizens, that crime also has shown a downward trend in the last four years, with a 73.2 per cent decrease from 2,986 cases reported in 2002 to an eight-year low in 2005.

51. That trend continued in 2006, reaching the even lower level of 621 cases reported between January and November of that year.



Source: National Police, *2005 Report on crime*.

52. The policy against kidnapping and extortion targets three main objectives:

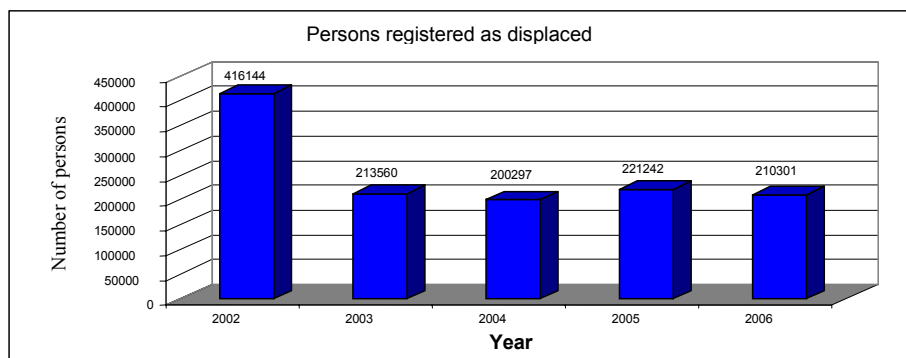
- (a) Reducing the number of extortion and extortive kidnapping cases;
- (b) Raising the costs of perpetrating such crimes;
- (c) Enhancing citizen confidence and the credibility of the State. Between 2002 and 2005, extortive kidnapping, a crime closely linked to the financing of armed organizations, decreased by 80 per cent, from almost 2,000 to fewer than 400 cases.

53. Between 2003 and 2006, forced displacements abated, contrary to the upward trend prevalent in the preceding decade, when, starting in the mid-1990s, the number of internal



displacements increased, peaking in 2002<sup>13</sup>. In fact, that number decreased considerably in 2003 and then remained relatively stable up to 31 December 2006<sup>14</sup>.

#### Development of internal displacements, 2002-2006



Source: RUPD<sup>15</sup>, February 2007, update of 3 March 2007.

54. Between 2003 and 2006, internal displacements have been relatively stable on the whole.

#### (c) Strategies against organized paramilitary armed groups

55. Under the Democratic security policy, the public security forces have employed the following two strategies against illegal organized armed groups, particularly the FARC, ELN and AUC guerrilla fighters, perpetrators of such crimes as torture: Armed combat, and individual and collective demobilization and reintegration.

<sup>13</sup> This problem peaked in the period 2000-2002, when displacement increased by an annual average of 40 per cent and affected 900 municipalities. Starting in 2003, however, displacement has been decreasing by an annual average of 41 per cent (National Council for Economic and Social Policy (CONPES), Document No. 3400, 2005).

<sup>14</sup> Information taken and adapted from: Discussion group on displacement trends in 2006, Report dated 22 March 2007, published on the web site of the Presidential Agency for social action and international cooperation ("Social Action").

<sup>15</sup> RUPD contains data on persons seeking displacement victim status. Such data has been kept since 1995, when CONPES document No. 2804 was drawn up, establishing the State's responsibility for formulating public policies guaranteeing comprehensive care for the displaced persons and protection of their rights.

To this date, RUPD statistics reflect basic variables characterizing displaced groups and the phenomenon of displacement, based exclusively on information regarding registered persons and households. Annual and monthly intervals in tables begin with the date of declaration. The data are tabulated by gender, age, ethnic minority, civil status, occupation, status in the household, place of expulsion and place of reception.

### **Combat against illegal paramilitary groups**

56. Under the first strategy, a total of 30,394 and 11,605 members of subversive groups were, respectively, captured and killed in the period 2000-2006; while, as a result of forceful action by the public security forces, a total of 14,857 and 1,820 self-defence group members were, respectively, captured and killed in the same period<sup>16</sup>.

### **Reintegration of members of organized paramilitary armed Groups**

57. Act No. 975 of 2005 (the Justice and peace act) was adopted in the period under review, with a view to achieving peace on a national scale. The act was the product of almost two years of debates and study conducted in view of the consideration of the bill by Congress, with the participation of various domestic sectors and the international community.

58. The act in question and its implementing regulations are part of the transitional justice system adopted by Colombia and comprising the Constitution and the laws of the Republic, in conformity with international standards.

59. The above provisions aim at facilitating the peace process and the individual and collective reintegration of paramilitary armed group members into civilian life, with guarantees for the victims' rights to truth, justice and redress.

60. The Constitutional Court has verified the constitutionality of the above provisions<sup>17</sup>.

### **Demobilization process**

61. In dismantling armed organizations, progress has been mainly achieved through individual and collective demobilization. In the case of self-defence groups, the peace process has led to the collective demobilization of 38 armed organizations. As a result, 32,267 persons have ceased to participate in illegal activities, including 2,695 individuals on the list drawn up under act No. 975 of 2005.

62. Between 2000 and 2006, 8,388 members of illegal guerrilla groups, particularly FARC and ELN, and 3,562 members of AUC and dissident groups demobilized on an individual basis<sup>18</sup>.

#### **(d) Peace talks**

63. Under Government policy, the national authorities offered all irregular armed groups the possibility of reintegration into civilian life, provided that they cease hostilities. Neither disarmament nor immediate surrender was necessary. The groups, however, were required

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<sup>16</sup> Human Rights Observatory. Presidential Human Rights Programme.

<sup>17</sup> Constitutional Court judgement No. C-370/06. Reporting judges: Dr. Manuel Jose Thorny Cepeda Espinosa, Dr. Jaime Cordova Triviño, Dr. Rodrigo Escobar Gil, Dr. Marco Gerardo Monroy Cabra, Dr. Alvaro Tafur Galvis, Dr. Clara Inés Vargas Hernandez.

<sup>18</sup> Human Rights Observatory. Presidential Human Rights Programme.

to desist from homicides, kidnappings, massacres, extortions and all offences and crimes committed against the population. To ensure full transparency and consistency, the fulfilment of that prerequisite should be verified by nationally and internationally competent and credible bodies. To that end, the Government requested assistance from the United Nations, the Organization of American States (OAS), the Catholic Church, public figures, friendly countries and civil society committees in opening a sincere and constructive dialog.

64. Moreover, peace negotiations with the illegal self-defence groups continued, producing conditions which allowed the demobilization of the majority of those groups with a view to reducing violence in the country, particularly attacks and abusive acts against civilians.

65. The process advanced under direct OAS oversight (in January 2004, the Government signed with OAS an agreement for comprehensive and flexible three-year backing for all peace initiatives and efforts in the country) and with Catholic Church support. OAS support is focuses on the following three areas:

- (a) Monitoring of the ceasefire and the termination of hostilities;
- (b) Disarmament, demobilization and reintegration of members of paramilitary armed groups;
- (c) Conflict-area local initiatives contributing to a culture of peace and the peaceful elimination of violence; and social improvement projects.

66. With regard to guerrilla groups, a process of dialog with ELN is in progress in Cuba. However, attempts to establish contact and discussion with FARC-EP have failed and, despite the Government's efforts, so have initiatives undertaken for the liberation of persons kidnapped and detained by those groups.

#### **D. Overview of torture in Colombia**

67. Colombia has an extensive institutional framework and a policy for protecting the right to life and personal integrity. In fact, the guarantees stipulated in article 178 of the criminal code (under act No. 599 of 2000) are stronger than the provisions of the international instruments, both regional and universal<sup>19</sup>, that have been ratified by Colombia, inasmuch as that article does not specify a torturer's status and therefore allows any person to be prosecuted for the crime of torture. Aggravating circumstances are provided for when the offender is a relative of the victim, a civil servant or an individual acting with a civil servant's consent.

68. In the period under review, the criminal provisions in question became stricter through amendments. For instance, act No. 890 of 2004 raised penalties by one third to a half, lengthening sentences from 96 to 128 months and from 180 to 270 months. Moreover, in judgement No. C-148/05<sup>20</sup>, the Constitutional Court declared the expression "serious", used in

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<sup>19</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Inter-American Convention to Prevent and Punish Torture.

<sup>20</sup> Reporting judge: Dr. Alvaro Tafur Gálvis.

the criminal code to describe pain or suffering, to be non-enforceable in the context of provisions on torture of a protected person (art. 137) and on torture (art. 178).

69. Regarding that type of crime, the Office of the Ombudsman reports that 710 complaints for threats or violation of the right to personal integrity were filed in 2004 through the National Directorate for care and complaints processing, including 281 complaints for cruel, inhuman or degrading treatment and 15 for torture attributed to the National Police, and 98 and 17 complaints for such offence, respectively, attributed to the Armed Forces.

70. According to Office of the Ombudsman information<sup>21</sup> based on the complaints procedure, in 2005 the right to personal integrity ranked third among rights subject to major threats or violations. In that connection, that body registered 613 complaints in 2005, a figure 13.7 per cent lower than in 2004.

71. Of the above 613 complaints, 306 were attributed to members of the National Police, 104 to members of National penitentiary and prison agency (INPEC), 75 to members of the Armed Forces and 23 to individuals acting with the support, consent or tolerance of civil servants.

72. The types of conduct denounced as violating the right to personal integrity were, first, cruel, inhuman or degrading treatment, involved in 582 complaints, and, second, torture, involved in 31 complaints.

73. In 2006<sup>22</sup>, the right to personal integrity ranked fourth among rights subject to major threats or violations, and the Office of the Ombudsman registered 785 complaints (showing a 28 per cent increase over 2005). The types of conduct denounced as infringing that right were, first, cruel, inhuman or degrading treatment, involved in 754 complaints, and, second, torture, involved in 31 complaints.

74. According to the National Directorate for care and complaints processing in the Office of the Ombudsman, the officers allegedly responsible were members of the National Police in 340 cases (15 involving torture and 325 involving cruel, inhuman or degrading punishment), the Armed Forces in 144 cases (13 involving torture and 131 involving cruel, inhuman or degrading punishment) and INPEC in 101 cases involving cruel, inhuman or degrading punishment.

75. Office of the Ombudsman data do not include the activity of organized paramilitary armed groups, to which many cases are attributed. According to the 2003 report of the Presidential Human Rights Programme<sup>23</sup>, which warned about under-reporting with regard to cases ascribable to such groups, in the period January-September 2003 self-defence groups perpetrated the largest proportion (43 per cent) of those offences and were followed by unknown offenders (37.7 per cent) and presumed members of the Armed Forces (12.7 per cent); moreover, guerrilla groups also engage in torture but the relevant records have significant factual gaps.

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<sup>21</sup> Thirteenth Report of the Ombudsman's Office to Congress, January-December 2005.

<sup>22</sup> Fourteenth Report of the Ombudsman's Office to Congress, January-December 2006.

<sup>23</sup> Centre for Investigation and Popular Education (CINEP), journal entitled "*Noche y Niebla*" ("Night and Fog").

## **II. MEASURES ADOPTED OR PROPOSED WITH A VIEW TO COMPLIANCE WITH THE PROVISIONS OF THE CONVENTION (art. 1, 2, 4, 5, 7, 8, 9 and 10)**

76. In the absence of a culture of respect for fundamental rights, violence had been increasing since the mid-1980s and, in 2002, led the country to a problematic situation as a result of human rights violations committed by organized paramilitary armed groups and various criminal organizations.

77. In response to that situation, the Government incorporated in the National Development Plan for 2002-2006 a strategy aimed at preventing, reversing and mitigating the effects of violence on civilians, particularly in connection with such practices as forced displacement, terrorism against the population, use of anti-personnel mines and selective persecution of leaders. Much of that strategy has consisted in activities designed to disseminate and promote human rights and IHL and meet related international commitments.

### **A. Protection of human rights and IHL**

78. Under the Government's Democratic security policy, the resolute reinforcement of the rule of law throughout the national territory is a key mechanism for protecting the population against human rights and IHL violations. There are, nevertheless, vulnerable Colombians who need special care and, therefore, the Government has encouraged the development of programmes for their protection. Targeted projects have been developed with a view to reducing risk factors, mainly by decentralizing the implementation of human rights public policy and through a project for supporting communities at risk.

#### **(a) Protection programme**

79. This programme, unique in the world, was established in 1997 through cooperation between the Government and civil society in order to protect the right to life, integrity, freedom and personal security among certain population categories particularly vulnerable to the activities of paramilitary armed organizations.

80. Protected groups include the following categories:

- (a) Political leaders and activists, particularly of the opposition;
- (b) Leaders and activists of social, civil, communal and professional organizations, trade unions, agricultural organizations and ethnic groups;
- (c) Leaders and activists of human rights NGOs;
- (d) Leaders and witnesses aware of human rights and IHL violations;
- (e) Leaders and members of the *Unión Patriótica* political party and the Communist Party of Colombia (UP-PCC);
- (f) Reporters and agricultural journalists;
- (g) Mayors;
- (h) Councillors;
- (i) Deputies;

- (j) Government officials;
- (k) Displaced persons<sup>24</sup>.

81. Measures that may be taken in order to protect the above groups are either political, involving public recognition of the legitimacy of activities related to human rights defence, and cooperation between the State and civil society through inter-agency coordination meetings at the central, departmental and local levels; or security-related measures, including the provision of armour-plated equipment, mobile protection systems, national and international tickets, bullet-proof vests, communications equipment and support for temporary relocation.

82. Despite the State's fiscal difficulties, the Government has earmarked considerable funds for the Protection programme. That funding has resulted in increased and effective protection for vulnerable people, particularly with regard to their life and integrity. In fiscal years 2002-2007, national budget allocations to the programme totalled COP 280,034,140,000. In the same period, United States Agency for International Development (USAID) contributions to the programme amounted to COP 24,696,976,000.

*In thousand COP*

Fiscal year	National budget allocations	International cooperation USAID contributions *	Total
1999	4,520,000	-	4,520,000
2000	3,605,015	-	3,605,015
2001	17,828,455	2,106,059.42	19,934,514
2002	26,064,000	5,873,420.33	31,937,420
2003	29,000,000	5,012,445.02	34,012,445
2004	30,740,000	4,096,197.56	34,836,198
2005	48,223,300	5,764,859.55	53,988,160
2006	71,289,065	1,843,994.27	73,133,059
2007	74,717,775	2,273,718.51	76,991,494
Total	305,987,610	26,970,694.66	332,958,305

\* Spliced series, based, as from 1980, on the Central Bank exchange rate and, as from December 1991, on the representative market rate of exchange (TRM), in accordance with Resolution No. 15 of 27 November 1991 of the Board of Directors of the Central Bank.

*Source:* Ministry of the Interior and Justice; USAID – Management Sciences for Development (MSD).

83. Regarding the number of programme beneficiaries, it should be note that, in 2006 alone, protection was offered to a total of 6,097 persons, mostly members of UP-PCC.

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<sup>24</sup> In accordance with Constitutional Court judgement No. T-025/04.

**Direct beneficiaries of protection measures, 1999-2006**

Category	Number of beneficiaries							
	1999	2000	2001	2002	2003	2004	2005	2006
UP-PCC	0	77	378	775	423	1,158	1,402	1,648
Trade-unionists	84	375	1,043	1,566	1,424	1,616	1,493	1,504
Councillors	0	0	0	0404	1,120	832	1,195	1,198
NGO members	50	224	537	1,007	1,215	733	554	683
Leaders	43	190	327	699	456	545	552	516
Public figures	0	0	0	26	125	65	45	94
Displaced persons (judgement No. T-025)	-	-	-	-	-	-	59	92
Mayors	0	0	0	212	344	214	87	76
Officials	-	-	-	-	-	-	-	69
Peace agreement beneficiaries	-	-	-	-	-	-	-	68
Journalists	0	14	69	168	71	125	46	64
Deputies	0	0	0	0	43	45	33	58
Witnesses	-	-	-	-	-	-	-	21
Physicians	-	-	-	-	-	-	-	4
Former mayors	0	0	0	0	0	114	41	2
<b>Total</b>	<b>177</b>	<b>880</b>	<b>2,354</b>	<b>4,857</b>	<b>5,221</b>	<b>5,446</b>	<b>5,507</b>	<b>6,097</b>

*Source:* Ministry of the Interior and Justice.

**(b) Communities-at-risk support project**

84. This project is designed to enhance human rights protection for communities at risk, whose needs are addressed by State institutions at the national, regional and local levels. It is also a key component of related action plans for departmental measures, compliance with international commitments, fulfilment of recommendations of the United Nations High Commissioner for Human Rights (UNHCHR) (2004 recommendation No. 3 in particular) and effective care under precautionary or provisional measures taken by protection agencies of the Inter-American System of Human Rights.

85. The above objectives are pursued through the following strategies:

- (a) Enabling communities to identify risks;
- (b) Building the protection and prevention capacity of State bodies at the national, regional and local levels;

- (c) Restoring or improving State-community relations with a view to developing action plans for reducing the vulnerability of the communities;
- (d) Providing technical assistance for the formulation of public policy on prevention and protection in the case of communities at risk.

86. The project focuses on communities located in the following areas: Antioquian and Chocóan Urabá, eastern Antioquia, coffee-growing region, Córdoba, Lower Putumayo, Arauca, southern Tolima, Montes de María, Nariño Pacific Coast, Ocaña and Catatumbo Province, Sierra Nevada of Santa Marta, Colombian Massif and Cauca.

**(c) Early warning system**

87. The early warning system is a mechanism set up by the administration as a key means for preventing displacement and protecting the communities and persons that may be affected by it. It comprises the early warning system of the Ombudsman's Office – which draws up reports on risk and related follow-up notes, based on ongoing monitoring in the various regions – and the Inter-Agency early warning committee (CIAT). CIAT, coordinated by the Ministry of the Interior and Justice and including representatives of the Ministry of Defence and the Presidential Human Rights Programme, is responsible for, *inter alia*, evaluating the reports of the Ombudsman's Office and developing appropriate responses to be implemented by the public security forces and the civilian authorities.

88. The project's role is preventive and its objective consists in anticipating and acting to forestall occurrences entailing human rights and IHL violations.

89. The system was created in response to the need for effective preventive action by Government bodies at the national, departmental and municipal levels through comprehensive measures over and above any steps taken by the public security forces. Accordingly, the Government fully took on the processing of risk reports drawn up by the Ombudsman's Office regarding all aspects of decision-making for preventing occurrences entailing human rights violations at the departmental and municipal levels and for monitoring the enforcement and implementation of such decisions. Once CIAT was set up, responsibility for administrative action on the reports was shared with division and brigade commanders, police department heads and Government unit secretaries or other relevant officials at the regional and municipal levels with a view to agreeing on appropriate mechanisms and instruments for the coordination of subsequent activities.

90. CIAT is expected to meet within 24 hours from the receipt of a risk report – regardless of whether the report has been given alert status – and transmit the information contained therein, complemented by State intelligence units, along with relevant recommendations by an operational committee created to that purpose, to the regional and local authorities. They are expected to hold a security meeting within 48 hours to adopt the necessary political, legal, military, police and social measures. The governor's or mayor's office concerned is expected to report on those measures to the committee within 72 hours after receipt of the alert or risk report. The committee is expected to follow up as appropriate and provide the necessary support and advice.



91. CIAT sends the risk reports, regardless of whether they have been given alert status, to the governors or mayors on a case by case basis. If an alert has been issued, the departmental or municipal authorities are expected to take measures that they consider appropriate. If no alert has been issued, CIAT recommends holding a security meeting for civilian and military authorities to plan activities for eliminating the risk described in the report. Those activities must be reported to the Committee for follow-up.

92. CIAT has progressively and sustainably improved the mechanisms for following up on recommendations and on the measures taken, with a view to forestalling human rights violations and assessing the effectiveness of alerts or reports in terms of the elimination or significant attenuation of the circumstances having occasioned the warning.

93. CIAT recommendations are not limited to military or police action, but also include such issues as humanitarian assistance, preventive police measures, presence of civilian organizations to address the situations described in risk reports and targeted action by such organizations.

94. In that connection, the analysis of issues closely related to the operation and effectiveness of the mechanism and related observations formulated by the Office of the Solicitor General of the Nation (PGN), in its capacity as a democratic monitoring body, are valuable<sup>25</sup>. The reports drawn up by that organization have contributed to identifying areas in which the various agencies must work towards improving the system of rights guarantees.

#### Early warnings issued by CIAT

Early warnings	2002	2003	2004	2005	2006	Total
Issued	12	28	17	12	10	79
Not issued	1	56	73	53	33	216
Grand total	13	84	90	65	43	295
Per cent change		133.33	-39.29	-29.41	-16.67	
Per cent share	92.31	33.33	18.89	18.46	23.26	26.78

*Source:* Presidential Agency for social action and international cooperation (“Social Action”).

#### (d) Programme for the protection of victims and witnesses

95. The mission of the Victim and witness protection unit in the Office of the Public Prosecutor of the Nation is to protect the victims, witnesses, jury members, civil servants and other participants in the criminal process. The unit, according to its operational report on the period 2005-2006 alone, received 599 protection requests, carried out 741 threat or risk

<sup>25</sup> Observations of PGN have focused on the following elements: Timeliness of risk information assessment; disregard for risks considered high by the Office; disregard for risks upgraded from medium to high; updating of alert follow-up; and frequency of monitoring. Analyses are also conducted regarding the role of CIAT (as a coordinating body designed to standardize criteria for dealing with risk situations) and the scope of its conclusions.

assessment missions and protected a monthly average of 411 persons belonging to 109 households. Maximum and medium security measures were taken in, respectively, 9.63 and 28 per cent of those cases, and supervised security measures were taken in the remaining cases; while 508 persons joined and 627 persons left the protection system.

96. In protecting and assisting the above persons, the unit meets their basic needs in housing, nutrition, health, clothing, recreation and preparation for resuming their economic, social and academic activities away from the area where the risk arose.

97. Considerable resources have been allocated to the implementation of the programme. In the period 1 August 2005-31 March 2006 alone, COP 2,390 million were appropriated through the imprest account for earmarked spending and the goods and services provision contract. Of the amounts allocated, 68.3 per cent were used for nutrition, health, recreation, clothing, training and the relocation process; 16.5 per cent for lodging costs and public services in temporary quarters for protected PERSONS; 6.3 per cent for communications and transport; 4.4 per cent for protection centre equipment; and 4.5 per cent for, *inter alia*, maintenance, materials and supplies.

98. The new adversarial system of criminal justice has brought about the following fundamental changes, which affect operational aspects of the programme:

- (a) The protection of victims, witnesses and experts is now a duty of the Office of the Public Prosecutor of the Nation;
- (b) Technology-based evidence, rather than witnesses, has become the main means for elucidating criminal cases. This approach enhances the credibility of investigations and the protection offered to potential witnesses;
- (c) More effective protection is offered to the public prosecutor and investigating team, who, knowing the case first hand, are evidently in danger, in view of the information and aggression capabilities of organized crime groups, which may attempt to incapacitate them. Further protection is sought in view of the public prosecutor's direct knowledge of the relevance and effectiveness of testimony in court;
- (d) Programme experience provides a basis for assessing the investigation and protection requests made by public prosecutors and thus for making effective use of witnesses in the administration of justice;
- (e) A training programme on the new system of criminal proceedings is promoted by the unit and the military training school and made available to programme staff and the judicial authorities.

## **B. Promotion of human rights**

99. In addition to the cultural and training activities discussed in chapter IV of this report, a National plan of action for human rights and IHL was drawn up in the period under review.

**(a) National plan of action for human rights and IHL**

100. In line with commitments under the Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights in 1993, the process of developing a National plan of action for human rights and IHL has been launched with a view to ensuring the full exercise of human rights and humanitarian provisions in Colombia.

101. The National plan in question, which is in the preparation stage, constitutes a guide for State action for human rights and IHL in implementation of the relevant international treaties and key commitments.

102. Discussions held with civil society sectors during the drafting process have led to preliminary agreements regarding the plan's thematic thrusts and the establishment of a unit for coordination between the State and civil society. That unit is expected to enrich the proposals made and provide the process as a whole with the legitimacy necessary for effectiveness and sustainability.

103. The plan aims at highlighting the role of human rights in national development and institutional operation with a view to strengthening the rule of law, promoting statehood over and above the term of office of particular Governments and comprehensively addressing human rights.

104. A Commission for ensuring coordinated preparation of the plan was established on 26 September 2006, with the participation of Government and State bodies, the international community and civil society<sup>26</sup>.

105. The National plan of action for human rights and IHL is aimed at the following objectives:

- (a) Providing a guide for concerted action by the State in collaboration with civil society organizations with regard to human rights and IHL;
- (b) Promoting cooperation on designing and implementing programmes and activities between Government and State bodies, NGOs, social organizations, professional groups and other civil society sectors;
- (c) Promoting the implementation of international human rights and IHL treaties;
- (d) Highlighting the role of human rights in national development and institutional operation with a view to strengthening the rule of law.

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<sup>26</sup> Government and State bodies: Ministries of the Interior and Justice, National Defence, Foreign Relations and Social Protection, Office of the High Commissioner for Peace, Presidential Human rights and IHL Programme; Office of the Public Prosecutor of the Nation; PGN; and Office of the Ombudsman. – London/Cartagena process bodies: Colombian Confederation of NGOs, National Trade-Union Council, Colombian Federation of Municipalities, National Council of Planning, National “Pastoral Social” Secretariat; Restrepo Barco Foundation; Colombia-Europe-United States Coordination for Human Rights; Plataforma DESC; and the social sectors.

106. The plan has been designed as a State instrument, with a gender and ethnic perspective based on a comprehensive perception of human rights and the interdependence of civil, political, economic, social and cultural rights, in the light of the country's priorities and in a context of inter-agency coordination and cooperation with civil society.

107. The plan has the following thematic structure:

- (a) Thematic thrust 1: Promoting a human rights culture;
- (b) Thematic thrust 2: Guaranteeing the personal rights to the life, freedom and integrity;
- (c) Thematic thrust 3: Combating discrimination and promoting the recognition of identity;
- (d) Thematic thrust 4: Promoting the rights perspective in public policies on education, health, housing and work;
- (e) Thematic thrust 5: Strengthening the administration of justice and the combat against impunity.

### **C. Combating impunity for human rights and IHL violators**

#### **(a) Policy foundations and achievements**

108. In July 2003, the Government signed with the Government of the Netherlands an international cooperation agreement entitled “*Bases for a strategy for inter-agency management and coordination of the combat against impunity for human rights and IHL violations*”. This agreement, which has so far been implemented, aims at the following two objectives: (i) formulating and implementing a policy for combating impunity; (ii) encouraging and following up on a number of trials for human rights and IHL violations.

109. Accordingly, based on inter-agency collaboration, cooperation with Netherlands and advice by the Office of the High Commissioner for Human Rights (OHCHR) in Colombia, a public policy has been formulated against impunity in cases of human rights and IHL violations with a view to ensuring that, on the basis of a comprehensive conception of the State, every organization involved in investigating, punishing and providing redress for such violations develops a set of activities aimed at strengthening the rule of law.

110. The policy, formally stated in CONPES<sup>27</sup> document No. 3411 of 2006, is based on the premise that Colombia should take comprehensive short-, medium- and long-term measures against impunity in cases of human rights and IHL violations, regardless of particular circumstances or changes to the underlying determining factors. This implies strengthening certain components of the “Policy to counter impunity in cases of human rights violations and breaches of international humanitarian law by strengthening the Colombian State’s capacity to investigate, adjudicate and punish” in order to ensure the implementation of its general and specific objectives.

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<sup>27</sup> National Council for Economic and Social Policy.

111. The policy essentially aims at overcoming obstacles to the elucidation of human rights and IHL violations and ensuring that those responsible are punished and that the victims obtain redress. This calls for strengthening the existing organizations, practices and procedures detecting human rights violations and breaches of IHL, resolving cases, punishing the perpetrators and compensating the victims. It further calls for improving the legal framework and harmonizing its various components.

112. In the framework of the project for combating impunity, approved in June 2003 and used as a basis for the formulation of public policy, significant progress has made with regard to training civil servants in charge of the investigation phase and encouraging the treatment of human rights violation, selecting the cases those considered most critical in consultation with the OHCHR bureau in Colombia. Other measures have included the creation of a special team of detectives focusing exclusively on the enforcement of pending arrest orders in relation to the cases in question.

113. Moreover, the Special action committee approved the signature of a cooperation protocol with the Armed Forces and the National Police (Ministry of Defence) with a view to protecting and guaranteeing the security of fact-finding commissions sent by investigating bodies on cases selected by that committee.

114. Furthermore, activities have been launched for strengthening the bodies in charge of investigation and proceedings, particularly the human rights and IHL units of the Office of the Public Prosecutor of the Nation and of PGN and the Higher Council of the Judicature, and for institution building in relation to the criminal courts of the relevant specialized circuit. Assessment surveys have been carried out with regard to the human rights and IHL violations information systems used by the bodies concerned. The objective has been to design a system providing access to comprehensive up-to-date information on investigations into human rights and IHL violations.

115. Thanks to the work of the Special action committee since 2003, progress has been made on more than 100 investigations into such violations and offences, as the results indicate. In fact, between October 2003 and December 2005, the human rights and IHL unit of the Office of the Public Prosecutor of the Nation carried out 159 individual and 10 regional missions, which led to action on 103 of the 134 cases selected.

116. As part of the work of relevant commissions, action was taken on 384 non-selected cases. Of the total number of 114 persons condemned, 108 were AUC members, four belonged to the Armed Forces, one was a non-political offender and one was a FARC member. In total, 307 arrests were made in connection with the violations in question.

117. PGN has been responsible for initiating disciplinary proceedings in 70 cases under the project for combating impunity. Of those cases, 12 remained without effect.

118. In relation to 59 instances in which proceedings were planned by PGN between January 2003 and April 2006, 33 missions were organized, leading to the processing of 26 human rights and IHL violation cases, including 12 cases involving disciplinary investigations and 14 cases involving criminal investigations by special units of the Office of the Attorney General.

119. Of the above cases, 37 per cent have been tried, 57 per cent have been classified and 5 per cent are in progress.

**(b) New adversarial system of criminal justice**

120. The adoption in 2004 of the new adversarial system of criminal justice<sup>28</sup> by the Congress has been crucial to combating impunity by strengthening investigation and judicial work and accelerating the proceedings through oral hearings in a framework more respectful of rights, in accordance with spirit of the Constitution and such international instruments as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the American Convention on Human Rights.

121. As a result, the inquisitorial model, which had provided the investigator with judicial powers allowing him/her to make decisions regarding the fundamental rights of the persons related to the proceedings, has been abandoned.

122. The adversarial system clearly distinguishes between different responsibilities during the various phases of the process. Accordingly, the preliminary inquest and the investigation come under the jurisdiction of the Office of the Public Prosecutor of the Nation, while the trial comes under the jurisdiction of the court which hears the case.

123. In the “investigation phase”, the Office of the Public Prosecutor of the Nation and the criminal police seek material evidence and legally obtained information, which may allow them to determine a person's responsibility in an offence. Based on such evidence and information, the public prosecutor brings charges before the supervisory judge and the participation of the defence in the criminal proceedings begins.

124. Matters related to actions limiting or restricting fundamental rights come under the jurisdiction of supervisory judges<sup>29</sup>, who are responsible for checking whether the legal steps taken by the public prosecutor, which affect the rights in question, such as requests for arrest orders, or orders and decisions for conducting raids or intercepting communications, meet due process requirements.

125. With a view to guaranteeing full and equal access to the administration of justice and to the decisions adopted by any public authority, the National Public Defender System, organized, run and supervised by the Office of the Ombudsman, provides technical defence assistance to persons of limited financial means or who are otherwise impeded from hiring a lawyer.

126. The responsibility of the Solicitor General of the Nation to defend society naturally implies his/her representation in the criminal procedure in view of the public damage occasioned by the offence. The Attorney General's Office acts directly in the criminal procedure through the representatives of the Solicitor General of the Nation as a “special agency”, once the need for

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<sup>28</sup> Act No. 906 of 2004.

<sup>29</sup> Other than the judges hearing the cases, who are responsible for the conduct of court proceedings.

intervention is established, since, under the new adversarial system, such intervention is conditional and not a requirement for the validity of the proceedings.

127. In sum, the adversarial system of criminal justice not only is aimed at guaranteeing the rights of participants by ensuring a better exercise of defence, participation of the victims and examination of evidence in the presence of all parties in a public oral hearing, but also constitutes a model for investigation and court proceedings that allows combating impunity faster and more effectively.

128. In order to train the civil servants in charge of the implementation of the adversarial system, whose gradual implementation started on 1 January 2005<sup>30</sup>, special academic programmes for public prosecutors, investigators, experts and judicial technicians began to be organized in 2004 in view of these professionals' new duties. Through regular and refresher training workshops, the Office of the Public Prosecutor of the Nation and other related bodies have sought to upgrade the profile of criminal police staff in the country.

129. The training has focused on encouraging a culture of oral hearings within the judicial authorities and on building abilities and skills in the adversarial system in relation to, *inter alia*, judicial management, interrogation techniques, counter-interrogation, case theory, evidence identification, investigator/witness matters and criminal police. Moreover, the training emphasizes the personal traits and values that should characterize those performing the duties in question, such as commitment, impartiality, objectivity, honesty and the ability to respond effectively, efficiently and promptly to the requirements of the adversarial system of criminal justice.

#### **D. Measures for the promotion of IHL**

##### **(a) Action against anti-personnel mines**

130. In order to deal comprehensively with the scourge of anti-personnel mines, which, since 1990, have claimed 5,003 military and civilian victims, and in accordance with IHL and the international obligations assumed through the ratification of Additional Protocol II to the Geneva Conventions and the Ottawa Convention, the Government, through the Anti-personnel Mines Observatory of the Presidential Human rights and IHL Programme, drew up a State policy for the implementation of a National strategic plan for comprehensive action against anti-personnel mines (MAP) and abandoned unexploded ammunition (MASE). The plan was drawn up and agreed with the ethnic communities, civil society, NGOs and the international community. To that end, activities were undertaken in the following four areas: Institution building, comprehensive care for the population, compliance with the Ottawa Convention and communication strategy.

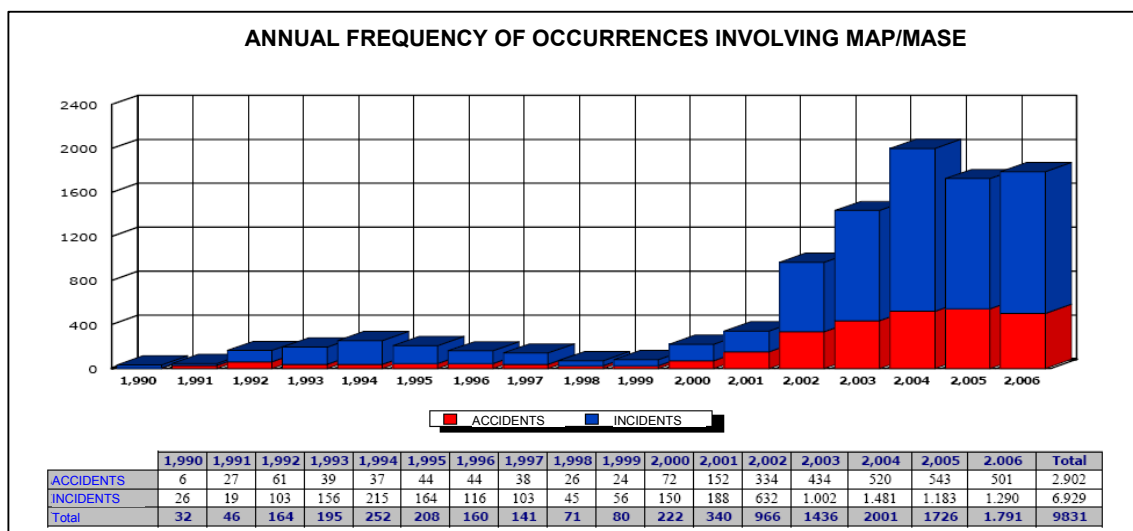
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<sup>30</sup> Implementation of the new criminal procedural system began on 1 January 2005 in the judicial districts of Bogotá, Armenia, Manizales and Pereira. In 2006, implementation began in Cali, Medellín, Tunja and Bucaramanga. The process will be completed for the country as a whole by 31 December 2008.

131. In the period 2002-2006, the objective of destroying 100 per cent of the mines (18,922 in number) in the Armed Forces arsenal was fully attained. Moreover, support was provided for the Anti-personnel Mines Observatory, through which 27 action plans were drawn up and launched in the areas of care for those affected and prevention of new occurrences. In that framework, training projects were launched, with international cooperation assistance, on accident prevention, rights promotion, civil society and training for civil servants in, *inter alia*, handling and destroying such devices.

132. With regard to comprehensive care for the population, significant activities were undertaken to the benefit of victims, with a view to, *inter alia*, providing care in relation to MAP/MASE at the national and departmental levels, establishing standards for care for the disabled, developing methods for care to victims and assessment of their situation and devising a project for the social and economic rehabilitation of victims.

133. Despite the efforts made, the incidence of the phenomenon in question has unfortunately increased, particularly among members of the Armed Forces, as a result of stepped-up pressure by the public security forces on organized paramilitary armed groups, which use such devices.



Source: Anti-personnel Mines Observatory of the Presidential Human rights and IHL Programme.

134. Moreover, the Presidential Human Rights and IHL Programme has included work on an information system for compiling statistics on the frequency and type of MAP and MASE events for the Anti-personnel Mines Observatory.

135. The statistics of the Observatory were last updated on 1 December 2006 and are published at <[www.derechoshumanos.gov.co](http://www.derechoshumanos.gov.co)> under the following parameters:

- (a) Frequency of events;
- (b) Annual frequency;
- (c) Departmental frequency;



- (d) Departmental map of events;
- (e) Municipal frequency of events;
- (f) Municipal map of events;
- (g) Departmental frequency of victims;
- (h) Municipal frequency of victims;
- (i) Departmental map of victims;
- (j) Municipal map of victims;
- (k) Victims by status;
- (l) Victims by state;
- (m) Victims by age, sex and area;
- (n) Victims by activity at the time of the accident.

**(b) Protection of the medical profession**

136. In the period 2002-2006, on the basis of discussion with civil society organizations represented by health sector associations, governmental organizations and some representatives of the academic community, the principles of protection and respect for the medical profession have been incorporated into public policies on human rights and IHL.

137. In that context, a Permanent working group on the medical profession has been set up. It comprises, *inter alia*, relevant State agencies, the Ministry of the Interior and Justice, the Ministry for Social Protection, the National Forensic Medicine Institute, the Presidential Human Rights and IHL Programme, regional secretariats for health, the Hospital workers' association (ANTHOC), the Institute for Peace Studies, the Colombian Medical Association, the Colombian Association of Faculties of Nursing, the International Red Cross Committee, the Colombian Red Cross, and Doctors Without Borders.

138. In that framework, work has been done on such lines of action as training in the application of IHL to the medical profession for military and health personnel and the civilian population in respect of the relevant rights, duties, obligations and rules protecting the exercise of the medical profession; support for the medical profession as a whole, which, in the course of its activities or in the development of its social action, has been the victim of attacks by organized paramilitary armed groups; establishment of the Medical Profession Observatory; creation of medical staff protection, care and stabilization mechanisms and encouragement and pursuit of related research; generalization of the use of the symbol signifying IHL protection for various goods; issuance, and training in the proper use, of medical and health staff cards; and use of the media to raise awareness of the role of the medical profession, health workers and health infrastructure.

139. In the area of reducing the effects of the violence exercised by organized paramilitary armed groups on health workers, facilities and means of transport, the State, civil society and health sector jointly face a number of challenges, including the following: Ensuring that the armed groups meet IHL standards; training health workers in the rules and principles which protect medical work; and encouraging an attitude of rejection towards offences committed against the medical profession.

**(c) Care for displaced population groups**

140. With regard to forced displacement, a phenomenon that gave the Committee cause for concern during the examination of Colombia's third periodic report<sup>31</sup>, the Government and the State as a whole have made a significant effort in implementing and effectively coordinating the policy for providing attention to the population concerned.

141. One of the main measures taken in the area of inter-agency coordination has been the creation, in May 2004, of the Coordination and comprehensive action centre of<sup>32</sup>, managed by the Presidential Agency for social action and international cooperation (formerly "Social solidarity network") and serving to carry out activities ensuring social and economic development in high-priority parts of the territory, where population expulsion has taken place and which have been recovered by the public security forces under the afore-mentioned Defence and democratic security policy. Although, admittedly, in some of those areas there is no substantial guarantee for citizens rights and the rule of law, nevertheless the effective presence there of a State which, as a whole, is coordinated has led to progress in terms of prevention, emergency humanitarian assistance and social and economic rehabilitation among population groups largely exposed to the risk of displacement.

142. The entry into force of the new National plan for comprehensive assistance to displaced population groups under Decree No. 250 of 200<sup>33</sup> has been a major contribution to the

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<sup>31</sup> That report makes reference to "the numerous forced internal displacements of population groups as a result of armed conflict and insecurity in the areas in which they live, taking into account the continuing absence in those areas of State structures for observing and ensuring compliance with the law".

<sup>32</sup> The centre comprises, on a permanent basis, 12 organizations which are members of the National system for comprehensive assistance to violently displaced persons (SNAIPD) and more than 20 bodies ensuring liaison between the national and territorial levels. At the international level, it has been recognized by, inter alia, USAID.

<sup>33</sup> Actually, the State policy rules and instruments developed for addressing the problems of displacement were introduced prior to the promulgation of Act No. 387 of 1997, with the adoption of the following CONPES documents: **No. 2804 of 1995**, which defined programmes for reducing the effects of displacement by promoting comprehensive sustainable development in the areas of expulsion and reception and introduced strategies for comprehensive assistance to displaced persons in the framework of voluntary return or resettlement; **No. 2924 of 1997**, which created SNAIPD and formulated a National plan for comprehensive assistance to the displaced population; **No. 3057 of 1999**, which proposed an action plan for improving the mechanisms of assistance to the displaced population in the various stages and provided for reorganizing and

establishment of the Government's policy for prevention and care in connection with forced internal displacements. Through care-oriented phases (prevention and protection, emergency humanitarian assistance and social and economic stabilization), the plan aims at an appropriate response to the needs of households victims of such displacement, according to guiding principles and intervention rules constituting a mission-based approach to the processes initiated under the plan.

143. As part of protection measures of a preventive character, the above decree provides for border area activities aimed at reducing the displacement of the population to neighbouring countries, such as training in averting anti-personnel mine accidents. Moreover, special protection activities are carried out for the benefit of communities at risk in relation to the right to life, physical integrity, freedom, free movement and dignity, including full avoidance of cruel, humiliating, degrading, cruel and arbitrary treatment. Such activities are led by the Office of the Vice-President of the Republic, the Ministry of National defence, the Ministry of the Interior and Justice, and Social Action with the participation of committees for assistance to displaced persons.

144. A key element of the strategic action lines in the prevention and protection phase consists in the consolidation of the early warning system by the Office of the Ombudsman. The system seeks to analyze risk in the regions concerned and to facilitate rapid and effective activities against factors likely to occasion displacement.

145. The bodies participating in SNAIPD<sup>34</sup> have achieved significant progress and success in ensuring the adoption of corrective measures for a progressive and sustainable change of the situation, which was declared unconstitutional by the Constitutional Court in judgement No. T-025 of 2004 as a result of the assessment of the constitutionality of 108 writs of protection, filed by 1,150 households living under conditions of forced displacement. The writs, contained in record No. T-653010, requested the public agencies responsible to ensure the protection of the rights of the persons concerned and to provide effective assistance.

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streamlining the institutional framework and strengthening information systems on displacement; **No. 3115 of 2001**, which provided for a sectoral mechanism for budget allocation and recommended readjusting the systems and procedures facilitating the displaced population's access to the programmes and institutions comprised in SNAIPD. That framework was crucial to establishing the rights of that population, which were eventually implemented, in their current form, in 2005 through the National plan for comprehensive assistance (Decree No. 250 of 2005), CONPES No. 3400 of 2005.

<sup>34</sup> The National system for comprehensive assistance to violently displaced persons (SNAIPD) was set up under act No. 387 of 1997, establishing measures for the prevention of forced displacement and for assistance, protection and social and economic rehabilitation of persons violently displaced within the country; and was regulated by Decree No. 2569 of 12 December 2000.

146. In the above judgement, the Constitutional Court ordered the National Council for comprehensive assistance to violently displaced persons (CNAIPD)<sup>35</sup> to adopt decisions ensuring consistency between the legal instruments governing State action in respect of displaced persons (international conventions, the Constitution, laws and decrees) and the resources actually allocated to ensuring effective enjoyment of the rights of such persons; and to build the institutional capacity required for timely and effective response to the needs of displaced persons with a view to ending their unconstitutional condition.

147. The above judgement of the Constitutional Court:

- (a) Analyzes the jurisprudence on the rights of displaced persons, reiterates and interprets the main constitutional rights and governing principles regarding internal displacements, points out the gravity of the situation of the displaced and the persistent violation of their rights and describes the orders issued the Court for the protection of those rights;
- (b) Reviews the State's response to the phenomenon of displacement and the main results and problems related to the relevant policy and its components;
- (c) Addresses the inadequacy of available resources and its impact on the development of the relevant public policy;
- (d) States findings on whether actions and omissions constitute an unconstitutional situation;
- (e) Specifies the constitutional obligations of the authorities to provide appropriate benefits;
- (f) Specifies the minimum protection levels that must be guaranteed;
- (g) Orders the measures to be taken by authorities in order to guarantee the rights of the population.

148. Moreover, it establishes the legitimacy of the initiation of protection proceedings by associations of displaced persons on behalf of their members, even where the latter have not specifically authorized the associations to that effect and the representative is not in possession of a power of attorney.

149. The Constitutional Court considers that there has been violation of the rights – both of those involved in the case under review concerning the collectively filed writs of protection and of the rest of the displaced population – to a life in dignity, personal integrity, equality, petition,

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<sup>35</sup> Act No. 387 of 1997, article 6, on the National Council for comprehensive assistance to violently displaced persons, is worded as follows: “The National Council for comprehensive assistance to violently displaced persons is hereby created as a consultative and advisory body, entrusted with formulating policy and ensuring budgetary allocations for the programmes carried out by the organizations responsible for the operation of the National system for comprehensive assistance to violently displaced persons”.

work, health, social security, education, minimum living wage and special protection of the life of children, the elderly and women heads of household.

150. Accordingly, the Constitutional Court stipulates that the State must guarantee to the displaced population the following minimum rights<sup>36</sup>:

- (a) Right to life;
- (b) Right to dignity and physical, psychological and moral integrity;
- (c) Right to family and family unity, especially in the case of families comprising persons particularly protected by the Constitution, such as children, older people, disabled persons and women heads of household;
- (d) Right to a minimum subsistence, with guaranteed access to essential foodstuffs, drinking water, basic accommodation and housing, appropriate clothing, and special medical and health services. Women must participate in planning and receiving these benefits;
- (e) Right to health;
- (f) Right to protection against discriminatory practices resulting from displacement;
- (g) Right to education up to age 15;
- (h) Right to social and economic backing towards becoming self-supporting;
- (i) Right to repatriation and resettlement;

151. Although the situation declared unconstitutional in judgement No. T-025 of 2004 and subsequent court orders has admittedly not yet been eliminated, a review of the measures taken shows advancement, acknowledged by the Constitutional Court in the hearing on indicators regarding the effective enjoyment of rights, held on 1 March 2007. In fact, the Government has made significant efforts in the area of inter-agency coordination, and progress on the implementation and adoption of measures and decisions for prevention and attention in the interest of internally displaced persons. Such activities, aimed at redressing the situation in a permanent, stable and sustainable manner, have brought about in particular the following achievements:

- (a) Greater coverage has been attained with respect to the registration and characterization of the displaced population and, as a result, there is better access

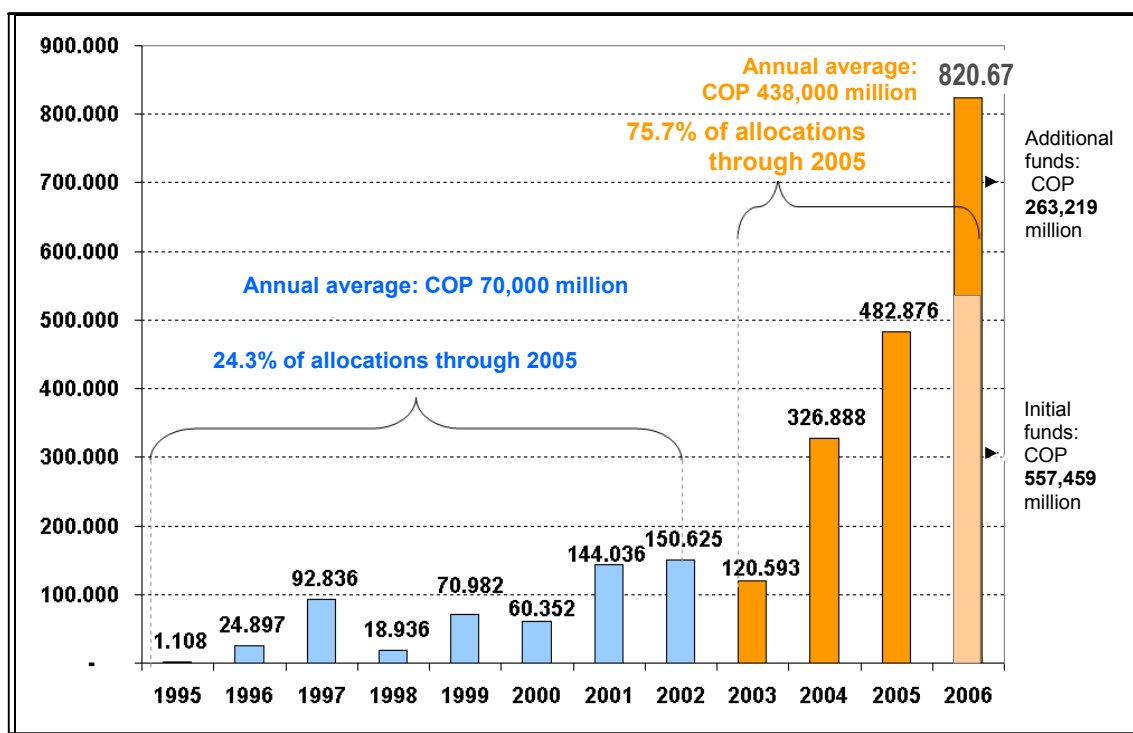
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<sup>36</sup> The above information has been obtained and adapted from the following two sources: Report on progress regarding displacement No. 20073340081271 of 11 April 2007, prepared for the Minister of Foreign Affairs by the Director for social programmes of Social Action; and the Executive report assessing the policy of assistance to violently displaced persons in Colombia, submitted to the Constitutional Court on 11 September 2006 pursuant to judgement No. T-025 of 2004 and court order No. 218 of 2006.

to benefits under the assistance and protection strategies and programmes implemented by the Government in favour of all such population groups towards reducing under-reporting, alleviating the plight of displaced persons, restoring their rights and seeking effective enjoyment of those rights. Although much remains to be done, the State is firmly and seriously committed to averting and counteracting forced internal displacement.

- (b) Budget allocations and execution in favour of the displaced population have been enhanced. In fact, funds earmarked for the population in question amounted to approximately COP 600,000 million in the period 1995-2002 and to COP 1.9 trillion in the period 2002-2006, while COP 4.1 trillion have been appropriated for the next quadriennium (2007-2010) in accordance with CONPES document No. 3400 of 2006, entitled “Prioritized budget objectives for assistance to violently displaced persons in Colombia”<sup>37</sup>. In other words, current expenditure in this area is twice as large as in the previous decade.

### The budget for assistance to displaced persons



Source: DNP – Directorate for Justice and Security (DJS) – Department of Public Expenditure and Finance (DIFP).

<sup>37</sup> Executive report assessing the policy of assistance to violently displaced persons in Colombia, submitted to the Constitutional Court on 13 September 2006 in accordance with judgement No. T-025 of 2004 and court order No. 218 of 2006.

152. Moreover, the following advances should be highlighted with regard to the period 2002-2006:

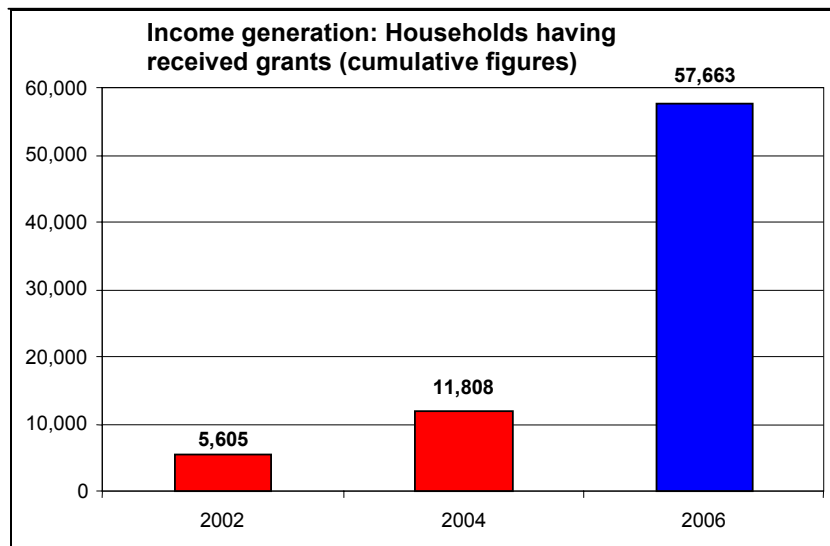
- (a) As beneficiaries under the “Families in Action” programme, 121,191 displaced families have had access to targeted subsidies for health (for children up to 7 years of age) and education (for children aged 7 to 17). As of 31 March 2006, 130,522 families were registered with the programme and the Government's target for 2007 is 300,000 families;
- (b) The number of Guidance and assistance units for displaced persons (UAOs) in the country increased from 13 in early 2002 to 34 in late 2006;
- (c) Emergency humanitarian assistance improved substantially, absorbing the backlog and significantly reducing waiting time in 95 per cent of the cases. In the last four years, such assistance has been provided to 177,869 families. Between 2003 and April 2006, 25,479,800 rations were distributed through the Protracted Relief and Recovery Operation<sup>38</sup>, benefiting 595,109 persons at a cost of COP 41,109,842. Between 2002 and 2006, community kitchens distributed 7,555,633 rations to 58,423 displaced persons;
- (d) Under an agreement with the Batuta Foundation, Social Action contributed COP 20,000 billion, a significant amount, exceeding the 2005 target of providing musical training courses to 20,000 children and setting a 2006 target close to 25,000 children<sup>39</sup>;
- (e) Up to 31 December 2006, a total of 7,491 households were relocated or supported in their (voluntary) return under food security projects, through the Food Security Network Programme (RESA), which encourages activities involving food production for personal consumption and strengthening rural property-based economic activity. In the period 2002-2006, collective and individual support was provided in the departments of Antioquia, Bolivar, Calda, Caquetá, Cauca, Cesar, Choco, Guaviare, Magdalena, Meta, Nariño, Risaralda, Santander and Sucre;
- (f) With regard to income generation, 70,072 households had at least one member who was, as of 31 March 2007, a beneficiary of income generation programmes or production projects. The range of institutional income generation initiatives comprises Social Action programmes, economic assistance programmes, agreements with territorial bodies, the peace and development programme (production projects),

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<sup>38</sup> The operation in question, which includes the provision of food assistance for the population and training in production projects, is part of the package of social programmes carried out by Social Action, a partnership between the Colombian Institute for Family Welfare (ICBF) and the United Nations World Food Programme (WFP).

<sup>39</sup> This activity consists in a programme for psychosocial support through musical training for children living in displacement conditions.

programmes carried out by the Joint Technical Unit (UTeC)<sup>40</sup> and programmes funded through international cooperation;



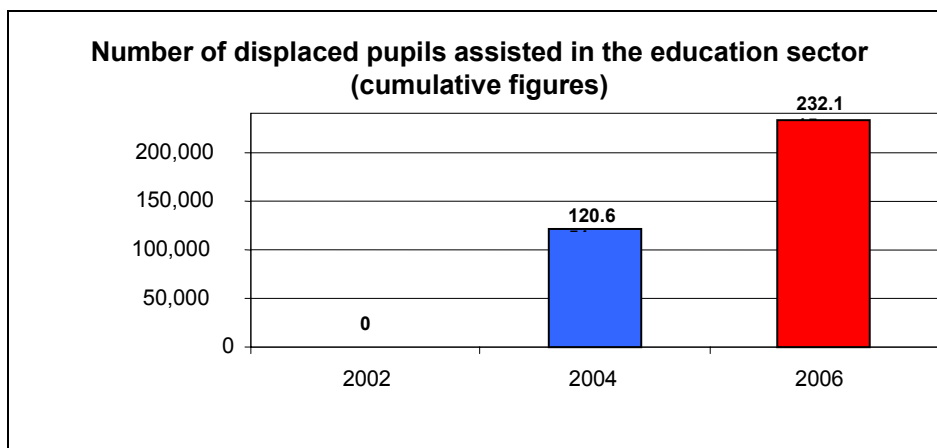
*Source:* Social Action, Area of social and economic stabilization.

- (g) The National Training Service (SENA) and Social Action have developed occupational counselling initiatives for skills enhancement with a view to enabling the persons concerned to enter the labour market or to develop a productive activity for income generation. Such counselling has been offered to 234,132 persons. The income generating activities thereby developed are accessible to displaced persons;
- (h) According to a report of the Ministry of Education, budget execution in the education sector in the period 2002-2006 increased from COP 118,289 million in 2004 to COP 203,205 million in 2006. As a result, school enrolment increased from 180,126 children and adolescents in 2005 to 232,115 in 2006;

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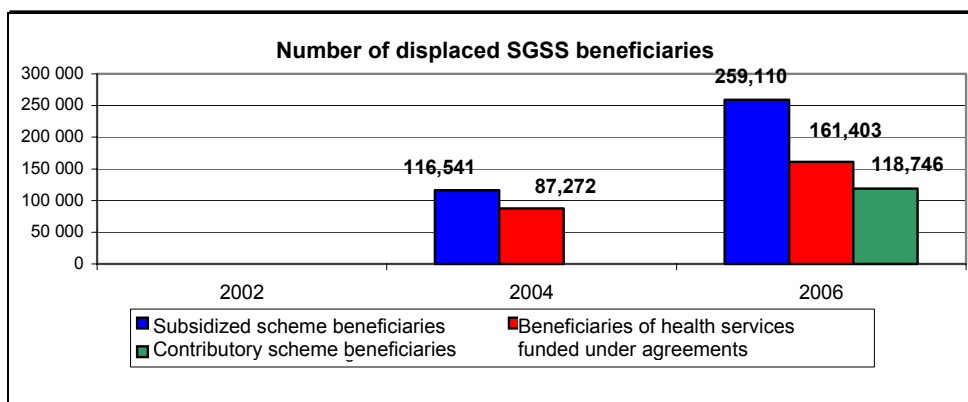
<sup>40</sup> UTeC was set up under an agreement between Social Action and the Office of the United Nations High Commissioner for the Refugees (UNHCR) as an advisory and technical support body designed to build the response capacity of SNAIPD, coordinated by Social Action.





Source: Ministry of Education.

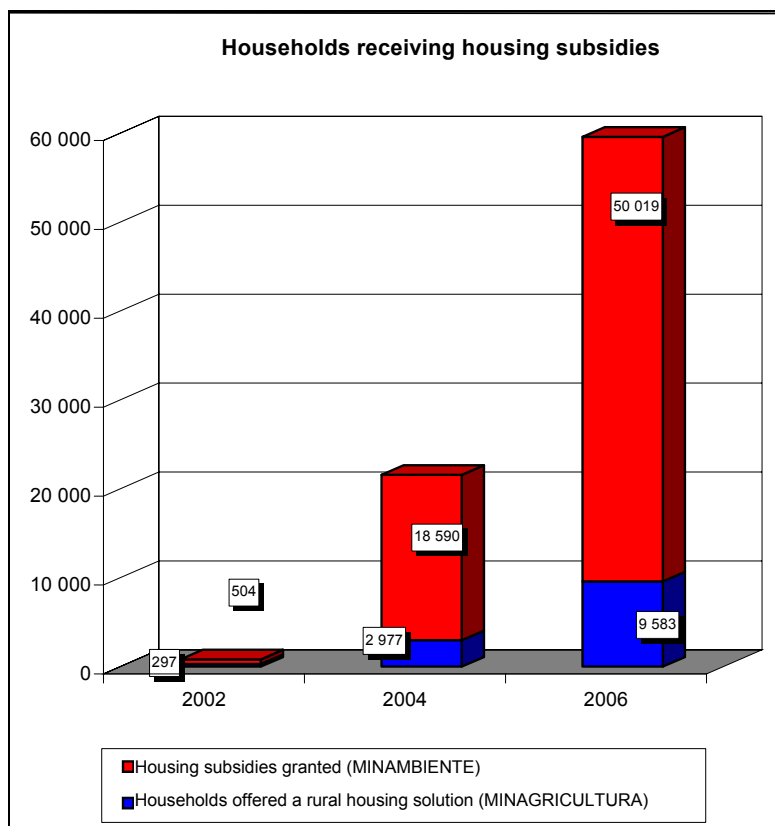
- (i) With regard to Social Security health benefits, the Ministry of Social Protection reported, as of 31 December 2006, 670,264 displaced beneficiaries under the General Health and Social Security System (SGSS);



Source: Ministry of Social Protection.

- (j) In the area of housing, more than 55,000 urban subsidies and more than 9,500 rural subsidies were granted in the period 2002-2007. In the period 2002-2004, 17,330 rural and urban housing subsidies were granted. In the period between 2005 and the current 2007 date, that number increased by 29,792 additional subsidies. Of the 65,347 housing subsidies granted as of 31 March 2007, 18,226 were funded from other sources<sup>41</sup>.

<sup>41</sup> Data reported by the Social Action programmes and the other public organizations participating in SNAIPD to Social Action as SNAIPD coordinator under decree No. 2467 of 2005 “establishing the merger of the Colombian International Cooperation Agency and the Social Solidarity Network (RSS), and containing other provisions” and the afore-mentioned



Source: Ministry of the Environment and Housing; Ministry of Agriculture.

153. SNAIPD has issued a Guideline for differentiated care, underscoring the gender factor. The purpose of the guideline is to promote differentiation based on the gender perspective in policies, programmes and projects aimed at improving the conditions faced by displaced persons with regard to prevention, protection, emergency humanitarian assistance and social and economic stabilization. This type of care, incorporated into public policy, will be based on interrelations between gender, ethnic, age, territorial and disability issues; and on providing psychosocial assistance conducive to the process of adaptation and integration of displaced women into a new environment. In fact, many women are victims of sexual abuse, forced recruitment, forced prostitution, early pregnancy, loss of loved persons and broken family and cultural ties.

154. The work of PGN is crucial to ensuring the enforcement of the orders contained in the afore-mentioned decision of the Constitutional Court.

155. Moreover, as part of its preventive role in the area of human rights, PGN has designed and developed public policy for monitoring forced displacement<sup>42</sup>. That conceptual framework

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decree No. 250 of 2005. Social Action Management Report, 2002-2006, “Achievements and 2006-2010 Road Map”.

<sup>42</sup> Resolution No. 394 of 2004 of the Solicitor General of the Nation “establishing the basis for PGN public policy on preventive assistance in view of forced displacement, and a model for

enables the civil servants of that body to work with greater clarity and to improve follow-up and preventive control measures.

156. Furthermore, in view of its role of preventive control agency, PGN designed and implemented a model – based on the principle of due process – for monitoring and evaluation in relation to SNAIPD agencies. The model consists in measuring, through indicators, the performance of every agency in fulfilling its obligations. A systematic application of the model in software form is being launched in 2007. That software facilitates timely access to the relevant information. According to Constitutional Court document No. 027 of 2007, part of the follow-up on judgement No. T-025, “PGN has developed and implemented a comprehensive system of indicators enabling it to carry out its inter-agency mission”.

157. The use of the above model has allowed PGN to verify whether the rights of displaced persons are actually exercised and to draw up follow-up reports regarding the above judgement.

158. In sum, the Constitutional Court and PGN have played a crucial role in providing assistance with regard to displacement, and the Government has made concerted efforts to address that problem in view of the mandates and observations of those bodies.

#### **E. Progress in respect of the penitentiary and prison System – Treatment of detainees**

##### **(a) Overcrowding**

159. The country's penitentiary and prison policy reflects concern over the phenomenon of overcrowding in detention centres. Accordingly, the Government has launched a programme for the enlargement of various such centres, based on CONPES documents No. 3277 of 2004 and No. 3412 of 2006.

160. The relevant strategy consists in increasing the number of detainee places at the national level by 24,887 in 2008, including 3,287 places obtained by enlarging 12 centres and 21,600 places created through the construction of 11 new penitentiaries and prisons.

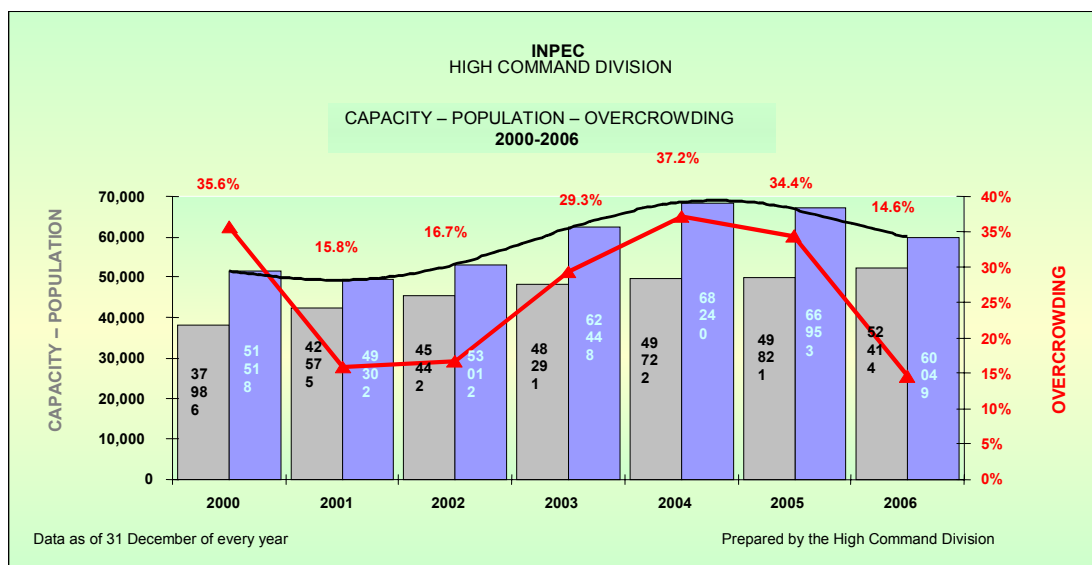
161. In the period under review, the increase of places reversed an upward trend in overcrowding, which began in 2002 and peaked at 37.2 per cent in 2004. According to the National Penitentiary and Prison Agency (INPEC), that rate decreased to 14.6 per cent in 2006.

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monitoring and evaluation in relation to SNAIPD agencies and all instruments that are part of that system”.

Places created in detention centres, 2002-2006		
Places generated through new construction		
Establishment	Commencement of operation	Capacity
High security prison of Popayán	2002	1,556
High and medium security prison of Cóbbita	2002	1,600
High and medium security prison of Girón	2003	1,486
High and medium security prison of Dorada	2003	1,524
Total, new construction		6,166
Places generated through centre enlargement		
Penitentiary and prison of Apartadó	2006	118
Prison of Popayán	Pendiente	1,000
Women's detention centre of Buen Pastor	2006	231
Penitentiary and prison of Pitalito	2006	400
Penitentiary and prison of La Plata	2006	200
Penitentiary and prison of Girardot	2006	176
Penitentiary and prison of Picota	2006	100
Penitentiary and prison of Duitama	2006	64
Penitentiary and prison of Sogamoso	2006	96
Penitentiary and prison of Sincelejo	2006	200
Women's detention centre of Pereira	2006	100
Penitentiary and prison of Calarcá	2006	354
Penitentiary and prison of Chiquinquirá	2006	57
Total, centre enlargement		<b>3,096</b>
<b>Total number of places generated, 2002-2006</b>		<b>9,262</b>

Source: INPEC.



Source: INPEC.

162. Despite such progress, PGN reports indicate a skewed situation with regard to overcrowding, which particularly besets some detention centres located in department capitals. Accordingly, the Government is committed to seeking effective solutions to that problem under the relevant public policy, as outlined above.

163. The Office of the Ombudsman monitors the issue of overcrowding through reports and resolutions with a view to ensuring that the human rights of the country's detainees are effectively exercised<sup>43</sup>.

164. In sum, within the framework of a social State governed by the rule of law, PGN, the Office of the Ombudsman, the Constitutional Court (cf. section II. E (f)) and the Government play a crucial role in implementing alternative policies for solving the problem in question.

**(b) Prohibition of humiliating, cruel or inhuman punishment**

165. In accordance with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, all types of punishment involving cruel, inhuman or degrading treatment, whether individual or collective, are prohibited in the Colombian penitentiary and prison system. Under Colombian legislation, any such violations entail disciplinary measures, notwithstanding criminal proceedings against those responsible for such offences. Pursuant to the principle of due process, the disciplinary regulation regarding detainees is laid down in title XI of act No. 65 of 1993.

<sup>43</sup> Resolution No. 14 of 25 July 2001 of the Office of the Ombudsman is an example in point. The Office of the Ombudsman has analyzed the circumstances surrounding the country's prison crisis and proposed some short-term measures. Overcrowding and the lack of adequate preparation for the social reintegration of detainees constitute the main problems of the prison system.

166. INPEC policy, expressed in the motto “Your human dignity and mine are inviolable”, recognizes the inalienable and inherent rights of the detainees, the administrative personnel and the members of the Association of custody and surveillance personnel as a whole in relation to penitentiary activities, in compliance with the international conventions, the Constitution and human rights law.

167. To that end, INPEC issued a “Manual on security and special treatment units” in accordance with Resolution No. 7468 of 29 November 2005 of the INPEC General Directorate, with a view to corrective action aimed at ensuring that the rights of detainees, due process and constitutional and legal guarantees are respected and protected when disciplinary measures are taken in the centres of detention.

168. Within the framework of the Cooperation project agreed upon by the INPEC General Directorate and the OHCHR bureau in Colombia and through inspections carried out by PGN and the Office of the Ombudsman, plans for improvement have been drawn up. In 2005, the Special Rapporteur on the rights of persons deprived of their liberty of the Inter-American Commission on Human Rights conducted an inspection and control visit to Colombia.

169. After more than a year of work and with technical advice provided by UNHCHR, PGN designed and drew up a “preventive policy of PGN in respect of the rights of detainees”, which is aimed at strengthening effective control in detention centres and the protection of the rights of detainees.

170. The above policy was adopted by the Solicitor General of the Nation through Resolution No. 368 of 2006. For purposes of preventive control, PGN adopted strategic and operational lines of action reflecting the two facets of State responsibility: On the one hand, “to establish limits to actions which, consciously or unconsciously and by their nature, may disrupt the balance in the enjoyment of individual rights and freedoms”; and, on the other hand, “to create conditions conducive to addressing the State's inactivity, which hinders the development of human rights as a whole”.

171. As a conceptual and operational instrument, the above policy reflects the principles governing the action of PGN, based on an outline of detention-related risks and the strategic thrusts of preventive action in respect of the protection of the rights of detainees. In that connection, it establishes “methods of intervention and tools for the standardization of institutional action”, including procedures for general inspectorate visits to penitentiaries and prisons and related assessment and follow-up reports.

172. PGN has adopted three more procedures, namely, for processing and following up on communications; for requesting, processing and analyzing official information on the prison system; and for organizing work related to the Constitutional Court. These procedures are designed “to organize and standardize the process of observation and collection of information at the regional level; to promote the timely drafting of pertinent reports; to systematize information at the regional and central levels; and to facilitate the preparation of analytical documents on respect for the rights of detainees. Through these procedures, information on the situation of the rights of detainees will become more systematic and will be used in greater compliance with the strategic aims of the preventive action of PGN, namely, towards improving public policies related to the conditions of detention”.

**(c) Solitary confinement**

173. In order to prevent inappropriate use of security and special-treatment “isolation” units, training has been provided in national-level detention centres, under UNHCHR auspices and based on an agreement among the United Nations Development Programme (UNDP), the Ministry of the Interior and Justice and INPEC, through workshops (in the number of 17 in 2005) on such issues as the absolute prohibition of sensory deprivation and dark prisons, prior and daily medical examinations, and restrictions on the use and duration of solitary confinement.

174. INPEC has adopted a “Manual on security and special treatment units – Solitary confinement”, which has been disseminated to all detention centres in the country.

175. Moreover, subsequent to the warning issued<sup>44</sup> by the Solicitor General of the Nation “regarding the risk of human rights violations in solitary confinement areas in the country's prisons” and thoroughly welcomed by the Constitutional Court in judgement No. T-684 of 2005, progress has been made towards reducing recourse to solitary confinement practices. Moreover, in a significant number of cases of inmates held indefinitely in isolation by prison authorities, PGN, subsequent to requests filed by the detainees, has recommended seeking alternative measures, which guarantee the inmates' security.

**(d) Mainstreaming of human rights principles into penitentiary and prison regulations**

176. With a view to mainstreaming international rules and principles regarding detainees' rights into the internal procedures of detention centres, a process of evaluation and approval of the relevant provisions and of incorporation of those rules and principles into regulations has taken place in accordance with UNHCHR recommendations and national and international human rights standards.

177. PGN participated in that process by providing the following observations and comments: (i) High and medium security prison regulations must conform to the provisions of Constitutional Court judgement No. T-1030/03; (ii) clear classification criteria must be established; and (iii) limitations on the rights of detainees must be based on criteria that are objective, rational and proportional in relation to the goal pursued.

178. In the light of the above observations, INPEC agreed to focus on evaluating the modifications in question within the framework of the inter-agency agreement concluded among PGN, INPEC, the Office of the Ombudsman and the Ministry of the Interior and Justice.

**(e) Social inclusion activities**

179. Under the INPEC procedure entitled Assistance to highly vulnerable groups, strategies have been developed with a view to improving the quality of life of vulnerable population group members held in detention, through access to comprehensive care and to programmes of treatment within the detention centre.

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<sup>44</sup> In August 2004.

180. Since social inclusion is a key objective of intervention in relation to minority groups, a new procedure, entitled Social integration of groups facing unusual conditions, was launched in 2006. It includes clearly defined activities, necessary in the case of such minorities. Over and above care, such activities build on the principles of cultural diversity and respect for diversity in line with the following main thrusts:

**(i) Social support**

181. This process consists in activities specific to each group under public policy provisions. Appropriate adaptation is sought within the detention environment with a view to enhancing well-being and the quality of life during incarceration. Initial adjustment to detention conditions is expected to encourage the adoption of strategies for facilitating social integration into the prison community.

182. The above approach constitutes the basic instrument for promoting a culture of social interaction networks, first within a group facing unusual conditions and eventually towards integration into the population at large.

**(ii) Multicultural encounters**

183. The objective is to set up dialogue and knowledge-transmission spaces, building awareness through discussions on various experiences and points of view. Such a space is the sum of different forms of reality interpretation carried out in four steps – conceptualization, analysis, reflection and self-evaluation – through:

**Cultural intervention groups:** They are aimed at preserving the beliefs, customs and values proper to the various cultures and – through respect for diversity – at transforming impressions and perceptions of indigenous persons, Colombians of African origin, the elderly, foreigners, the disabled, pregnant women and nursing mothers.

**Intercultural sample:** This activity, scheduled once a year, highlights the value and characteristics of each group. All inmates may participate. By exhibiting the outcomes reached by cultural intervention groups, it provides a space conducive to sharing the experiences and gains obtained through multicultural contacts. In order to promote individual and collective reflection and through the participation of personalities or social organizations representative of the various minorities, it aims at strengthening cultural integration of within the penitentiary.

**(iii) School of life**

184. The overall objective of School of life is to create a space, where the inmate population belonging to groups facing unusual conditions generates significant affective networks within which they may experience, express and think about their daily life.

185. This initiative has been designed as a pedagogical alternative that breaks with the traditional educational paradigm and is based on perceiving education as “a process of jointly building knowledge”. In an ecological perspective, this “dynamic educational development” highlights individual-collective learning potential and unlocks human capabilities through self-dependence and personal and group empowerment.



186. In that context, a new category, entitled “groups facing unusual conditions”, builds on specific characteristics related to gender, ethnic group, age, nationality and physical disability as a basis of differentiation from the rest of the detainee population only to the extent that such characteristics call for appropriate support or measures. That approach counters the culture of social welfare and over-protection, in favour of the concept of social inclusion. Detainees belonging to minority groups are positioned on the basis of their condition as individuals rather than their status in terms of risk and are viewed as persons able to rebuild their life through their positive experiences, overcoming daily conflictual occurrences – in other words, through the generation of processes conducive to *autonomy*.

**(vi) Complaints and claims system**

187. In order to strengthen the complaints and claims system for the benefit of detainees and their relatives, resolution No. 0668 of 2006 reorganizes and revamps that system through the creation of the Unit for assistance to dependent citizens in the General Secretariat of INPEC. That unit is mainly responsible for handling and orienting, in a precise and opportune manner, requests made by detainees and citizens in need of information on the workings, procedures and requirements of INPEC services. Moreover, the system is responsible for receiving, recording, managing and following up on complaints, claims and suggestions.

**(f) Guarantee of detainees' rights based on Constitutional Court jurisprudence**

188. As mentioned in an earlier section<sup>45</sup>, the Constitutional Court, in judgement No. T-153 of 1998<sup>46</sup>, found the situation in prisons and penitentiaries to be unconstitutional. The Government has been correcting those conditions through various projects.

189. Inadequate conditions of detention, characterized *inter alia* by overcrowding, have produced situations that violate various rights of the inmates, such as the rights to life, dignity, health, education, work and equality. Based on its jurisprudence, the Constitutional Court has intervened with a view to improving the situation of the detainees and guaranteeing their fundamental rights. The Constitutional Court has stressed that, although detainees have a special status of subordination to the penitentiary authorities, detention centres do not fall outside the purview of the law but – as any other institution – must be governed by the provisions of the Constitution.

190. Based on writs of protection<sup>47</sup>, the Constitutional Court has defended the fundamental rights of the detainees. It has addressed issues related to prison overcrowding (for instance, in

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<sup>45</sup> Overview of torture in Colombia.

<sup>46</sup> Reporting judge: Eduardo Cifuentes Muoz.

<sup>47</sup> This writ is provided for in article 86 of the Constitution, under which “every person has the right to file a writ of protection before a judge, at any time or place, through a preferential and summary proceeding, for himself/herself or through whoever acts on his/her behalf, for immediate protection of his/her fundamental constitutional rights, when that person fears that they may be violated by the action or omission of any public authority.

judgements Nos. T-1077/01 and T-1096/04) and to cruel, inhuman and degrading treatment (for instance, in judgements Nos. T-1030/03, T-690/04, T-622/05, T-624/05, T-848/05 and T-1069/05). These judgements aim primarily at establishing respect for the dignity of detainees and guaranteeing their rights.

191. With regard to overcrowding, the Constitutional Court<sup>48</sup> has indicated in various judgements that this phenomenon – along with, *inter alia*, the poor condition of the buildings and inadequate public services – violates the right to dignity and the right not to be subjected to cruel, inhuman or degrading treatment or punishment. According to the Constitutional Court, overcrowding infringes or undermines the detainees' rights to life, physical integrity and a family, since overcrowded prisons and administrative deficiencies preclude the possibility to guarantee those rights. Moreover, the Constitutional Court has observed that the right to presumption of innocence is violated insofar as detainees awaiting trial are lodged together with convicts.

192. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment has been defended in the face of undue application of administrative rules by detention centres. In particular, the Constitutional Court has addressed the issue of visual inspections or frisks of detainees and persons visiting detention centres, conducted on the grounds of order and security in the prison. “Not so when it comes to visual inspections or touching the nude bodies of detainees and visitors, or to interventions, corporal verifications and searches, insofar as recourse to such measures, restrictive of the corporal privacy, personal freedom and physical, moral and legal integrity of those affected, requires direct and reasonable judicial intervention according to the relevant constitutional and legal rules and guidelines, so as to guarantee respect for the fundamental rights that such procedures undermine<sup>49</sup>.”

193. Moreover, the Constitutional Court has placed restrictions on the use of internal procedures applied in the country's detention centres, considering that the measures concerned may in no case go beyond the legitimate requirements of safety and order in the centres, in line with the fundamental principle of respect for human dignity. Accordingly, the Constitutional Court has indicated that the proposed objectives should be pursued “through a means less offensive to human dignity”. In that context, the Supreme Court has addressed such issues as haircuts, visits

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The protection shall consist of an order issued by a judge, enjoining others to act or refrain from acting. The order, which must be complied with immediately, may be challenged before a superior court judge, and in any case the latter may send it to the Constitutional Court for possible revision.

This action shall be available only when the affected party has no other available means of judicial defence, except when it is used as a temporary device to avoid irreversible harm. In no case may more than ten days elapse between the filing of the writ of protection and its resolution.”

<sup>48</sup> Constitutional Court, judgement No. T-1077/01.

<sup>49</sup> Constitutional Court, judgement No. T-690/04. Reporting judge: Dr. Jaime Cordova Triviño.

to detention centres, cold water showers, the use of uniforms<sup>50</sup> and some measures taken with respect to visitors, such as “vaginal inspections”<sup>51</sup>.

194. With regard to visit rules and the need to reconcile the rights of detention centre visitors with the requirements of prison security, the Constitutional Court has referred to a judgement stating that “for the sake of the general good supposed to be protected, security in detention centres may not be pursued to the detriment of the rights of persons. It is incumbent upon the competent authorities to reconcile the two requirements, namely, not to expose prison safety measures to risk and not to violate the visitors' fundamental rights. Neither of these two goods, however, may take precedence over the other”<sup>52</sup>.

195. Along the same lines, the Constitutional Court has extensively examined the constitutional basis for the so-called “verifications and searches” – inspections of persons – and discussed the legal and judicial reservations in respect of procedures affecting corporal privacy and physical, moral and legal integrity. On that issue, the Constitutional Court has referred to the International Covenant on Civil and Political Rights, which, in article 7, stipulates that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”, and to the American Convention on Human Rights<sup>53</sup>.

196. The judgement in question<sup>54</sup> refers to the relevant provisions of the Constitution, including the principles of international law; the prohibition of torture or cruel, inhuman, or degrading treatment or punishment; the protection of personal privacy; respect for the right not to incriminate oneself; the prohibition of a person's being importuned in his/her person; the principle of due process of law; the legal prerequisites for restrictions on personal freedom; and the guarantee that no one may be tried otherwise than on grounds previously established by law, before a competent judge or court and in full compliance with the procedural rules applicable to the case (art. 9, 12, 15 and 28).

197. The conclusion of the Constitutional Court reads as follows: “There is, therefore, no doubt about the clear legal and judicial reservations required in relation to bodily searches and verifications and frisks because such procedures, whenever used, are allowed on the basis of a legal provision and it is judges that order, delimit and guarantee them, so that the moral, physical and mental integrity of persons suffers no prejudice and, on the contrary, the right to defence and, therefore, to silence is respected. Moreover, such interferences require in all cases the intervention of appropriate professionals and suitable techniques. Accordingly, the authorities may not order collective and indeterminate corporal searches in order to confirm suspicions, intimidate those suspected or maintain order and security, whatever the place may be. Since

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<sup>50</sup> Constitutional Court, judgement No. T-1030/03. Reporting judge: Dr. Ines Vargas Hernandez.

<sup>51</sup> Constitutional Court, judgement No. T-624/05. Reporting judge: Dr. Alvaro Tafur Galvis.

<sup>52</sup> Constitutional Court, judgement No. T-359 de 1997. Reporting judge: Jorge Arango Mejía.

<sup>53</sup> Constitutional Court, judgement No. T-690 de 2004. Reporting judge: Alvaro Tafur Galvis.

<sup>54</sup> Ibid.

measures restricting fundamental rights are self-justified and self-legitimized, and their utility and necessity are attributed to the pursuit of the purpose claimed, it is not possible to conclude on the appropriateness of such general and unclear procedures<sup>55</sup>.”

#### **F. Forensic investigation**

198. In the framework of its forensic work, the National Institute of Legal Medicine and Forensic Sciences uses the definition of torture provided in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

199. In that framework and with a view to mainstreaming the Minnesota and Istanbul Protocols, the Institute has trained medical experts who practice autopsies in the following areas: (i) Modern technical and scientific procedures used to investigate deaths, and preservation and recording of physical evidence that may be useful in identifying possible suspects and constitute evidence at the trial stage; and (ii) guidelines contained in the Manual on the effective prevention and investigation of extra-legal, arbitrary and summary executions, published by the United Nations in 1991<sup>56</sup> and whose parts which have a bearing on the examination of corpses were included in the Manual on practices for medico-legal autopsies adopted as an institutional standard under the Agreement of 11 September 2002. In addition, the Institute’s basic procedural guides for the conduct of medico-legal autopsies deal with specific points such as identification of sexual offences, examination of decomposed corpses or body parts that have or have not been retrieved from water, injuries caused by electric current and other possible circumstances or findings that may be associated with or constitute acts of torture.

200. Moreover, it is provided that those responsible for the quality of service in forensic pathology should promote the application of the autopsy protocol developed by the United Nations as a guide for a comprehensive autopsy to detect possible violations of human rights and international humanitarian law in all cases subject to a medico-legal autopsy, especially in the context of events occurring in combat zones. The protocol ensures sound scientific documentation of the findings and achievement of the aims of a criminal investigation through the systematic examination and description of the corpse. Provision has been made for the application – where working conditions preclude its full adoption – of the emergency measures and adjustments contemplated in the protocol itself.

201. The Institute has developed a basic quality monitoring programme involving a review of the legal qualifications of each expert witness to conduct autopsies, particularly in terms of the detection and detailed documentation of injuries that cause pain and suffering, signs of

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<sup>55</sup> Ibid.

<sup>56</sup> Bulletin No. 3 of the Division of Forensic Thanatology, entitled “Autopsy protocol proposed by the United Nations in cases related to human rights protection”, 1997. It includes a table on post-mortem detection of torture (p. 27).

forced immobilization or sexual assault and evidence or a record of concealment of the body or activities designed to prevent identification<sup>57</sup>.

202. Moreover, programmes have been developed in all areas of activity of the Institute for a reliable identification of the deceased in any medico-legal post-mortem, including the specification of the final destination of the body where exhumation is required for corroboration purposes. A national registry of missing persons is being developed in order to implement these measures. The progress in question is reflected in decree No. 4218/05 on the National Registry of Missing Persons<sup>58</sup>. That registry constitutes an information system containing reference data provided by the intervening bodies in their area of competence. It is a source of accurate, opportune and useful information for identifying corpses having undergone an autopsy within the national territory; guiding the search for persons reported as victims of forced disappearance; and facilitating follow-up on such cases and the activation of the Urgent Search Mechanism.

203. Institute staff is constantly kept up to date in the area of human rights and IHL. For instance, the 13th National Legal Medicine and Forensic Sciences Congress, held in 2006, addressed the following topics: (i) Differences and relation between human rights and IHL; (ii) the concept of forced disappearance; (iii) forensic sciences and humanitarian challenges; (iv) relations between the inter-American system of human rights, the International Criminal Court and the domestic juridical system.

204. Moreover, a course for expert agents was offered in 2006 at the national level. It was attended by 153 civil servants and addressed such topics as issues related to the Minnesota and Istanbul Protocols, the forensic approach to cases involving suspicions of torture, and digital photography.

205. With regard to information related to acts of torture in a forensic perspective, the Institute has been implementing a System of epidemiological vigilance in respect of injuries from external causes (SIVELCE), which has been collecting data on the subject since 2003 under the heading "Human-rights-related variables" on the basis of the following definitions:

- (a) Evidence of physical torture (applicable in cases of homicide or personal injuries): record the combination of signs that may constitute evidence of torture having been inflicted on the victim, bearing in mind that such evidence must be distinguished from any other type of injury inflicted since the person's death;
- (b) Evidence of immobilization: if the dead or injured person presents signs of hand restraints, foot restraints, body restraints or gagging;
- (c) Evidence of infliction of pain: if the dead or injured person presents one or more traces of punctures, burns, cuts, blows, electric shocks or excessive pressure;

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<sup>57</sup> Division of Forensic Thanatology, "Procedural guide for medico-legal autopsies, second edition, p. 17. Basic quality monitoring, Component No. 5, Description of lesions.

<sup>58</sup> Implementing article 9 of act No. 589 of 2000, Creation of the National Registry of Missing Persons.

- (d) Evidence of pre-mortem mutilation: if the dead or injured person has suffered amputation of nails, phalanges, hands, feet, extremities, head, eyes, tongue, sexual organs, ears, nose or hair;
- (e) Evidence of practices precipitating death: if the dead or injured person has a bag over his/her head or shows signs of submersion.

206. Where the evidence available allows to presume an act of torture, the expert is required to respond by noting, for every specific type of information, “yes”, “no”, “I do not know” or “not applicable”. Further information, which may be provided in a section for observations and comments, allows a better understanding of the local *modus operandi*. Moreover, where sufficient data are available, the Institute, under the heading “Membership of vulnerable groups”, enters information on identity, occupation and the circumstances<sup>59</sup> surrounding the death<sup>60</sup>, including whether the case involves group execution as part of a so-called “massacre”, defined as the intentional, collective, violent and simultaneous or quasi-simultaneous death of more than four defenceless persons.

207. During the period under review, steps were taken to develop a system for monitoring possible human rights and IHL violations by proposing criteria for subjecting corpses to a medico-legal autopsy and an operational definition of a missing person. Such criteria and definitions facilitate the selective inclusion of cases from the very beginning either of the autopsy – where even the cause of death is as yet unknown but the circumstances arouse suspicion – or of the reported disappearance of a person where the circumstances of the disappearance have not yet been confirmed. Investigative machinery, such as the emergency request mechanism, may thus be set in motion, as part of the inquiry, at an early stage before any judicial decision is taken in view of the considerable time required for investigation, recording of the evidence and characterization of a crime such as enforced disappearance or torture.

208. In accordance with the judgement of 12 September 2005 of the Inter-American Court of Human Rights in the case of Wilson Gutiérrez Soler versus Colombia, declaring the State of Colombia internationally responsible for the violation of human rights, a training seminar on the Istanbul Protocol was organized in July 2007 at the request of the Ministry of Foreign Affairs, with the cooperation of the OHCHR bureau in Colombia.

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<sup>59</sup> While participating in meetings and activities of volunteer organizations or in a humanitarian medical or health-related mission; during an illegal or criminal activity; during legal or illegal detention; in the course of armed guerrilla, self-defence unit or military action; or as part of an armed confrontation, a political assassination, a street hold-up, a kidnapping, an act of revenge, a gangland killing, violence against discredited or marginal groups, a law enforcement intervention, a sexual crime or an act of terrorism.

<sup>60</sup> Attributes of the deceased: Politician, political or union leader, trade union or NGO member, member of an ethnic or vulnerable group (such as rejects, displaced persons, sexual workers, gang members, drug users, detainees, former convicts, peasants and demobilized or rehabilitated combatants), alleged collaborator of an illegal group, physician, educator, wounded person or patient under medical protection, judicial civil servant and civic or religious leader.

209. The aim of the seminar was to disseminate and provide training in the Istanbul Protocol and its implementation, with a view to raising awareness of the international guidelines regarding the approach to victims, documentation and effective crime investigation. In fact, adequately documenting physical and psychological injuries, so that it is subsequently possible to punish those responsible and avoid the recurrence of such acts, is a key to protecting people against torture.

210. To that end, the following bodies, considered crucial to the implementation of the protocol, ensured a broad participation in the seminar:

- (a) Office of the Public Prosecutor of the Nation (including the Technical investigation unit (CTI) and DIJIN);
- (b) Judiciary branch;
- (c) National Police;
- (d) Military criminal justice;
- (e) Administrative department of security;
- (f) Office of the Ombudsman;
- (g) PGN;
- (h) INPEC;
- (i) National Institute of Legal Medicine and Forensic Sciences;
- (j) Colombian army and navy;
- (k) Ministry of Foreign Affairs;
- (l) Ministry of the Interior and Justice.

211. The civil servants who participated in the seminar will serve as trainers within their respective bodies in order to present the instrument and explain its significance in conducting investigations into torture.

### **G. Legislative advances**

212. Significant progress has been made with respect to legislation. All such improvements aim at guaranteeing the fundamental rights of the citizens. Important issues, such as disciplinary procedures, the Justice and peace act, the military criminal code and the public defender system have been regulated; criminal law reforms have been adopted; and relevant international human rights instruments have been approved and ratified.

213. The Committee's recommendation, contained in paragraph E.10 (b) (iii) of document CAT/C/CR/31/1, regarding the judicial reform bill and expected, *inter alia*, to amend the law on

writs of protection, was not adopted by Congress and therefore the proposal was classified. It should be noted that all related judicial reform proposals failed to be processed by the legislature.

**(a) Disciplinary procedures reform**

214. The reforms adopted in the area of disciplinary procedures during the period under review are described below. They regard the public security forces and civil servants, and reflect Constitutional Court jurisprudence.

215. **Act No. 734 of 2002** establishes the Consolidated disciplinary code, designed to harmonize disciplinary legislation, provide it with a structure that guarantees legal security for the persons concerned and accelerate the procedures. Moreover, it considerably lengthens the list of actions constituting a fault and classifies them by their degree of gravity. Under this act, human rights violations amounting to crimes against humanity, such as genocide, forced disappearances, torture, arbitrary executions, forced displacements and illegal detentions, are considered as extremely serious crimes and are punished with removal from office and a 10 to 20 year prohibition of exercising public responsibilities. The above provisions are in line with the human rights instruments to which Colombia is party.

216. With regard to torture in particular, the above code reflects the text of the Inter-American Convention to Prevent and Punish Torture, which is the most recent and thorough international instrument on that issue.

217. The system of sanctions has become more severe with a view to greater effectiveness in the prevention of conduct detrimental to the role of civil service. As the reasoned preamble to the above act states, “if they are not countered with strong disciplinary sanctions, public power abuses will get out of hand, defy all control and lead to outright arbitrariness” (Congress Journal No. 291 of 27 July 2000)

218. Pursuant to Constitutional Court judgement No. C-286 of 1996, a special standard system has for the first time been established in respect of individuals performing public functions. It is applicable solely by PGN where the persons in question lack, strictly speaking, a direct superior or a connection with public administration, so that internal disciplinary control units of State bodies and organs may initiate appropriate disciplinary proceedings.

219. **Act No. 836 of 2003** contains the regulation of the military disciplinary system, laying down the relevant procedures applicable to members of the Army, the Air Force and the Navy. That disciplinary jurisdiction is exercised by the Armed Forces without prejudice to the disciplinary authority of PGN. The act specifically states the relevant principles and the code of conduct applicable to all circumstances related to public order; and specifies in detail the various types and degrees of faults and the respective sanctions to be imposed in accordance with due process.

220. Accordingly, the system provides for three types of sanctions for officers, non-commissioned officers and volunteer privates, which range from full severance (for “extremely serious fraud”) to 90-day suspension without pay and to simple, formal or severe punishment.



221. Under the act, the sanctions and other provisions of the system shall apply to all active members of the Armed Forces; and war prisoners shall be treated in accordance with IHL provisions.

222. **Act No. 1015 of 2006** contains the disciplinary system applicable to the National Police. The provisions of the act are adapted to the specific responsibilities of the members of the police force and reflect the multiple relevant rulings issued by the Constitutional Court.

223. The system provides for a detailed list of sanctions, whose severity depends on the seriousness of the fault. The list includes dismissal and general disqualification. All extremely serious faults involving fraud or grave wrongdoing are punished with dismissal. The objective is to characterize offences on the basis of the parameters indicated by the Constitutional Court and to mete out punishments based on the principles of proportionality and reasonableness.

224. The above disciplinary provisions do not apply to crimes against humanity or serious human rights or IHL violations. Such cases fall within the jurisdiction of PGN.

**(b) Criminal law reforms**

225. Considerable progress has been made in the area of criminal law, including legislation which, in a framework respectful of rights, aims at laying the groundwork for and developing the oral-hearings and adversarial system in the country.

226. **Legislative act No. 03 of 2002**, which contains an amendment to the Constitution, defines a framework for the establishment of the system in question.

227. **Act No. 733 of 2002** provides for, *inter alia*, measures designed to eliminate the crimes of kidnapping, extortive kidnapping, extortion and terrorism. Favourable treatment and alternative forms of punishment are precluded in the case of such crimes. In particular, there is no possibility for plea bargains, sentence reductions for confession, sentence-related benefits, incarceration substitutes (such as house arrest), parole, conditional release or any other legal, judicial or administrative benefit or substitute, save for the benefits for collaboration, which are provided for in the criminal procedure code (CPC), wherever applicable. Moreover, in no case may a perpetrator of – or participant in – such crimes be eligible for commutation or amnesty. Furthermore, in view of their atrocity, such crimes may not be regarded as related to political offences.

228. **Act No. 750 of 2002** provides for special support, in the form of house arrest and community work, in the case of women heads of household. Under certain prerequisites, women in that category may serve their sentence at their place of residence or, in the event that the victim of the offence resides there, at another place, with a view to guaranteeing the rights of minors and enabling the women concerned to perform the duties resulting from their status.

229. The act does not apply to perpetrators of – or participants in – the crimes of genocide, homicide, aggression related to matters or directed against persons or goods protected under IHL, extortion, kidnapping or forced disappearance or to persons with a criminal record, save persons guilty of negligence and political offenders.

230. **Act No. 890 of 2004** amends and adds provisions to the criminal code, lengthening sentences, as of 1 January 2005, by one third part to one half. Under this act, the crime of torture, which previously carried a prison sentence of 128 months, is now punished with 270 months in prison.

231. **Act No. 906 of 2004** contains the criminal procedure code (CPC) and, within the framework of legislative act No. 03 of 2002, is designed to develop the adversarial model and oral-hearings system in replacement of the earlier, mixed system. The new code clearly differentiates the roles of the participants in the proceedings, as follows: An impartial judge assesses, on behalf of the State, the defendant's responsibility on the basis of evidence presented to the court publicly, orally, systematically and in full adversarial confrontation; a public prosecutor, acting on behalf of the State, initiates criminal action based on the indictment and must support the proposed punishment with sufficient evidence to refute the presumption of innocence; and the defence, representing the interests of the accused, argues under conditions of full equality with the prosecutor.

232. The adversarial system aims at offering the parties, including the victims, better guarantees for their rights to truth, justice and redress, providing them with an opportunity to participate in all phases of criminal proceedings.

233. **Act No. 941 of 2005** organizes the National Public Defender System, whose purpose is to provide the people with access to the administration of justice in criminal cases under conditions of equality, due process of law and respect for substantive and procedural rights and guarantees. In that context, the system will serve persons who, because of their economic or social situation, are clearly disadvantaged with regard to defending their own rights.

234. **Decree 2636 of 2004**, implementing legislative act No. 03 of 2002, is aimed at aligning the regulatory framework of the penitentiary and prison system with new guidelines under the constitutional reform in respect of such essential matters as the legality of arrest and detention, police custody and the role of the sentence enforcement judge.

235. **Act No. 971 of 2005** contains provisions which, *inter alia*, regulate the emergency request mechanism, a procedure, accessible to the public, for the protection of personal freedom and integrity and the other rights and guarantees to which persons presumed missing are entitled. The objective is to ensure that the judicial authorities immediately take all measures necessary for locating such persons in order to effectively prevent the occurrence of the crime of forced disappearance. In that connection, a National Plan for searching for missing persons has been drawn up in consultation with all bodies participating in the National Commission for emergency searches for missing persons referred to in Colombia's third report to the Committee<sup>61</sup>, with a view to, primarily, locating those persons alive or, alternatively, restoring their bodies to their relatives so that the family may mourn according to their customs and beliefs.

236. **Act No. 986 of 2005**, contains provisions for, *inter alia*, protection measures for victims of kidnapping and their families. The objective is simply to establish, on the basis of the principles of social solidarity and fulfilment of the State's constitutional role, a system for such protection,

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<sup>61</sup> In relation to act No. 589 of 2000.

the requirements and procedures for its implementation, the related legal instruments and the bodies to be addressed, and the agents responsible for system implementation and monitoring. The goal is to alleviate the impact of kidnapping on the families affected, particularly with regard to civil obligations. Moreover, under Constitutional Court judgement No. C-394 of 23 May 2007, the families of victims of the crimes of forced disappearance and hostage taking have the same rights as those provided for under this act.

237. **Act No. 985 of 2005** provides for measures against trafficking in persons and establishes rules for assisting and protecting the victims of that practice. The main objective of the act consists in the adoption of prevention, protection and assistance measures necessary for guaranteeing respect for the human rights of actual and possible victims of such trafficking (including persons residing in or transported into the national territory and Colombians located abroad) and in strengthening State action against the crime in question.

238. **Act No. 1058 of 2006** amends the military criminal code by establishing a special procedure, adding an article and modifying article 367. The objective is an adjustment to procedures for acts of limited harmfulness, which are listed restrictively in the act, with a view to shortening the duration of proceedings in the interest of procedural economy and speed but with due respect for the right to defence.

239. **Act No. 1095 of 2006** regulates matters regarding procedures, jurisdiction and other issues related to habeas corpus as a fundamental right and, simultaneously, as constitutional action for protecting personal freedom where a person's detention violates constitutional or legal guarantees or is illegally extended. Under the act, this right may not be suspended even when there is a state of emergency. All judges and courts of the judiciary have jurisdiction to hear habeas corpus requests.

240. With this act, Colombia abides by the relevant international recommendations.

241. **Act No. 1121 of 2006** contains provisions on, *inter alia*, the prevention, detection, investigation and punishment of financing terrorism.

242. This act is a step forward in fulfilling the obligations stipulated in the International Convention for the Suppression of the Financing of Terrorism, in resolutions of the United Nations Security Council and in the Special Recommendations of the Group of Financial Action Task Force (FATF). Among other measures, the act provides for the characterization of the financing of terrorism in the following terms:

“A person who directly or indirectly provides, collects, gives, receives, administers, contributes, guards or keeps funds, goods or resources, or carries out any other act that promotes, organizes, supports, maintains, finances or economically assists paramilitary armed groups or their members, or national or foreign terrorist groups, or national or foreign terrorists, or terrorist activities shall be sentenced to 13 to 22 years in prison and a fine equal to 1,300 to 15,000 times the legal minimum monthly wage in force.”

243. With a view to the prevention, reporting and detection of the operations in question, the role of the Financial Information and Analysis Unit (UIAF) has been expanded to include the reception of reports regarding operations suspected to be related to the financing of terrorism.

244. Pursuant to the reform, all organizations supervised by the Financial Superintendency must report any unusual or suspicious transactions in order to avoid that their clients' operations serve not only for money laundering, but also for financing criminal activities.

245. In the punitive area, the crime of financing of terrorism – over and above its characterization in accordance with multilateral instruments – is considered as an offence underlying money laundering, as deliberate concealment of one's knowledge of a crime and as criminal association.

246. In implementation of the measures specified in the relevant United Nations Security Council resolutions, particularly resolution 1373 (2001), procedures were established for the publication and fulfilment of obligations listed in international instruments binding on Colombia under international law.

247. Moreover, steps were taken with regard to criminal jurisdiction and procedural matters, including in particular the prohibition to apply the discretionary powers principle in cases that may be related to the crime of the financing of terrorism.

248. As a corollary, article 27 of the act provides that, in any contracting process, the State and the territorial authorities, with a view to preventing criminal activities, must fully identify the individuals and legal entities signing the contracts and the origin of their resources.

**(c) Justice and peace**

249. **Act No. 975 of 2005**, also known as the Justice and peace act, contains provisions regarding the reintegration of organized paramilitary armed group members, which effectively contribute to national peace, and other provisions regarding humanitarian agreements. This legal instrument, proposed by the Government, was adopted by Congress after a process of extensive consultations, which lasted at least two years and in which national and international community bodies participated. The objective of the act is to provide a viable framework for individual or collective reintegration of members of the above groups, includes guerrilla and self-defence fighters, as an effective step towards attaining peace at the national level while guaranteeing the victims' rights to truth, justice and redress.

250. This act precludes impunity for atrocious crimes, making them ineligible for any type of amnesty or pardon. Moreover, the act introduces such elements as the victims' right to truth and to redress. Offenders wishing to benefit under the act must confess their crimes before a public prosecutor of the Justice and peace unit and compensate the victims from their legal or illicit assets. In order to guarantee the rights of victims, the act created the National Commission for Compensation and Reconciliation, consisting of senior civil servants and representatives of victims' associations.

251. The constitutionality of the act has been reviewed as a result of public actions filed with the Constitutional Court, which, in judgement No. C-370 of 2006, declared some articles to be unenforceable and others conditionally enforceable, thereby rendering implementation of the act stricter, to the victims' advantage.

252. The Government has issued implementing regulations for the above act through decrees No. 4760 of 2005, No. 690 of 2006, No. 2898 of 2006, No. 3391 of 2006 and No. 551 of 2007.

**(d) Women and children**

253. **Act No. 823 of 2003** contains provisions for equal opportunities for men and women with a view to establishing an institutional framework and guiding Government policies and action towards guaranteeing equity and equal opportunities for women in the public and private sectors. The act is based on the constitutional recognition of the legal, substantive and effective equality of women's and men's rights and opportunities, on respect for human dignity and on the principles enshrined in the relevant international agreements.

254. **Act No. 1009 of 2006** establishes the Observatory for gender issues as a permanent body under the responsibility of the Presidential Council for women's equality attached to the Presidency of the Republic. The Observatory is expected to define a set of gender indicators, categories and monitoring mechanisms with a view to promoting constructive criticism of policies, plans, programmes, legal provisions and jurisprudence for the improvement of women's condition and promoting gender equality nation-wide.

255. **Act No. 1098 of 2006** contains the children's and adolescents' code, a normative instrument which develops the principles and guidelines laid down in the International Convention on the Rights of the Child, based on the concept of comprehensive protection of children in view of their rights and obligations. The overall set of provisions consists of substantive and procedural subsets aimed at fully protecting children and adolescents by assigning responsibilities to the family, society and the State as a function of their respective areas of competence.

**(e) International human rights and IHL instruments**

256. **Rome Statute of the International Criminal Court**: Adopted by Congress through act No. 742 of 2002 and ratified on 5 August 2002.

257. **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**: Adopted by Congress through act No. 833 of 10 July 2003 and ratified on 25 May 2005.

258. **Inter-American Convention on the Forced Disappearance of Persons**: Adopted by Congress through act No. 707 of 28 November 2001 and ratified on 12 April 2005.

259. **Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities**: Adopted by Congress through act No. 762 of 31 July 2002 and ratified on 11 February 2004.

260. **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**: Adopted by Congress through act No. 765 of 31 July 2002 and ratified on 11 November 2003.

261. **United Nations Convention against Transnational Organized Crime, and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**,

**supplementing the United Nations Convention against Transnational Organized Crime:** Adopted by Congress through act No. 800 of 13 March 2003 and ratified on 4 August 2004.

262. **International Convention against the Taking of Hostages:** Adopted by Congress through act No. 837 of 16 July 2003 and ratified on 14 April 2005.

263. **International Labour Organization (ILO) Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour:** Adopted by Congress through act No. 704 of 27 November 2001 and ratified on 28 January 2005.

264. **United Nations Convention against Corruption:** Adopted by Congress through act No. 970 of 2005. Review of the act's constitutionality currently pending, in view of subsequent ratification.

265. **Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women:** Adopted by Congress through act No. 984 of 2005. Reviewed by the Constitutional Court in judgement No. C-322/06. Ratification pending.

266. **Act No. 759 of 2002** containing provisions for the implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention), and for eliminating the use of anti-personnel mines in Colombia.

267. **Inter-American Convention against Terrorism:** Adopted by Congress through act No. 898 of 2004. Review of the act's constitutionality currently pending, in view of subsequent ratification.

#### **H. Constitutional Court judgements related to torture**

268. The Constitutional Court has championed the protection of the human rights of Colombians through its judgements on constitutionality and rights protection.

269. In its capacity as guardian of the Constitution, the Constitutional Court – over and above writ-of-protection judgements aimed at urgently safeguarding infringed fundamental rights – has established guiding principles and parameters for assessing the proportions of the crime torture from various perspectives. Some of the relevant judgements are highlighted below:

270. **Judgement No. C-695/02.** Referring to what constitutes a political or related crime, the Constitutional Court<sup>62</sup> indicated that “basically, there are offences that may not be described as political or related crimes because they are incompatible with the extent and conceptual, philosophical and legal delimitation of such punishable acts. That applies to, *inter alia*, crimes against humanity, terrorism, kidnapping, extortion, deliberate homicide, forced disappearance and torture. Accordingly, forms of conduct that use violence or terror and fail to consider the human being as an end in itself may never be exempt from prosecution or punishment through such legal procedures as amnesty or pardon, since they may not be viewed as offences of a

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<sup>62</sup> Dissenting opinion: Justice Rodrigo Escobar Gil.

political or related character but must be regarded as atrocious and barbarous acts affecting a democratic State's bone and marrow, namely, the dignity of the human person, which constitutes the principle and goal of every political society”.

271. **Judgement No. C-004/03**. Declaring article 220 (3) of act No. 600 of 2000 (criminal procedure code) to be constitutional, the Constitutional Court, in support of the guarantee of the right to justice, expanded the range of grounds for action for revision by ruling that “accordingly, ... action for revision is called for in cases of preclusion of investigation, cessation of proceedings or dismissal of charges, where human rights violations or serious IHL infringements are involved and a domestic court judgement or a decision by an international human rights monitoring and follow-up body, formally recognized by Colombia, has found that there exists a new fact or evidence not known at the time of the hearing”. Moreover, the Constitutional Court ruled that action for revision is called for “against preclusion of investigation, cessation of proceedings or dismissal of charges, where human rights violations or serious IHL infringements are involved, even in the absence of a new fact or of evidence not known at the time of the hearing, provided that a domestic court judgement or a decision by an international human rights monitoring and follow-up body, formally recognized by Colombia, finds that there has been a major failure of the State to fulfil its obligations to investigate seriously and impartially the said violations”.

272. **Judgement No. C-148/05**<sup>63</sup>. Referring to the scope of international instruments regarding torture in relation to domestic legislation, the Constitutional Court took into account the principle of “*pro homine*”, as follows: “It is here taken into account not only that this Convention offers greater protection of the rights of victims of torture, but also that the other international instruments referred to safeguard the applicability of the said Inter-American Convention. Thus, article 1 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment indicates that article 1 'is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application'. This means that, under those circumstances, the text of the Inter-American Convention prevails. Moreover, article 10 of the Rome Statute of the International Criminal Court reads as follows: 'Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute'. Accordingly, if the statute – recently adopted by Colombia – contains a provision that does not coincide with the definition of torture provided in the Inter-American Convention, nothing prevents taking into account the more rights-oriented content of the said Convention with regard to the crime of torture.

273. **Judgement No. C-102/05**<sup>64</sup>. The Constitutional Court, addressing the relation between the concept of the privilege against self-incrimination and torture, formulated the following warning: “The so-called privilege against self-incrimination, or the right to remain silent, not to testify against oneself or one's closest kin ... constitutes a key civil guarantee in criminal proceedings and is directly related to the prohibition of torture. The immediate origin of these prohibitions goes back to the liberal world's response to the inquisitorial practices of the Holy Inquisition

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<sup>63</sup> Constitutional Court. Reporting judge: Dr. Alvaro Tafur Galvis.

<sup>64</sup> Constitutional Court. Reporting judge: Dr. Alfredo Beltrán Sierra.

court in various parts of the world. In those trials, as we know, the role of that court was thought to consist in investigating against the defendant, extracting the confession and 'saving the soul'. Hence, the confession was the supreme evidence – *probatio probatissima* – and, to obtain it, the judges employed any means – torture, threats or gifts – in order to spare the civil servant the obligation to examine the evidence. Confession was sufficient. Moreover, the trials were opaque and secret, the judges did not inform the defendant of the reason of detention and, nevertheless, forced them to answer questions that not only implied self-incrimination, but also could constitute grounds for further accusations, other than those that had brought about the detention, and thus initiate further proceedings, equally opaque and secret.”

274. In the same judgement, the Constitutional Court established the prohibition of torture as an immediately enforceable provision, namely as law that is not subject to (possibly illegal) interpretation by the authorities. The relevant passage reads as follows: “Against these practices, currently the law against torture (art. 12 of the Constitution) and the prohibition of self-incrimination (art. 33 of the Constitution) are essential guarantees in favour of the person indicted. They admit of no nuances, variations or reservations because they are directly linked to such important values and principles as life and personal dignity, essential elements of the Constitution. Moreover, the prohibition of self-incrimination and torture are enshrined as immediately enforceable fundamental rights (article 85 of the Constitution).”

275. **Judgement No. C-1076/02**<sup>65</sup>. In respect of international instruments on torture, the Constitutional Court adopted the principle of the prevalence of the provisions that are more recent and more respectful of rights, as follows: “Although, certainly, Colombia is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, incorporated into its legal system under act No. 70 of 1986, a subsequent international treaty, of a regional character, has also been adopted by Colombia and incorporated into its legal system under act No. 409 of 1997. The two international instruments contain different definitions of the international crime of torture. Accordingly, on the basis of the most authoritative international law doctrine<sup>66</sup>, the Court must conclude that the more recent international instrument has precedence over the earlier one and, in addition, is much more respectful of rights”.

276. **Judgement No. C-816/04**<sup>67</sup>. The Constitutional Court declared unconstitutional, on formal grounds, legislative act No. 02 of 18 December 2003, amending articles 15, 24, 28 and 250 of the Constitution with a view to dealing with terrorism (Counter-Terrorism Statute). Regarding that legislative act, the Committee, in its Recommendations (paragraph E.10 (b) (ii) of document CAT/C/CR/31/1), had expressed concern over measures that appeared to give military forces powers of criminal investigation.

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<sup>65</sup> Constitutional Court. Reporting judge: Clara Inés Vargas Hernández.

<sup>66</sup> Cf. Constitutional Court, judgement No. 1076/02: “Among many other authors, see: Alain Pellet and Patrick Daillier, *Droit International Public* (International public law), Paris, LGDJ, 1999, p. 176; and Manuel Díez de Velasco, *Instituciones de Derecho Internacional Público* (International public law institutions), Madrid, Tecnos, 1999, p. 300”.

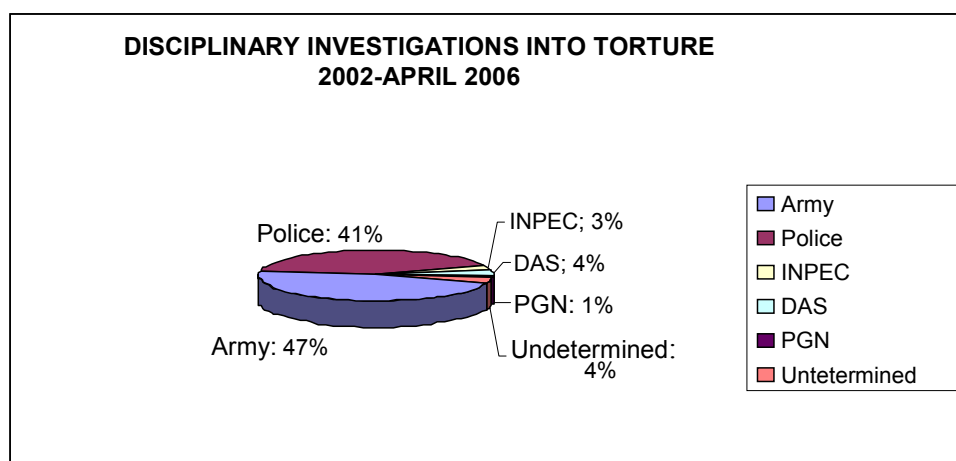
<sup>67</sup> Constitutional Court. Reporting judges: Jaime Còrdoba Treviño and Rodrigo Uprimny Yepes.



## I. Disciplinary measures against torture

277. In its capacity as guardian and promoter of human rights, protector of the public interest and monitor of the official conduct of civil servants at the national level, PGN, through its Human rights disciplinary officer and the Group of human rights advisers, conducted and processed, as part of disciplinary action in the period 2002 – April 2006, the following investigations into torture: 41 in 2002 (22 of which have been closed), 85 in 2003 (47 have been closed), 59 in 2004 (6 have been closed) and 71 in 2005 (10 have been closed).

278. In terms of responsibility, of the total of 256 investigations carried out in the period -2005, the Army was held responsible in 47 per cent of the cases, the National Police in 41 per cent, the Administrative Department for Security (DAS) in 4 per cent, INPEC in 3 per cent and PGN in 1 per cent.



Source: PGN.

## III. MEASURES FOR PROHIBITING THE EXPULSION, RETURN OR EXTRADITION OF PERSONS AT RISK OF BEING SUBJECTED TO TORTURE

### A. Decree No. 4000 of 2004 – Administration of aliens

279. Pursuant to decree No. 4000 of 2004<sup>68</sup>, DAS takes into consideration the provisions of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. DAS – which is responsible for, *inter alia*, exercising migration control at the national level, managing and monitoring migration services for nationals and aliens at the ports specified by law, and ensuring compliance with the migration provisions in force, particularly with regard to the enforcement of a migration-related measure involving the deportation, expulsion or non-admission of a foreign citizen – considers whether such a person should be

<sup>68</sup> Containing provisions on the issuance of visas, administration of aliens and other matters related to migration.

transported to his/her country of origin or residence or to a third State, which would host that person without any risk to his/her life.

280. In that connection, article 111 of the above decree<sup>69</sup> is worded as follows:

“Colombia's migration authorities may place an alien affected by non-admission, deportation or expulsion measures at the disposal of the authorities of the country of his/her nationality of origin, of the last country from which he/she entered Colombia or of a country that receives or requests that alien.”

#### **B. Decree No. 2450 of 2002 – Refuge**

281. Article 18 of decree No. 2450 of 2002, which lays down procedures for determining refugee status, provides for the following measure with a view to rights protection:

“Where a request for refuge is denied, a time limit of 30 calendar days from the notification of the respective decision shall be granted in order to allow the alien to organize his/her legal admission into another country, unless the alien regularizes his/her stay in the country in accordance with migration provisions. In no case may the alien be returned to the country where his/her life is in danger.

A copy of the said decision shall be transmitted to DAS and, where necessary, other appropriate bodies in order that procedures for leaving the country may start.

If the applicant files an application for reconsideration, the 30 calendar day time limit stipulated in the first paragraph shall commence on the date of notification of the document of confirmation.

During the deadline specified in this article for leaving the country, the Ministry of Foreign Affairs may request the cooperation of OHCHR in organizing the legal admission of the petitioner into another country.”

#### **C. Legislative act No. 001 of 1997 – Extradition**

282. Under legislative act No. 001 of 1997 (on constitutional reform), in respect of extradition, and in accordance with criminal procedure rules<sup>70</sup>, extradition formalities comprise the following three stages: (i) a preliminary stage, in which the Ministries of Foreign Affairs and Interior and Justice deliberate on the applicable legal provisions to serve as a basis for the Supreme Court to formulate an opinion; (ii) a court proceedings stage, in which the criminal affairs chamber of the Supreme Court initiates action, invites the person concerned or his/her counsel to produce evidence within a 10-day deadline and takes evidence – if the elements produced are appropriate and relevant – during a further 10-day period. The file then remains in the secretariat for five days for entering pleas and for the formulation of the opinion.

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<sup>69</sup> Containing provisions on the issuance of visas, administration of aliens and other matters related to migration.

<sup>70</sup> Act No. 906 of 2004, art. 409 *et seq.*

(iii) An administrative stage, in which a decision granting or denying extradition is issued.

283. With regard to torture in this context, the Constitutional Court has ruled as follows:

“Extradition, an instrument for international cooperation on criminal matters, has acquired maximum relevance in combating transnational crime. It involves an administrative decision through a summary procedure which, in principle, is brief and does not require court proceedings or a preliminary hearing. It is designed to allow the conduct of an investigation or trial for an offence, or the enforcement of an appropriate punishment, in the requesting State, when the presumed offender is in the territory of a State other than the one where the act was committed or one more seriously affected by that act. In that context, the rule should be that, in his/her relations with the requesting State, the extradited person may use the procedural guarantees in force in civilized countries and the provisions based on due process. To that effect the Court has stipulated that, in addition to the provisions of CPC article 550, according to which the person concerned may not be tried for acts not forming the basis of extradition or subjected to sanctions other than those stated in the sentence or to capital punishment (which must be commuted), other conditions, under articles 11, 12 and 34 of the Constitution, include that the extradited person may not be subjected to forced disappearance, torture, cruel, inhuman or degrading treatment or punishment, deportation, life imprisonment or confiscation of property<sup>71</sup>.”

284. In accordance with the relevant international instruments, conditions for offering or consenting to extradition under the current procedural rules preclude, *inter alia*, the subjection of the extradited person to forced disappearance, torture or cruel, inhuman or degrading treatment.

285. CPC article 494 reads as follows:

“Conditions for offer or consent: The Government may subordinate offering or consenting to extradition to any prerequisites that it considers appropriate. In any case, it shall insist that the person extradited shall not be judged for an earlier act other than the act motivating extradition nor be subjected to punishments other than those to be imposed according to the sentence.

In the event that, under the legislation of the requesting State, the crime motivating extradition carries the death penalty, the person concerned shall be delivered only on condition that such a sentence shall be commuted and that he/she shall not be subjected to forced disappearance, torture, cruel, inhuman or degrading treatment or punishment, deportation, life imprisonment or confiscation of property.”

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<sup>71</sup> Constitutional Court, judgement No. C-1106 of 2000. Reporting judge: Alfredo Beltrán Sierra.

#### **D. International cooperation on criminal matters**

286. Under criminal procedure provisions<sup>72</sup>, judicial cooperation is governed by the general principle that cooperation requests shall comply with the Constitution and the relevant international instruments and law, particularly in the light of International Criminal Court decisions. A special expeditious procedure is provided for where it is advisable to track down a person by disseminating information or circulating a red notice through the channels of the International Criminal Police Organization (INTERPOL).

287. The judicial and police authorities may request foreign and international bodies for any type of evidence or court order that may be necessary, within their jurisdiction, in relation to a case investigated or heard by a court in Colombia. The assistance request shall provide the requested authority with the necessary information, specifying the acts motivating the procedure, the object of the request, the evidence, the presumed infringements, the identity and location of persons or goods as appropriate, any relevant instructions and the time limit for processing the request. The transfer of witnesses and experts considered as essential to the investigation is also provided for.

288. Moreover, in the framework of investigation, court proceedings and their own jurisdiction, the judges and public prosecutors may directly request Colombian diplomatic and consular staff abroad to obtain evidence or take other steps not incompatible with the applicable CPC principles.

289. The General Prosecutor of the Nation may authorize the presence of foreign judicial civil servants for implementing court orders within the national territory, under the direction and coordination of a public prosecutor designated to that effect and with the assistance of a representative of the Office of the Attorney General.

290. In cases involving transnational crimes, the Office of the Public Prosecutor of the Nation may participate in an international inter-agency commission formed with a view to cooperation in conducting an inquiry or investigation. To that end, the General Prosecutor of the Nation may take joint action with his/her foreign counterparts towards strengthening judicial cooperation and exchanging technology, experience, training or any other relevant capacity.

291. Lastly, under the provisions in question, assistance may be provided only within the bounds of compatibility with the values and principles enshrined in the Constitution.

#### **E. Enforcement of sentences under criminal law**

292. Under criminal procedure provisions<sup>73</sup>, criminal sentences imposed on Colombian citizens or on aliens by foreign authorities may be enforced in Colombia after prior request of the authority concerned, through the diplomatic channel.

293. Nevertheless, the law provides for the following requirements:

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<sup>72</sup> Act No. 906 of 2004, articles 484 *et seq.*

<sup>73</sup> Act No. 906 of 2004, articles 515 *et seq.*

- (a) The measure must not be incompatible with international treaties to which Colombia is party, the Constitution or Colombian law.
- (b) The sentence must clearly comply with the law of the foreign country.
- (c) No charges may have been brought and no enforceable sentence may have been handed down by national judges in Colombia for the same acts, save for the cases provided for in article 16 (1) of the criminal code.
- (d) In the absence of public treaties, the requesting State must offer reciprocity in analogous cases.

**IV. EDUCATION AND INFORMATION CONCERNING THE PROHIBITION OF TORTURE; TRAINING OF CIVILIAN AND MILITARY LAW ENFORCEMENT PERSONNEL (art. 10 of the Convention)**

**A. Human rights culture**

294. The Project for a human rights culture is one of the lines of action developed by the Government in the period under review as part of the policy of decentralization in the area of human rights. It aims at promoting institutional and social practices contributing to respect for human rights and to the exercise and ownership of human rights concepts and social practice. That goal has been pursued in the form of the following three strategic objectives: (i) drawing up and developing plans for building a human rights culture in State institutions; (ii) establishing procedures for human rights dissemination and training within various social, institutional, population and ethnic sectors; (iii) formulating alternative mass communication strategies for disseminating human rights practices actually followed by specific community.

295. The implementation of the project has included discussion workshops and working groups comprising representatives of bodies of the three branches of Government. Such meetings led to the identification of qualitative elements promoting or impeding the strengthening of a human rights culture in public organizations. This process was facilitated by inter-agency cooperation with the Higher School of Public Administration and the Administrative department of civil service towards laying the basis for defining and developing lines of action in the framework of relevant institutional plans.

296. One of the most significant results of the work carried out so far has been the inclusion of a human rights culture action line in the operational plan of the Colombian Institute of Family Well-Being, to be implemented by that organization's 24 regional offices.

297. At the regional level, more than one hundred municipalities, in only 16 departments, have formulated institutional education plans on human rights.

298. With regard to objective (ii), the Project for a human rights culture accounts for some of the activities of the Technical committee for preparatory support for drawing up the "National plan of action on training, respect and the practice of human rights in the educational system", under a related agreement concluded between the Office of the Ombudsman and the Ministry of National Education. Such activities have facilitated participation in workshops and seminars at

the national and regional levels and raised awareness of various valuable regional initiatives in the area of human rights education.

299. Measures complementing and coordinated with Policy decentralization activities and the National Plan of Action for human rights have resulted in the inclusion of a human rights culture action line in the action plans of the departments concerned; and in the definition of objectives, identification of actors and methods, and rationalization of the human rights culture approach adopted under the National Plan of Action.

#### **B. Human rights training in prisons and penitentiaries**

300. The provision of human rights training for the civil servants of INPEC<sup>74</sup> constitutes a major strategy for ensuring awareness of and respect for the rights of detainees and guaranteeing those rights. To that end, a technical cooperation agreement was concluded in 2003 between the OHCHR bureau in Colombia and INPEC. In that framework, 34 civil servants have been trained to serve as promoters and trainers in the six regional offices of INPEC among the other civil servants vis-à-vis the detainees.

301. The workshops focus on the following topics:

- (a) Protection of the human rights of detainees: Respect for their dignity and equality, absolute prohibition of torture and of cruel, inhuman or degrading treatment or punishment and need for clear rules available at all times through the same channels;
- (b) Use of force: Emotional state of the persons concerned, force and violence and recourse to force in exceptional cases.
- (c) Entry procedures.
- (d) Solitary confinement, prohibitions, medical examinations, restrictions on their use and PGN alerts;
- (e) Contact with the outside environment; visits; correspondence; confidentiality of correspondence; access to radio, television and reading material; and family relations
- (f) Confiscation procedures,
- (g) Equality and respect for diversity.

302. As a result of a process that began in 2002, an agreement was signed for one year (June 2005-June 2006) between the Ministry of the Interior and Justice, UNDP and INPEC with a view to consolidating the Institutional educational project (PEI) and training and feedback activities for civil servants of INPEC and of the Enrique Low Murtra National school of the penitentiary sector in the area of human rights.

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<sup>74</sup> National penitentiary and prison agency.

303. Under the above agreement, 689 staff members of the six regional INPEC offices<sup>75</sup> received training in 2005 and 2006. Moreover, 13 workshops provided training for 808 civil servants, including detention centre directors, human rights and monitoring officers, administrative staff and members of custody and security units.

304. In that connection, the Ministry of the Interior and Justice issued decision No. 0815 of 4 April 2006, “incorporating human rights programmes into the penitentiary and prison policy”, whose implementation aims at enhancing the range of subjects offered at the above National school and the human rights programmes as part of courses in the areas of training, guidance, basic education, qualification and further, supplementary and specialized training for administrative staff and members of custody and security units.

305. In order to strengthen its civil servants' commitment to the promotion and implementation of the detainees' human rights and of respect for human dignity, INPEC, through circular No. 029 of 16 May 2006, made detention centre directors directly responsible promoting and protecting such rights and for spearheading the work of human rights officers<sup>76</sup> in the regional offices and in the individual establishments. Moreover, centre directors are under an obligation to pay immediate attention and respond to situations prejudicial to the detainees' human rights and, to that effect, chair the meetings of the detainees' human rights committee<sup>77</sup> in their respective establishments.

### **C. Human rights training in the Armed Forces**

306. With regard to human rights training, the public security forces have issued instructions and provided ongoing training to ensure their members' full respect for human rights and IHL. The result has been a significant reduction in the number of complaints for such violations and offences. According to data provided by the Office of the Ombudsman, the number of cases involving human rights and IHL violations in 2005 was, respectively, 19 and 39 per cent lower than in 2002<sup>78</sup>. The Government has reiterated its commitment to investigating and punishing the violations in question.

307. The signature of a cooperation agreement between the Ministry of National Defence and OHCHR on 8 November 2005 has been a significant step.

308. This agreement is part of the commitments made by Colombia in response to a statement made in April of that year by the chair of the now extinct United Nations Commission on Human

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<sup>75</sup> Administratively, INPEC has divided its detention centres among the following regional offices: Central, North, West, East, Viejo Caldas and North-West.

<sup>76</sup> Entrusted with addressing human rights issues at regional level and in the establishments.

<sup>77</sup> The detainees' human rights committee is a forum where the detainees' concerns, suggestions and urgent needs regarding human rights are addressed. Committee members are elected democratically.

<sup>78</sup> Source: National Directorate for Care and complaints processing, Office of the Ombudsman. Only partial data are available for 2005.

Rights and complies with one of the 27 recommendations formulated with regard to Colombia in the recent reports of UNHCHR.

309. That recommendation urged the “Ministry of Defence to develop, on the basis of an independent study, comprehensively, systematically and operationally, human rights and IHL in the training of all members of public security forces”.

310. The study conducted under the agreement addressed the following thematic areas:

- (a) Human rights and IHL education and training: Cross-cutting introduction of human rights and IHL in the training of the public security forces at all levels;
- (b) Prevention and protection: Human rights and the IHL mainstreaming into all instructions, orders, activities and operations effectuated by the public security forces under their constitutional mandate.

311. In 2006, the Ministry of Defence conducted seven workshops, several with UNHCHR participation, for all public security forces staff, with a view to providing training in the prevention of violations, the protection of human rights and behaviour compatible with IHL as part of the officers' constitutional mission. Ministerial guideline No. 08 of 2007, relating to the Plan for strengthening human rights and IHL education for the public security forces, has aimed at reinforcing the culture of respect for human rights and compliance with IHL within those units through the development of officially institutionalized spaces of interaction between the officers and the community that they serve.

312. Efforts are made to strengthen the systematic mainstreaming of IHL provisions into the planning, implementation and conduct of all military and police operations.

313. To that end, 11 workshops, to be held in the main training centres of the public security forces in 2007, were planned for all levels of military and police personnel.

314. Lastly, the Ministry of National Defence has issued a series of directives aimed at, generally speaking, underscoring compliance with the public security forces' constitutional and legal obligations in relation to fundamental issues involving respect for human rights and related guarantees. The directives in question include the following:

- (a) Standing ministerial directive No. 06/2006: Instructions for supporting investigations into forced disappearances, preventing forced disappearances and for activating the emergency request mechanism, in accordance with the relevant legal provisions referred to in the directive;
- (b) Ministerial directive No. 09/2003: Measures for strengthening the policy of promotion and protection of the human rights of workers, unionists and human rights defenders;
- (c) Standing ministerial directive No. 16 of 2006: Sectoral policy for recognition and protection of the human rights of indigenous communities, and for prevention of violations against those rights, by the public security forces;



- (d) Ministerial directive No. 07 of 2007: Measures for strengthening the policy for recognition and protection of the human rights of black, Afro-Colombian, *raizal* and *palenquero* communities, and for prevention of violations against those rights;
- (e) Ministerial directive No. 10 of 2007: Reiteration of the Armed Forces' obligation to abide by the principles of due process, necessity and proportionality. In their capacity as authorities responsible for upholding and ensuring compliance with the Constitution and the law and prevent the killing of persons under their protection, the Armed Forces must unreservedly abide by humanitarian law.

315. Measures for IHL implementation are taken at the levels of prevention, monitoring and legislation. Accordingly, under the above directive all military activities must be governed by the principles of due process, discretion, necessity and proportionality. In view of the circumstances, and in particular the new criminal methods employed by the organized paramilitary armed groups, which increasingly operate in small numbers and dressed as civilians, the Armed Forces must make every effort to distinguish them from the civilian population and to protect the citizens in any type of situation.

316. With a view to ensuring the monitoring of its own implementation, the above directive provides for a Committee for following up on alleged cases of homicide of a protected person. The role of that committee is as follows: (i) offering all necessary support for the criminal and disciplinary investigations carried out; (ii) strengthening controls and making recommendations to be presented at the Meeting of Commanders; (iii) identifying factors that may affect the occurrence of the acts in question; (iv) holding periodic meetings with international bodies interested in the problems in question and receiving and evaluating the information that they may provide.

317. Directive No. 19 of 2007: Recent complement to Directive 10 of 2007, reiterating the obligations of law enforcement agencies with regard to averting the killings of protected persons, and providing additional instructions for ensuring effective implementation of that earlier directive.

**V. INTERROGATION RULES – INSTRUCTIONS, METHODS AND PRACTICES; ARRANGEMENTS FOR THE CUSTODY OF PERSONS SUBJECTED TO ARREST, DETENTION OR IMPRISONMENT; INADMISSIBILITY OF EVIDENCE OBTAINED UNDER TORTURE (art. 11 and 15 of the Convention)**

**A. Human dignity as a fundamental principle**

318. CPC, contained in act No. 906 of 2004, is designed to develop the adversarial model and oral hearings system and comprises a series of provisions aimed at protecting the rights of persons implicated in criminal proceedings.

319. CPC is governed, *inter alia*, by the principle of human dignity, applicable to all participants in the criminal process, and the principle of freedom, which implies a person's right not to be harassed or detained save by written order of a competent judicial authority, issued in accordance with legal procedures and on grounds previously defined by law.

## **B. Detention**

320. In order to guarantee the rights of detainees, CPC article 38<sup>79</sup> provides for judges of sentence enforcement and security measures. Their role is, *inter alia*, to examine the place and conditions of sentence or security measure enforcement, to demand or impose any necessary corrections in that regard and to determine the manner in which security measures are imposed on persons lacking legal responsibility.

321. In the case of persons lacking legal responsibility, the judges, along with rehabilitation centre managers or directors, participate in all arrangements concerning inmates in that category and may order the modification or cessation of the measures in question, based on information from the health workers responsible for providing care, treatment and rehabilitation of such inmates. The judges may also order that any examinations, which they consider necessary, are carried out by public or private professionals.

322. Moreover, there are provisions for the participation of the Attorney General's Office, as guarantor of human and fundamental rights, in all procedural stages, including inquiry, investigation and court hearings. That role includes, *inter alia*, the following tasks: Monitoring judicial police activities that may affect fundamental guarantees; participating in those procedures or activities, initiated by the Office of the Public Prosecutor of the Nation and the courts, which affect or reduce a fundamental right; and ensuring that the conditions of detention, as a precautionary, punishment or security measure, comply with international treaties, the Constitution and the law.

## **C. Exclusion clause**

323. CPC article 23 contains the so-called exclusion clause, according to which any evidence obtained by violating fundamental guarantees shall be ipso facto null and void and must therefore be excluded from the proceedings.

324. Proof that is the consequence of evidence excluded or that may be explained only through the existence of such evidence shall be treated in the same manner.

325. Therefore, under CPC articles 457 and 455, the substantive violation of the right to defence or to due process and the use of illicit evidence constitute grounds for invalidation of the proceedings. In that connection, the Constitutional Court, in judgement No. C-591/05 of 9 June 2005 (reporting judge: Dr. Ines Vargas Hernandez), indicated that “accordingly, the process shall be declared invalid where illicit evidence has been presented at the trial, with disregard for the exclusion rule, and that illicit evidence has been the result of torture, forced disappearance or extrajudicial execution, and shall be sent to another judge...”.

326. Under the principle of legality of evidence, the law provides for rules regarding the administration of evidence, particularly in relation to the person of the party concerned.

327. Accordingly, with regard to evidence entailing a bodily inspection of the suspect, CPC article 247 stipulates that the Public Prosecutor of the Nation or a designated prosecutor may

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<sup>79</sup> Criminal procedure code.

order a bodily inspection of a person, where there are reasonable grounds – based on the fact-finding methods provided for in CPC – for suspecting that there are, in the body of the suspect, material proof and physical evidence necessary for the investigation. For rights guarantee purposes, the counsel must be present during the process and all criteria related to human dignity must be met.

328. With regard to interrogation of suspects, the law provides for a series of rights, including the right to remain silent, not to testify against oneself or against one's spouse, including one's common-law spouse, or relatives up to fourth degree of consanguinity or civil relationship or up to second degree of affinity. If the suspect renounces on those rights and desires to make a statement, he/she may be interrogated in the presence of a lawyer.

329. A suspect's confession must be a free, conscious and spontaneous acknowledgement of participation in any manner or to any degree in the perpetration of the offence investigated.

330. In addition to inquiries and investigations, interrogation is another activity that, according to the law, the police may conduct where, in its capacity as a public service, it receives denunciations, complaints or any other type of information entailing the possible perpetration of an offence. It is then the duty of the police to identify, gather and assemble in a technically appropriate manner any material proof and physical evidence; record in writing or on audio- or audiovisual tape any interviews and interrogations; and keep such elements safe under lock.

331. Within 36 hours, the police must submit an executive report on the above emergency measures and the related findings to the competent public prosecutor in order that he/she may take charge of, coordinate and supervise the investigation.

332. The police authorities must in any case file an operation initiation report, so that the Office Public Prosecutor of the Nation may immediately take over the direction, coordination and supervision of the activities.

333. Where, upon reviewing the operation initiation report submitted by the police, the public prosecutor finds that steps were taken in disregard of the governing principles and procedural guarantees, he/she shall reject the measures in question and report the irregularities to the competent disciplinary and criminal officials.

## **VI. EXAMINATION AND PROCESSING OF COMPLAINTS AND REPORTS OF TORTURE; MATERIAL RESPONSIBILITY OF THE STATE (art. 12, 13 and 14 of the Convention)**

334. New provisions adopted in this area are presented in the following paragraphs.

### **A. New criminal procedure code**

335. Act No. 906 of 2004 contains extensive provisions aimed at the protection of victims' rights, clearly stating the obligation of the State to guarantee their access to the administration of justice in accordance with terms specified in CPC.

336. Accordingly, the victims have a right to:

- (a) Be treated, throughout the procedure, in a humane manner, respectful of their dignity;
- (b) Receive privacy protection and guarantees for their own security and the security of their relatives and defence witnesses;
- (c) Receive, for the prejudice suffered, speedy and full redress from the perpetrator of the injustice, the participants in that act or any third parties held accountable under CPC;
- (d) Be heard and present evidence without undue impediments;
- (e) Receive, from the first contact with the authorities and in accordance with CPC provisions, pertinent information on the protection of their interests and on the actual circumstances surrounding the injustice that they have suffered;
- (f) Have their interests taken into consideration with regard to discretionary decision taken in connection with prosecution of the case;
- (g) Be informed of the definitive decision regarding criminal prosecution; appear, as appropriate, before the supervisory judge; and file motions before the hearing judge, in view of any trial;
- (h) Be assisted during the hearing, and during the examination of the incidental issue of redress, if the interests of justice so require, by a court-appointed lawyer;
- (i) Receive comprehensive assistance for recovery, according to the law;
- (j) In the event that they do not know the official language or have a language-related impairment, to be assisted, free of charge, by a translator or interpreter.

337. Moreover, the section on precautionary measures provides for material measures in favour of the victims. In that connection, the public prosecutor may, at the request of the interested person:

- (a) Order that any goods related to the offence and recovered are restored to the victim;
- (b) Authorize to the victim to use and provisionally enjoy any goods acquired in good faith which are related to the offence;
- (c) Approve provisional assistance from the Victims' compensation fund.

338. For effects of the attention and protection to the victims, the norm forces the General prosecutor of the Nation to adopt the necessary measures for the attention of the victims, the guarantee of its personal and familiar security, and the protection against all publicity that implies an illegal attack to its private life or dignity.

339. Through the public prosecutor, the victims may, seeking a guarantee for their security and privacy, request the supervisory judge for any necessary care and protection measures.

## **B. The Justice and peace act**

340. Act No. 975 of 2005 (the Justice and peace act), which is discussed in earlier sections (including II. G (c)), contains measures designed to protect the victims and promote and guarantee their rights to truth, justice and redress.

341. Generally speaking, the act defines a victim as a person who, individually or collectively, has suffered such direct damage as temporary or permanent injuries causing some type of physical, mental and/or sensory disability, emotional hardship, financial loss or curtailment of fundamental rights, as a result of actions in violation of criminal law, which have been perpetrated by organized paramilitary armed groups.

342. The term also includes the spouse, including one's common-law spouse, and relatives of first degree of consanguinity or direct civil relationship, where the victim is dead or missing. In judgement No. C-370 of 2006, the Constitutional Court declared this provision enforceable, on the understanding that “the presumption thereby established does not exclude as victims other relatives who have suffered a damage as a result of any other violation of criminal law committed by members of paramilitary armed groups”.

343. The act provides for the concept of “alternative sentencing”, namely, a benefit consisting in the suspension of the enforcement of the punishment specified in a sentence and its replacement by an alternative punishment. The benefit is granted in view of the beneficiary's contribution to national peace, cooperation with justice, compensation to the victims and social rehabilitation. In judgement No. C-370 of 2006, the Constitutional Court declared this provision enforceable, on the understanding that “cooperation with justice must aim at the effective enjoyment of the victims' rights to truth, justice, redress and non-repetition”.

344. As a specific provision regarding the rights of victims, the act obligates the State to guarantee access to the administration of justice, and therefore the victims' right to, *inter alia*, to treatment respectful of human dignity, protection of their privacy, guarantee for their security; and speedy and full compensation for prejudice from the perpetrator of – and participants in – the offence.

345. With regard to security, the act establishes a framework for protecting victims and witnesses. Accordingly, the competent officials must take the measures that they consider adequate and all necessary action for protecting the security, physical and psychological well-being, dignity and private life of the victims, witnesses and other parties to the proceedings.

346. Lastly, with regard to the victims' right to redress, the act takes a comprehensive and extensively formulated approach comprising obligations to restore, indemnify, rehabilitate and compensate.

347. With a view to guaranteeing due redress, the act created, on one hand, the National Commission for Compensation and Reconciliation (which, *inter alia*, ensures the victims' participation in the process of judicial elucidation and the fulfilment of their rights; follows up and assesses compensation and makes recommendations as to its adequacy; and proposes compensation criteria); and, on the other hand, the Victims' compensation fund (which receives

all goods and funds turned over in any manner by illegal organized armed groups or their members, national budget allocations and monetary grants).

348. The above act, decree No. 3391 of 2007 and judgement No. C-370 of 2006 provide that victims shall be compensated from the (legal and illicit) assets of demobilized combatants, assets turned over by responding teams or groups under the principle of solidarity and – residually – national budget funds.

## VII. CONCLUSIONS

349. The Democratic Security policy implemented by the Government has contributed to the recovery of national territory and, consequently, to a reversal of trends in respect of the country's general indicators of violence. Enhanced security has led to a more effective guarantee for the exercise of the rights of Colombians.

350. Despite the significant results achieved, the goal of promoting and guaranteeing human rights and IHL constitutes a major challenge for Colombia, mainly in view of the constant threats posed by the action of organized paramilitary armed groups.

351. In order to face that challenge, foundations have been laid for long-range projects designed to orient State action towards the future. The National plan of action for human rights, developed in extensive coordination with various sectors of society, is an example in point.

352. The Government has been consistently working on human-rights and international humanitarian law (IHL) teaching and training for the public security forces in order to ensure that their activities are based on respect for and compliance with the relevant principles and rules.

353. Accordingly, it has been proposed that the Minister of Defence should play a leading role in formulating a single comprehensive policy comprising all relevant activities of the Armed Forces and aimed at the following objectives: ensuring the protection of the human rights of civilians, direct participants in the hostilities and Armed Forces members; enhancing the legitimacy and credibility of the public security forces; mainstreaming human rights concepts into operational practice; building institutional and judicial controls in order to prevent and punish human rights violations and to promote inter-agency cooperation in that area. These objectives are to be pursued through activities promoting education and values, comprehensive and practical training in IHL, and effective monitoring of the public security forces in the accomplishment of their mission.

354. The policy of combating impunity, formulated through coordination between the executive and the investigation, control and law-enforcement agencies, comprises short-, medium- and long-term measures aimed at resolutely, comprehensively and consistently ensuring truth, justice and compensation in cases of human rights and IHL violations.

355. The displaced population constitutes a priority for the State. As part of the National Development Plan for 2002-2006, the Government has set the objective of formulating a State policy facilitating comprehensive assistance for population groups displaced by violence and freeing them from the conditions that they face as a result of their displacement.

356. The economic and social reintegration of demobilized combatants constitutes a major challenge for the State and for society as a whole. That challenge requires, *inter alia*, the following measures: drawing up a plan of action generating programmes, strategies and tasks necessary for the reintegration of the demobilized population; formulating a policy for preventing the recruitment of children by the organized paramilitary armed groups; giving priority to psycho-social care and education as factors conducive to social inclusion; ensuring the active and direct participation of family nuclei in the process; decentralizing the social reintegration policy; encouraging the participation of the private sector and civil society as a whole; creating a single information system allowing for swift, targeted and reliable monitoring and evaluation of demobilization and reintegration policy activities and outcomes; designing and implementing a system for monitoring and support during and after the inclusion of demobilized in assistance programmes, in order to ensure that they sustainably abide by the law.

357. Through the activities developed by the State throughout the period under review and the measures planned for the future, Colombia meets its commitment to implementing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the other international human rights instruments that it has ratified.

**LIST OF ENACTMENTS**

1	Legislative act No. 03 of 2002
2	Act No. 734 of 2002
3	Act No. 733 of 2002
4	Act No. 750 of 2002
5	Decree No. 2450 of 2002
6	Act No. 836 of 2003
7	Act No. 823 of 2003
8	Act No. 906 of 2004
9	Decree No. 2636 of 2004
10	Decree No. 4000 of 2004
11	Act No. 941 of 2005
12	Act No. 971 of 2005
13	Act No. 986 of 2005
14	Act No. 985 of 2005
15	Act No. 1058 of 2006
16	Act No. 1095 of 2006
17	Act No. 975 of 2005
18	Act No. 1009 of 2006
19	Act No. 1098 of 2006
20	Act No. 1015 of 2006



**LIST OF CONSTITUTIONAL COURT JUDGEMENTS**

1	Judgement No. C-695 of 2002
2	Judgement No. C-1076 of 2002
3	Judgement No. T-1030 of 2003
4	Judgement No. C-004 of 2003
5	Judgement No. C-516 of 2004
6	Judgement No. T-690 of 2004
7	Judgement No. T-1096 of 2004
8	Judgement No. T-025 of 2004
9	Judgement No. C-148 of 2005
10	Judgement No. C-684 of 2005
11	Judgement No. T-624 of 2005
12	Judgement No. C-148 of 2005
13	Judgement No. C-102 of 2005
14	Judgement No. T-848 of 2005
15	Judgement No. T-1069 of 2005
16	Judgement No. C-591 of 2005
17	Judgement No. C-370 of 2006
18	Judgement No. C-322 of 2006
19	Judgement No. C-394 of 2007

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