United Nations CCPR/C/COL/6

International Covenant on Civil and Political Rights

Distr. General
CCPR/C/COL/6
2 June 2009
English
Original: Spanish

Human Rights Committee

Consideration of reports submitted by States parties under article 40 of the Covenant

Sixth periodic report

COLOMBIA*

[10 December 2008]

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* 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 services.

GE.09-42862 (EXT)

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I. General framework

A. General

1. The International Covenant on Civil and Political Rights was ratified by Colombia on 29 October 1969, following its approval by Congress through Law Nº 74 of 1968 and entered into force in accordance with the provisions of the instrument of 23 March 1976. Accordingly, the Covenant has mandatory application under domestic law as regards both nationals and foreigners[1], and especially for the public authorities.[2]

2. The Covenant, as well as other international human rights instruments, have the status of constitutional enactments and therefore take precedence in the domestic legal order as provided by articles 53[3], 93[4], 94[5], 102 (2)[6] and 214 (2)[7] of the Constitution. Based on these rules, the Constitutional Court has developed the concept of “the body of Constitutional law”, referring to rules and principles which, although not appearing formally in the text of the Constitution, are understood to form part of the Constitution by a mandate of the Constitution itself.

3. Under the foregoing logic, international human rights instruments have binding force and, indeed, constitutional priority, such that no domestic law or provision may run counter to them.

4. The Government of Colombia presented its fifth periodic report on implementation of the Covenant on 14 August 2002 (documents CCPR/C/COL/2002/5 and HRI/CORE/1/Add.56).

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[1] Constitution, article 4: “The Constitution is the supreme law. In all cases of incompatibility between the Constitution and the law or any other legislation or regulation, the provisions of the Constitution shall apply. It is the duty of nationals and aliens in Colombia to abide by the Constitution and the laws and to respect and obey the authorities.”

[2] Constitution, article 6: “Each person is individually responsible before the authorities for violations of the Constitution and the laws. Civil servants are responsible for the same reason, and likewise for omission or acting ultra vires in exercising their functions.”

[3] Article 53 provides: "Duly ratified international labour agreements are part of domestic law.”

[4] Article 93 provides: “International treaties and agreements ratified by the Congress that recognize human rights and prohibit their limitation in states of emergency have priority domestically. The rights and duties enshrined in this Constitution shall be interpreted in conformity with international human rights treaties ratified by Colombia.”

[5] Article 94 provides: “The enunciation of the rights and guarantees contained in the Constitution and in international agreements in effect should not be understood as a negation of others which, being inherent to the human being, are not expressly mentioned in them.”

[6] Article 102, paragraph 2, provides: “The limits indicated in the manner prescribed by the Constitution may be modified only pursuant to treaties approved by Congress, duly ratified by the President.”

[7] Article 214, paragraph 2, provides: “Neither human rights nor fundamental freedoms may be suspended. In all cases, the rules of international humanitarian law will be observed.”

5. The Human Rights Committee considered the fifth periodic report of Colombia at its 2167th and 2168th meetings (CCPR/C/SR.2167 and 2168) held on 15 and 16 March 2004, and adopted concluding observations at its 2183rd meeting (CCPR/C/SR.2183), held on 25 March 2004.[8]

6. This sixth periodic report which the State of Colombia submits for the consideration of the Committee reflects the advances, obstacles and challenges experienced by the various State entities during the period from 2002 to 2007 in applying and developing the rules contemplated in the Covenant through work in concert by the three branches of government in their respective spheres of competence and by the Public Prosecutor's Office (*Ministerio Público*), within the framework of a social state under the rule of law.

7. This report has been prepared in keeping with the compilation of guidelines on the form and content of periodic reports to be submitted by States parties to the international human rights treaties (HRI/GEN/2/Rev.4).

8. This report consists of two parts: a general part dealing with fundamental aspects of the Colombian State, and another part pertaining to specific provisions, which refers to the application of provisions of the International Covenant on Civil and Political Rights, presenting legislative, judicial and administrative advances.

9. Colombia reaffirms its commitment to respect, guarantee and promote fundamental rights and to full observance of international instruments ratified by Colombia and the undertakings arising therefrom.

B. Fundamental aspects of the Colombian State

10. Colombia is a social state under the rule of law, organized in the form of a unitary decentralized republic with autonomous territorial entities. It is democratic, participatory and pluralist, founded on respect for human dignity, on the labour and solidarity of the persons constituting it and on the primacy of the general interest.

1. Political organization

11. Public authority under the Constitution[9] is divided into three branches: executive, legislative and judicial.

12. The executive branch comprises the President, who is Head of State and Government and supreme administrative authority, the cabinet ministers, directors of administrative departments, governorates, mayorships, superintendencies, public establishments and the industrial and commercial enterprises of the State.

13. The President is elected by popular vote for a term of four years, together with the Vice-President. In accordance with Legislative Act No. 02 of 2004, amending the Constitution, the President may be re-elected in the following term. After four years in office (2002 – 2006), Dr. Álvaro Uribe Vélez was re-elected President in the elections of May 2006 for a new term as President which will end in the year 2010.

14. Ministers and heads of administrative departments direct and oversee the public administration. Their number and titles are determined by law. These officials are appointed directly by the President. Under Law No. 790 of 2002, there are 13 ministries[10]. The governors of departments and municipal mayors are popularly elected.

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[8] Concluding observations of the Human Rights Committee: Colombia, 26 May 2004, CCPR/CO/80/COL.#

[9] Constitution of Colombia, 1991, Title V, "Organization of the State", arts. 113 et seq.

[10] The following, in order of precedence, are the ministries which constitute the national Government: 1) Ministry of Interior and Justice, 2) Ministry of External Relations, 3) Ministry of Finance and Public Credit; 4) Ministry of National

Public establishments, superintendencies, State industrial and commercial enterprises and mixed-economy enterprises are also part of the executive branch.

15. The legislative branch at the national level comprises a bicameral Congress, empowered to amend the Constitution, pass laws and exercise political control over the Government and administration. The upper chamber or Senate is made up of 100 senators elected by national constituency and two additional senators elected by special constituencies for indigenous populations. The lower chamber or House of Representatives is made up of 241 representatives elected by territorial districts and special districts. These correspond to Afro-Colombian communities (two seats), indigenous communities (one seat) and political minorities (one seat). Similarly, there are two seats for the indigenous constituency.

16. The judicial branch is independent and autonomous. It is composed of the Constitutional Court, which is responsible for the integrity and supremacy of the Constitution; the Supreme Court, the highest court of ordinary jurisdiction (criminal, civil and labour chambers); the Council of State (the highest dispute-settlement and advisory tribunal for administrative and civil service matters); the Judicial Council (highest administrative and disciplinary authority of the judicial branch), the Office of the Public Prosecutor (General Prosecutor and assistant prosecutors) as an investigative body; the superior district courts (generally in the capitals of departments, circuit judges, municipal judges), administrative tribunals, administrative judges and military criminal law judges, entrusted with cases relating to offences committed by members of the armed forces in active service and in relation to such service.

17. Special jurisdictions are also contemplated, i.e. the indigenous jurisdiction and justices of the peace.

18. At the same time, recent years have seen growth in alternative dispute resolution methods, advanced by the National Conciliation Programme of the Ministry of the Interior and Justice, the *Programa Nacional de Casas de Justicia y Paz* and the *Jurisdicción de Paz.*

19. The organs of public oversight are the Office of the Controller General of the Republic and the *Ministerio Público*. The *Ministerio Público* includes the Office of the Attorney General and the Ombudsman's Office (*Defensoría del Pueblo*). The Attorney General is appointed by the Senate and has the duty to ensure compliance with the Constitution, laws, judicial decisions and administrative acts, to protect human rights, to defend the collective interests of society and the environment, and to oversee the official conduct of those who hold public office, including those who are popularly elected. He has primary responsibility for taking disciplinary measures, carries out investigations as required and applies appropriate sanctions.

20. The Ombudsman's Office is headed by the Ombudsman, who is elected by the House of Representatives and ensures the promotion, exercise, dissemination and protection of human rights.

21. The National Electoral System, according to article 120 of the Constitution, consists of the National Electoral Council and the National Civil Registry. It is responsible for organizing, managing and monitoring elections, as well as matters relating to the identity of individuals.

22. The National Electoral Council is composed of nine members elected for a four-year term by the Congress as a whole, by the electoral quotient system, upon nomination by political parties or movements with legal personality or by coalitions thereof.

Defence; 5) Ministry of Agriculture and Rural Development; 6) Ministry of Social Protection, 7) Ministry of Mines and Energy, 8) Ministry of Commerce, Industry and Tourism; 9) Ministry of Education; 10) Ministry of Environment, Housing and Territorial Development, 11) Ministry of Communication, 12) Ministry of Transport, and 13) Ministry of Culture.

23. The National Civil Registrar is chosen by the Presidents of the Constitutional Court, the Supreme Court and the Council of State, by competitive merit-based review. His term is four years and he must have the same qualifications required by the Constitution for a judge of the Supreme Court and must not have exercised leadership positions in political parties or movements within the year immediately preceding his election. He may be re-elected once. He conducts the management and organization of elections, civil registration and identification of individuals, and may conclude contracts on behalf of the nation as provided by law.

24. The country's mechanisms of citizen participation, fully dealt with in the fifth periodic report of Colombia to the Human Rights Committee, are the vote, the plebiscite, the referendum, the consultation of the people, the open council meeting, the legislative initiative and the removal of officials.

2. Territory

25. Colombia is a geographically, ethnically and culturally varied country. It covers an area of 1,141,748 km^2 and is divided into territorial units: departments, districts, municipalities and indigenous territories. The municipality is the basic political and administrative unit of the State. Currently there are 32 departments, four districts and 1,094 municipalities.

3. Culture and religion

26. Colombia is a country in which the *mestizo* population predominates. In Colombia there are three major ethnic and social groups which stand apart, both geographically and culturally, from the bulk of the population, namely the Afro-Colombian communities, the *Raizal* communities of San Andrés and Providencia [see para. 27], which make up 10.5 per cent of the total population, the indigenous peoples, which account for 3.4 per cent of the population, and the Roma.[11]

27. Spanish is recognized as the national language, although there are marked dialectic and regional characteristics. The country has a wealth of languages among its indigenous communities: 64 languages belonging to 22 indigenous families have been identified. The *Raizal* communities of San Andrés and Providencia belong to the Afro-Anglo-Antillean culture and use English as a standard language and San Andrés creole as a domestic language. In the mainland Caribbean area of Colombia, among the population of San Basilio de Palenque, another Afro-Colombian creole, Palenquero, is spoken. Roma groups or gypsies from eastern Europe, speak their own language, Romani. These languages and dialects are also official in their territories.

28. According to the latest national census conducted in 2005, 10.5 per cent of the population living in Colombia identify themselves as *Raizal*, Palenquero, black, mulatto, and Afro-Colombian or of African descent, and 3.4 per cent as indigenous.

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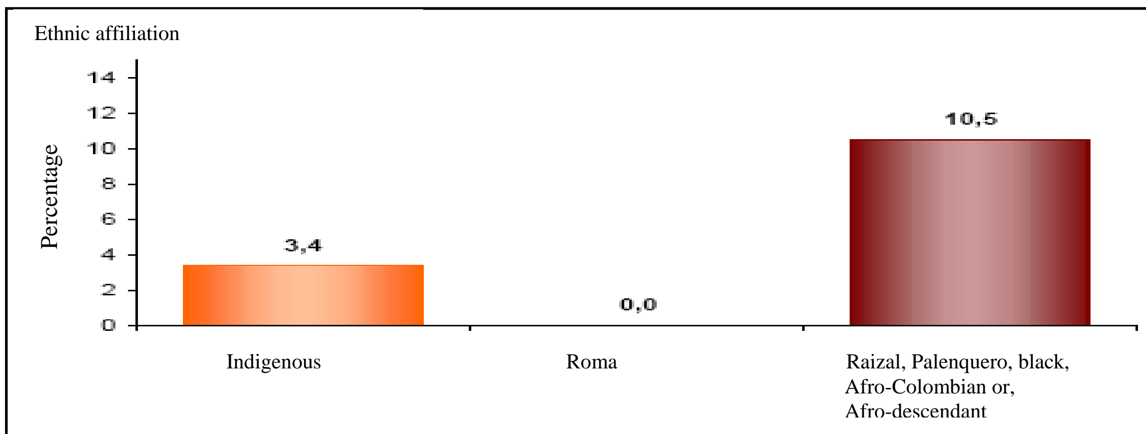
[11] Results of 2005 census, DANE.

Ethnic affiliation



29. The 1991 Constitution enshrined freedom of religion, so that all have the right to profess their religion freely and to disseminate it individually or collectively. According to the Public Registry of Religious Entities there are currently about one thousand such organizations in Colombia; however, the predominant religion is Christianity and the majority denomination is Catholicism.

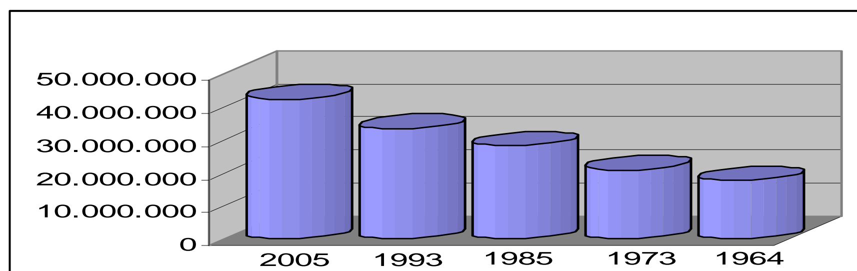
4. Population

30. The results of the latest census (2005) show that 42,888,592[12] people live permanently in the country, which makes it the third most populous country in Latin America, after Brazil and Mexico, and twenty-eighth in the world. Of the total population, 51.2 per cent are women and 48.8 per cent men, and 75 per cent live in urban areas, while only 25 per cent live in rural areas.

31. Population trends may be perceived by comparing Census 2005 data with the previous censuses of 1964, 1973, 1985 and 1993:

[12] DANE. 2005 Census. Conciliated population. Population as of 30 June 2005.

Population censuses 2005, 1993, 1985, 1973, 1964



Source: 2005 census results. National Bureau of Statistics, DANE.

5. Armed violence and public order

32. In 2002 the country faced a threat to democratic institutions. In several regions of the country organized armed groups outside the law --the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP), the National Liberation Army (ELN) and United Self-Defence Forces of Colombia-- actively made their presence felt through terror, drawing strength from the drug trade. Abduction, terrorism, extortion, murder of civilians, attacks on the population, mass killings, child conscription and forced displacement were common activities of these groups against the civilian population.

33. These practices, remote from or contrary to recognition and respect of the principles and values underlying the protection and exercise of human rights, show a lack of concrete commitment to human rights, particularly on the part of the FARC-EP.

34. The civilian population, particularly ethnic groups, have been affected by displacement, constraints on the transport of food, medicines and people, sexual violence against women and girls and conscription of boys and girls. Failure to respect the medical mission has become a recurring practice to secure territorial control of strategic corridors and zones of influence.

35. Local Government leaders faced great difficulties due to threats and pressures from organized armed groups outside the law. Constant attacks on the country's economic infrastructure not only generated huge economic losses but also hindered the development of the country. This context was not conducive to domestic and foreign investment, which brought about negative consequences for the country's growth and its position in international markets.

36. In response to this situation, the Government designed and implemented the Democratic Security Policy, whose main thrust was focused on restoring and securing institutions and the rule of law, permitting the exercise of the rights by all citizens in every corner of the national territory and restoring the confidence of Colombian society.

37. Government policy was built on a set of strategies that included control of territory and the defence of sovereignty, the dismantling of organized unlawful armed groups and organizations involved in drug production and trafficking, and the bolstering of justice services and governmental functions in depressed and violent areas, all within a framework of total commitment to and respect for human rights and international humanitarian law.

38. The launch of the Government policy made substantial headway towards reversing the situation in the country, particularly as regards strengthening of institutions throughout the territory, which brought residents greater security and confidence.

39. As part of the Democratic Security Policy, several strategies have been developed for the dismantling of organized unlawful armed groups and for the pursuit of peace, particularly against the guerrillas of the FARC and ELN and United Self Defence Forces of Colombia (AUC) through direct combat, individual and collective demobilization and reintegration.

40. From August 2002 to December 2007 a total of 28,612 members of subversive groups were captured and 10,698 were killed. Against paramilitary groups and criminal gangs, action by the security forces has been robust: during the same period, 14,959 were captured and a total of 2,149 were killed.[13]

41. Parallel to the military combat strategy, the national Government gave all organized armed groups outside the law the option to return to civilian life. It did not require disarmament or immediate surrender. It did demand, however, that they put a stop to killings, abductions, mass killings, extortions and all depredations and criminal acts against Colombians.

42. To ensure full transparency and good faith, the Government proposed verification by competent and credible authorities at the national and international levels. In that vein, the Government requested the assistance of the United Nations, the Organization of American States (OAS), the Catholic Church, public figures, friendly countries and civil society committees to initiate a sincere and productive dialogue.

43. In this context and under the framework created by Law No. 975 of 2005, better known as the Justice and Peace Act, peace negotiations were pursued with the illegal paramilitary groups (AUC), which created the conditions for the demobilization of most of the groups, with the specific objective of reducing violence in Colombia and especially the attacks and abuses against civilians.

44. The process has advanced under the direct oversight of the OAS. To this end, in January 2004, the Government signed an agreement with the OAS designed broadly and flexibly to support all of the country's peace initiatives and efforts for three years. The OAS support focuses on three aspects: a) verification of the ceasefire and cessation of hostilities; b) disarmament, demobilization and reintegration of members of organized armed groups outside the law; c) supporting local initiatives in "conflict" areas that foster and develop a culture of peace and peaceful resolution of the violence and the promotion of social projects. Cooperation by the Catholic Church has likewise been forthcoming.

45. In 2006 the AUC peace process culminated with the collective demobilization of the AUC on 37 fronts, which meant that 31,671 AUC members[14] laid down their arms. This process led to the imprisonment of AUC leaders, the prosecution of AUC collaborators and the implementation of the Justice and Peace Act (Law No. 975 of 2005) as a framework for ensuring progress on truth, justice and reparations.

46. Law No. 975 of 2005, which aims at the ultimate achievement of peace in our country, is the product of nearly two years of discussion, analysis and involvement of multiple sectors of the country and the international community, in the context of the draft legislation pending before the Congress, and was subjected to scrutiny for constitutionality by the Constitutional Court[15], which has on 13 occasions conducted constitutional review of the Law in light of the Constitution and international treaties on human rights ratified by Colombia.

[13] Presidential Programme of Humanitarian Assistance to the Demobilized, January 2008. Source document: Achievements of the Policy to Consolidate Democratic Security. Preliminary data, 2007. Ministry of Defence.
[14] Ibid.

[15] Ruling C-370/06. Constitutional Court. Opinion delivered by Judges Manuel José Cepeda Espinosa, Jaime Córdoba Triviño, Rodrigo Escobar Gil, Marco Gerardo Monroy Cabra, Álvaro Tafur Galvis, Clara Inés Vargas Hernández.

47. This Act, together with its implementing regulations, is part of the transitional justice scheme adopted by Colombia, which is integrated into the Constitution and laws of the Republic, in conformity with international standards. It is not, therefore, as in the patterns applied in other countries, a law of oblivion leading to impunity for criminal acts.

48. The aim of the regulations is to facilitate the peace process and the individual or collective reintegration into civilian life of members of organized illegal armed groups, guaranteeing the right of victims to truth, justice and reparations.

49. Among the peace processes taking place in the world, this is the most stringent law. This legal framework does not allow amnesties or pardons for war crimes or crimes against humanity. By contrast, it grants offenders reduced prison sentences in exchange for truth, justice and reparations for victims and compliance with commitments on disarmament and non-recidivism. It should be noted that, as to all facts that are not clarified voluntarily, the ordinary courts will be required to take cognizance of them and pursue the investigation.

50. In connection with the illegal armed group National Liberation Army (ELN), during the first administration of President Álvaro Uribe efforts were launched to start a peace process, initially in Cuba between August and December 2002, and then through facilitation by Mexico between June 2004 and April 2005. With the start of a Formal Exploratory Phase in Cuba since December 2005, the way was opened to a dialogue that continues today, although with periods of stagnation.

51. The Government has made numerous attempts at rapprochement and dialogue with the FARC-EP that have proved unsuccessful, despite the various initiatives by the Government, in particular the release of jailed guerrillas. These efforts have received the backing of the Church and the international community, particularly France, Spain and Switzerland, which have been authorized to seek agreements with the guerrilla group. Similarly, last year (2007), President Hugo Chávez of the Bolivarian Republic of Venezuela was authorized to pursue facilitation aimed at a humanitarian agreement allowing the release of all hostages held by the guerrilla group. Subsequently, the national Government through the High Commissioner for Peace resumed coordination of all actions to secure the release of the hostages. He confirmed that the release of kidnap victims and achievement of a comprehensive, definitive humanitarian solution was of paramount importance to the Government and, along these lines, simplified the requirements for a humanitarian agreement (Decree No. 880 of 2008) and opened up the possibility of granting benefits under the Justice and Peace Act to guerrilla members who demobilize individually (Decree No. 1059 of 2008).

52. In pursuing the demobilization strategy against the guerrilla groups, 8,378 members of FARC and 1,960 members of ELN were demobilized individually between August 2002 and December 2007.[16]

53. In the last year (2007) new criminal organizations or groups have been emerging in demobilized areas that are in league with unquestionably criminal gangs. Links have been established with some chiefs, mid-level commands and demobilized members of this new criminal apparatus, which seeks to finance itself and to profit from exclusively criminal activities.

54. Emerging criminal gangs (BACRIM), which are comprised to a small extent of demobilized paramilitaries from the self-defence groups, have become a factor that drives organized crime, since they form structures

[16] Presidential Programme of Humanitarian Assistance to the Demobilized, January 2008. Source document: Achievements of the Policy to Consolidate Democratic Security. Preliminary data, 2007. Ministry of Defence.

principally engaged in drug trafficking in the stages of cultivation, production, marketing and distribution, tending to appear geographically in growing areas and border areas, in order to facilitate moving narcotics out of the country. As of December 2007 a total of 1,638 demobilized offenders who had engaged in criminal activities (i.e. 5.17 per cent of total persons demobilized collectively) had been captured by the authorities.[17]

55. The State has taken a clear decision to do all in its power to combat these groups. To this end, it has created the Joint Verification Mechanism against Criminal Gangs nationally and regionally, as well as the Integrated Intelligence Centre against Criminal Gangs. A public report is issued monthly about the results of this effort. It highlights the valuable contribution of the OAS Mission in monitoring this phenomenon. Many of these gangs have been dismantled and their leaders have been imprisoned or killed in clashes with the security forces. It has been established that 12.7 per cent of those captured or killed were demobilized persons.

6. Legal mechanisms for protection of human rights

56. The Constitution of 1991 recognized the human person as a holder of individual, group or collective rights; accordingly, it established legal mechanisms for their full protection from acts or omissions of public authorities, through resources, actions and procedures established by law.[18]

57. The realization of these rights depends in the first instance on legal mechanisms approved by the legislature to be applied by the executive through plans and programmes designed for implementation at the national, regional and local levels.

58. Likewise, the Colombian State has an array of institutional measures that seek to protect and guarantee the rights of citizens. Thus, in particular with regard to human rights, a significant feature of the executive branch is the Presidential Human Rights and International Humanitarian Law Programme, headed by the Vice President, who is the Government’s advisor on policies concerning human rights and international humanitarian law.

59. This area is given specific treatment through the Human Rights Directorate of the Ministries of Interior and Justice, the Ministry of External Relations, the Ministry of National Defence, the Ministry of Social Protection, and the National Police, according to their respective spheres of competence.

60. Meanwhile the *Ministerio Público*, through the Office of the Attorney General and the Office of the Ombudsman, deals among other functions with securing and protecting human rights, upholding the public interest and monitoring the official conduct of those who hold public office.

61. From the judicial perspective, the organ responsible for investigating, prosecuting and charging those responsible for violations of the law is the Office of the Public Prosecutor. This organ, as indicated in the last report, has a unit for the protection of human rights and international humanitarian law that deals with specific matters related to crimes that constitute human rights violations or breaches of international humanitarian law.

62. On the issue of enforceability, various kinds of remedies have been established through which citizens can appear before judicial and administrative authorities to enforce their rights.

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[17] Nineteenth Report on Monitoring of the Demobilized, Collectively and Individually. National Police, Directorate of Criminal Investigation, Crime Information and Criminological Analysis Branch, January 2008.

[18] Constitution, art. 89.

63. **Unconstitutionality exception**. In cases where they are clearly contrary to the principles and precepts of the Constitution, judges may exceptionally refrain from applying provisions of a general and abstract nature produced at different levels of the legal order constituting the Colombian State: laws, decrees, resolutions, ordinances, agreements and other rules.

64. **Petitions of unconstitutionality[19] or of nullity due to unconstitutionality[20]** may be lodged by any citizen before the competent judicial authority[21] for decision on the constitutionality of laws, decrees or administrative acts, both as to their substantive content and as to errors of procedure.

65. **Petition of nullity**. The purpose of the petition of nullity against an administrative act is protection of the legal order, in order that the act be set aside as contrary to higher rules of law.

66. This action is in the general interest, ensuring that legality is upheld as against acts taken at an inferior administrative level; it may therefore be brought by any person at any time.

67. **Petition for redress**. A person who believes he has been harmed by an administrative act may petition an administrative disputes jurisdiction in defence of his individual and specific interest, maintaining not only that the act was null as contrary to higher rules of law but that the right disregarded or impaired by the act should be restored. Therefore, this action can only be exercised by the person whose right is allegedly infringed by the administrative act.

68. **Petition for direct reparations**. By this action citizens can request that the State respond materially for wrongful damage attributable to it, caused by acts or omissions of public authorities.

69. **Petition for compliance**. The Constitution provides for the so-called petition for compliance. Through this action all persons are entitled to appear before a judicial authority in order to enforce compliance with a law or administrative act; if the action is successful, the court orders the non-complying authority to discharge the unfulfilled duty.

70. **Petition for protection** (*tutela*). This is the most effective remedy and arises from "...the direct vigilance each person exercises over his fundamental rights, recognized as such by the Constitution, to seek from the courts at any time and place, through a prompt and summary procedure, for himself or through a representative, the immediate protection of such rights, when they have been infringed or threatened by any action or omission of any public authority or by individuals responsible for the provision of public services, or by individuals in respect of whom the applicant is in a position of subordination or helplessness, or whose conduct seriously and directly affects the public interest."[22]

[19] Ibid., art. 241.

[20] Ibid., art. 237.

[21] The Constitutional Court as to the former and the Council of State as to the latter.

[22] Mendoza Palomino, Álvaro, *Teoría y Sinopsis de la Constitutionde 1991*, ("Theory and Overview of the 1991 Constitution") Ediciones Doctrina y Ley, Bogotá, D.C., second edition, 1996, pages. 355 and 356.

71. **Popular actions**. Under the Constitution (art. 88), citizens may seek protection of collective rights and interests related to property, space, public safety and health, administrative ethics, the environment, free economic competition and other similar interests defined by Law 472 or 1998.

72. **Right to petition**. The right of petition (art. 23) is another constitutional mechanism which citizens can use in order to submit petitions to the authorities, for general or individual reasons, to obtain a prompt resolution.

73. The Constitution establishes the material responsibility of the State for wrongful damage attributable to it, caused by acts or omissions by public authorities. In this regard, it also provides a right of recovery by the State against its agent when the State is ordered to pay damages arising out of wrongful or gravely negligent acts of one of its agents.

7. Government policy on human rights

74. Colombia is a country open to international scrutiny and committed to United Nations bodies and the international human rights system. Since 1997 it has had an office of the United Nations High Commissioner for Human Rights, the agreement for which has been extended until October 2010. There are 23 offices of United Nations agencies, funds and programmes and a delegation of the International Committee of the Red Cross (ICRC). Additionally, there is an open invitation to human rights organs and special procedures of the United Nations and the international human rights system. A group of 39 embassies has been formed that regularly reviews the human rights situation together with the Government and civil society. Since 2002, eight evaluation mechanisms of the United Nations and four mechanisms of the international human rights system have visited the country, and two further visits are expected during this semester.[23]

75. Government policy on human rights during the period 2002 - 2006 was marked by a development plan under the theme "Towards a Community State," adopted into law by Congress in June 2003, whose main aim is to restore security in order to make democracy viable and thus strengthen the legitimacy of the State and the rule of law.

76. For the period between 2006 and 2010 a development plan with the theme "Community State - Development for All " was adopted, framed on three main objectives: a) consolidating the achievements of the democratic defence and security policy ; b) bolstering investor confidence and a high and sustained economic growth with social equity, in order to generate competitiveness and employment and spread their benefits to all Colombians; c) carrying out an ambitious programme of social goals to reduce poverty, promote equity and expand State programmes to reach the majority of Colombians, especially those most in need.

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[23] For the United Nations, there have been visits to the country in the past seven years by the Special Rapporteur on the right to education, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Special Rapporteur on the right to freedom of opinion and expression, the Working Group on Enforced or Involuntary Disappearances, the Special Representative of the Secretary General on human rights of internally displaced persons, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the question of children and armed conflict, and, finally, a visit in the second half of 2008 by the Working Group on Arbitrary Detentions and the United Nations High Commissioner for Human Rights. A visit by the independent expert on human rights and extreme poverty is expected in 2009. For the Organization of American States, the Special Rapporteur on freedom of expression, the Special Rapporteur on women's rights, the Special Rapporteur on the rights of persons deprived of liberty and the Special Rapporteur on Afro-descendant populations have visited Colombia.

77. The policy is based on strengthening the rule of law, which constitutes the necessary condition in order to protect each and every citizen of Colombia, regardless of gender, race, origin, language, religion or political ideology. The fundamental principle is that all citizens are equal before the law, enjoy equal rights and thus should be equally protected. The vigour of human rights depends primarily on full democratic sovereignty and the State's ability to uphold the legal order throughout the territory.

78. Within this framework, a policy has been framed to ensure free and full exercise of human rights by preventing violations, combating impunity, taking care of victims and giving impetus to the enforcement of international humanitarian law.

79. The main objectives of the policy of human rights and international humanitarian law are: a) respect for the human rights of all inhabitants of the country through mechanisms that are adequate to achieve effective monitoring; b) promoting fundamental rights Colombians, in partnership with all social organizations, to build shared ethical standards; c) ensuring the exercise of human rights in two different areas: the first refers to those activities protected by the authorities and aimed at dealing with cases of threats to or violations of fundamental rights; the second pertains to creating or restoring conditions necessary for the full realization of fundamental rights; d) addressing the consequences of cases of violation of fundamental rights, regardless of the perpetrators, and respect for all persons not involved in hostilities.

80. In furtherance of the above, a strategy of decentralization of human rights public policy has been designed, which takes the form of regional human rights action seeking to prevent human rights violations and breaches of international humanitarian law through participatory processes and participatory planning, actively involving departmental, municipal and national authorities, the security forces, civil society and communities, adapting to the humanitarian characteristics of regions, their daily life, their resources and the conditions of violence to be found there.

81. According to the document CONPES[24] 3172 of 15 July 2002, "Lines of action to strengthen the State's policy on human rights and international humanitarian law," the Colombian State's policy on human rights and international humanitarian law focuses on the following priority areas: a) Prevention of human rights violations and breaches of international humanitarian law; Safety of human rights defenders; c) Care of people displaced by violence; d) Specific measures to boost international humanitarian law; e)Strengthening the administration of justice; f) Compliance with the national Government's commitments to international bodies or agencies; (g) Combating armed groups operating outside the law; h) National Plan of Action on Human Rights and International Humanitarian Law; i) Strengthening of institutions.

82. **National Plan of Action**. In compliance with the commitments undertaken with the approval of the 1993 Vienna Declaration and Programme of Action, there began a process of drafting a national action plan on human rights and international humanitarian law which aims at achieving the full enjoyment of human rights and humanitarian law in Colombia.

83. Is intended that the National Plan of Action in the process of being structured should constitute a guide for State action on human rights and international humanitarian law and that, given the importance of the commitment in this field internationally, the implementation of international treaties on human rights and international humanitarian law should be given impetus.

[24] National Council for Economic and Social Policy.

84. As part of the process, dialogue with sectors of civil society has been pursued. Preliminary agreements have been reached in regard to the themes contained in the Plan and in regard to the establishment of a coordination mechanism between the State and civil society that will build upon the proposals and give the whole process the legitimacy needed to ensure its suitability and sustainability. Although obstacles have been encountered in the dialogue, the Government maintains an open door and a readiness to work together.

85. The plan seeks to emphasize the role of human rights in national development and in the orientation of institutions, with a view to strengthening the rule of law, maintaining the continuity of that role in the State in a manner that transcends the duration of governments, contemplating the comprehensive nature of human rights.

86. The Commission to ensure the joint preparation of the Plan was created on 26 September 2006. It will include participation by State and governmental entities, the international community and civil society.[25]

87. The objectives of the National Plan of Action on Human Rights are to:

a) Provide guidelines for the coordinated efforts of State and its linkages with civil society organizations active in human rights and international humanitarian law;

b) Promote cooperation in the design and implementation of programmes and actions between Government entities, the State, nongovernmental and social organizations, professional groups, and other sectors of civil society;

c) Promote the implementation of international treaties on human rights and international humanitarian law;

d) Emphasize the role of human rights in national development and in the mission of institutions in order to strengthen the social state under the rule of law.

88. The State Plan as conceived has a focus on gender and ethnic perspectives, with a comprehensive view of human rights and of the interdependence between civil and political rights and economic, social and cultural rights, in light of the priorities which the country considers necessary to establish in a context of inter-institutional cooperation and cooperation with civil society.

89. The thematic structure of the Plan is as follows:

a) First thematic element: emphasis on promoting a human rights culture;

b) Second thematic element : emphasis on ensuring the rights to life, liberty and personal integrity;

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[25] The Government, the Ministries of the Interior, Justice, National Defence, External Relations and Social Protection, the Office of the High Commissioner for Peace and the Presidential Programme for Human Rights and International Humanitarian Law; the Office of the Public Prosecutor; the Office of the Attorney General; the Ombudsman; the organizations of the London-Cartagena consensus; the Colombian Federation of NGOs; the National Trade Union Council; the Colombian Federation of Municipalities; the National Planning Council; the National Pastoral Social Secretariat and the Restrepo Barco Foundation; the Colombia-Europe-US Coordination; the DESC Platform; and social sectors.

(c) Third thematic element: emphasis on combating discrimination and promoting recognition of identity;

(d) Fourth thematic element: emphasis on promoting the rights approach in public policies on education, health, housing and work;

e) Fifth thematic element: emphasis on administration of justice and combating impunity.

90. A noteworthy development in early 2008 is the launch of an ambitious Comprehensive Policy on Human Rights and International Humanitarian Law by the Ministry of National Defence, an effort that, among other things, provides for the regulation of the use of force in war through legitimacy and effectiveness in accordance with General Comment No. 12 of the Human Rights Committee on the right to self-determination.

91. The Comprehensive Policy describes guidelines, sets goals and establishes programmes in human rights and international humanitarian law that should be understood and pursued by the Armed Forces and, when appropriate, by the National Police. It is the road map that lays out the behaviour of the security forces in the conduct of their operations.

92. The Comprehensive Policy serves three purposes: to *articulate* the educational system of human rights and international humanitarian law which has been implemented by the Ministry of National Defence for over a decade; to *adapt* methods of instruction in human rights and international humanitarian law to the needs of the security forces in the current context; and, finally, to *integrate* all of the capabilities available to security forces to ensure compliance with their obligations regarding human rights and international humanitarian law.

93. The aim is not only to strengthen instruction, but to revise and enhance all the instruments available to the security forces to ensure compliance with these duties and obligations. It seeks to establish a clear normative framework which will provide instruction and oversight as an integral part of all law enforcement activity.

8. Progress in protecting and guaranteeing human rights

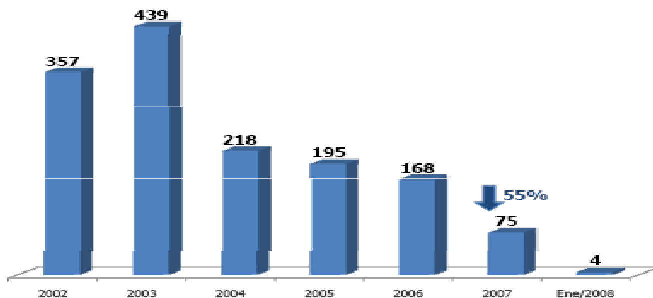
94. The implementation and consolidation of the Democratic Defence and Security Policy, through greater control over the national territory, has enabled the Colombian Government to attain considerable achievements in its core purpose of protecting the human rights of its inhabitants. As a result there have been remarkable reductions in the main forms of violence and crime, the number of attacks on civilian populations, cases of killings and mass killings, kidnapping and forced displacements, among others, in addition to securing rights such as freedom of movement. This improvement has had a positive effect on economic growth by bolstering investor confidence in the country.

95. In 2002, there were 168 towns where no law enforcement personnel were continuously stationed, which facilitated the actions of illegal organized armed groups, their control over broad areas of the country and, consequently, the intimidation and vulnerability of much of the population. By the month of February 2004, the recovery process had culminated, in the municipality of Murindó in Antioquia Department, thus covering all municipalities in the country.

96. As a result of the strengthening of the security forces it was possible not only to regain control of large areas of territory that were under constant threat from armed illegal organizations, but mainly to reduce the number of terrorist acts, which include attacks against civilians and economic infrastructure, thus demonstrating the inverse correlation between the strengthening of the security forces and terrorist acts.

97. One of the most important results was the reduction in subversive activities, including attacks on police facilities, attacks on aircraft, urban attacks, armed clashes, ambushes, harassment, incursions and raids on settlements, which declined from 439 in 2003 to 75 in 2007, i.e. a decrease of 83%.

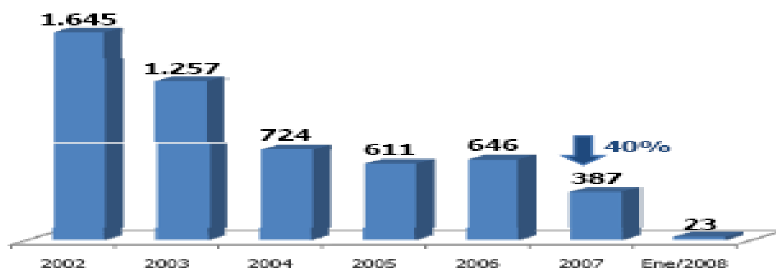
Subversive activities, 2002-2007



Source: Ministry of National Defence.

98. There has also been a clear reduction in the number of terrorist attacks[26], from 1,645 in 2002 to 387 in 2007. Between 2006 and 2007 alone the decrease was 40%.

Terrorist attacks, 2002-2007

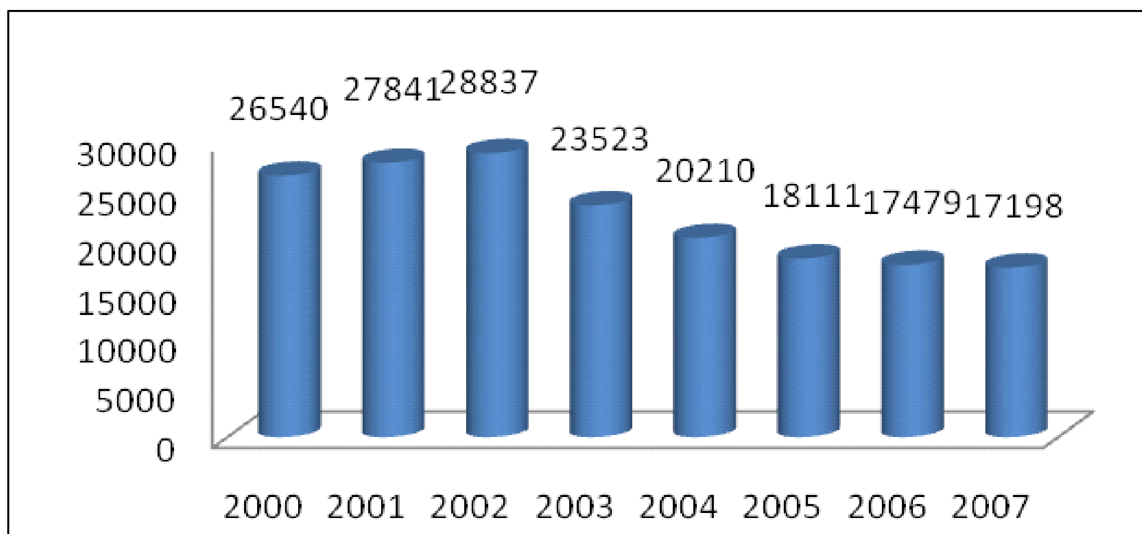


Source: Ministry of National Defence

[26] Defined by Law No. 599 of 2000 as the act of causing or maintaining a state of anxiety or fear in a population or a sector thereof through acts that endanger the life, physical integrity or freedom of persons, buildings or means of communication, transport, processing or carriage of fuels or power, through means capable of causing damage.

99. The country experienced a significant reduction in crimes of greater social and economic impact, particularly homicides and abductions. As regards homicides, the upward trend of more than a decade was reversed, and the number of annual cases declined by 60% from 28,837 cases in 2002 to 17,198 in 2007.

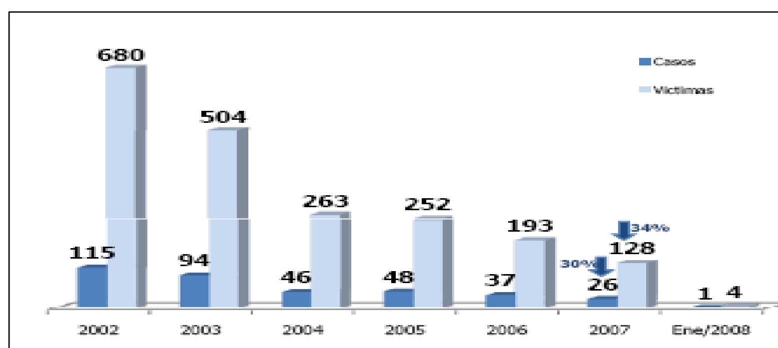
Homicides, 2000-2007



Source: National Police. Centre for Criminological Research.

100. There was likewise a marked downward trend in the number of mass killings, from 1,403 victims in 2000 to 128 in 2007.

Mass killings

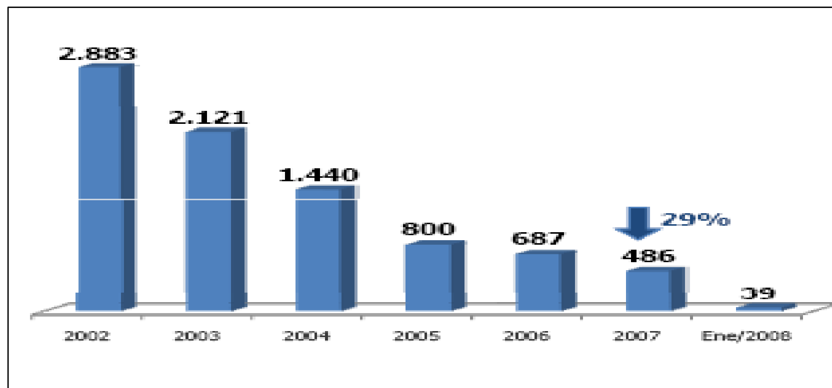


Source: Ministry of National Defence.

101. Thanks to a comprehensive policy against the scourge of kidnapping in the country and to joint action by Government agencies and the cooperation of the public, the crime of kidnapping also showed a downward trend

since 2002, moving from 680 victims to 128 in the 2007. This trend has also held true so far in 2008. Between January and August there has been a fall of 23% compared with the same period in 2007, with a total of 315 kidnappings.

Abductions

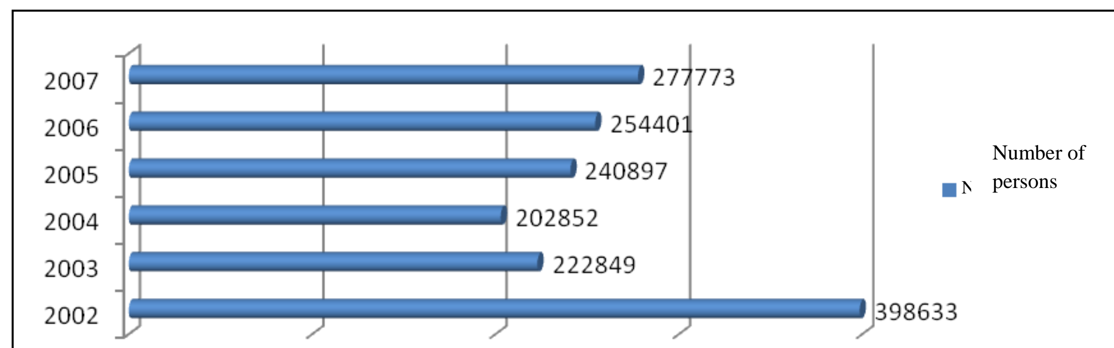


Source: FONDELIBERTAD - Ministry of National Defence.

102. Regarding the phenomenon of forced displacement that our country has had to endure for years as a result of violence, the figures show a significant decrease beginning in 2003. Between the years 2003 and 2007 the trend has changed by comparison with the dynamic shown during the last ten years, when there were an increasing number of internal displacements since the mid-1990s, peaking in 2002.[27]

[27] The most critical point in this problem occurred between 2000 and 2002. During that time, displacements grew by an average of 40% per year and affected 900 municipalities in the country. By contrast, beginning in 2003, displacements declined by an annual average of 41%. CONPES 3400 of 2005.

Displaced population - by year



Cut-off Date: 31 July 2008. Source: Social Action - Information system on displaced persons.

II. SUBSTANTIVE PROVISIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

A. Article 1. Right of peoples to self-determination

1. Legislative developments

103. In addition to the contents of the fifth periodic report, which presented in detail the broad legal framework that guarantees the right to self determination, it should be noted that in realizing the principle of sovereignty Colombia's constitutional law provides mechanisms for citizen participation which are regulated mainly by Law No. 134 of 1994, in addition to participation, accountability and management of public affairs. They are the vote, the plebiscite, the referendum, the popular consultation, open forums, the legislative initiative and the recall of public officials, which are referred in particular in the section "Mechanisms of Participation".

2. Judicial developments[28]

104. The Constitutional Court, by Ruling C-1200/2003, handed down in the context of a constitutional challenge against Legislative Act No. 03/02, developed the concept of the "constituent or founding act, as the act of sovereignty par excellence," and said that, in democratic states, the sovereign alone, strictly speaking, has constitutional power through which it can constitute a new system and adopt a new constitution.

105. In Ruling C-249/2004, taken in a case challenging the constitutionality of several paragraphs of article 13 of Law No. 80 of 1993 on "Rules of Administrative Procurement" referring to non-Colombian rules applicable to

[28] It is important to clarify the effect of judicial decisions in Colombia, i.e. whether they are "C", "T" or "SU" decisions. A "C" decision is a review of constitutionality whose effect is *erga omnes*, or for the whole of society. A "T" decision is a decision *inter partes* which affects the parties to the case, not the whole of society. An "SU" decision is an *erga omnes* decision whose purpose is to unify divergent lines of case law.

contracts concluded abroad, concluded in Colombia to be performed abroad or financed by foreign entities, the Constitutional Court sheds light on the principle of sovereignty and the right to self-determination of peoples. It gives an account of the development of the principle of sovereignty in relation to the autonomy of peoples to adopt their own internal legal order, to decide on and resolve their own affairs and, in general, to act freely in all matters that does not alter or infringe the legitimate rights and interests of other States.

B. Article 2. Guarantee of rights recognized in the Covenant and non-discrimination

106. Colombia has a broad constitutional framework that develops the principle of non-discrimination, which was presented in its fifth periodic report.

107. To delve more fully into this matter, it may be noted that in February 2008, the State of Colombia presented its periodic report to the Committee on the Elimination of Racial Discrimination, which gives an account of all of Colombia's advances in implementing the Convention in recent years.

1. Legislative developments[29]

108. In the period under review, and based on constitutional provisions, particularly article 13, there was progress in the regulatory framework which provides that the rights recognized in the Covenant must be guaranteed to all individuals who are in the country, without any discrimination.

109. In regard to the rights of foreigners, a subject of interest to the Committee[30], based on article 100 of the Constitution[31], Law No. 1070 of 2006 regulates voting by foreigners residing in Colombia. This law enables foreigners resident in Colombia to vote in elections and referenda at the municipal and district level based on their most recent place of domicile. The elections that are open to foreigners in Colombia are contests to elect district and municipal mayors, district and municipal councillors and district and municipal local administrative boards throughout the country.

110. In regard to public administration, a noteworthy development is the issuance of **Law No. 734** of 2002 -- the Unified Disciplinary Code-- which is designed to uphold the ethical conduct, transparency, objectivity, legality, honesty, fairness, equality, impartiality, promptness, public disclosure, economy, neutrality, effectiveness and efficiency that should observed in the exercise of public employment, public office or public trust.

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[29] Constitution, article 13. All individuals are born free and equal before the law and are entitled to equal protection and treatment by the authorities, and to enjoy the same rights, freedoms, and opportunities without discrimination on the basis of gender, race, national or family origin, language, religion, political opinion, or philosophy.

The state shall promote the conditions necessary in order that equality may be real and effective shall adopt measures in favour of groups which are discriminated against or marginalized.

The state shall especially protect those individuals who on account of their economic, physical, or mental condition are in manifestly vulnerable circumstances and shall sanction any abuse or ill-treatment perpetrated against them.

[30] According to text of paragraphs 1 to 7 of General Comment No. 15 (27).

[31] It provides that aliens enjoy the same civil rights as those granted to Colombians. However, it indicates that pursuant to law and for reasons of public order these rights may be limited.

111. Focusing in particular on the principle of equality and non-discrimination, the Code provides in article 35 that every public servant is prohibited from making distinctions, exclusions, restrictions or preferences based on race, colour, or national or ethnic descent that have the object or effect of nullifying or impairing the recognition, enjoyment or exercise on equal footing of human rights and fundamental freedoms in the political, economic, social, cultural or any other sphere of public life.

112. As a guarantee against impunity for the violation of rights under the Covenant and other international human rights instruments, an important advance is the enactment of Law No. 742 of 2002, whereby the Congress approved the Rome Statute of the International Criminal Court, an instrument that was ratified by Colombia on 5 August 2002. Upon ratification, the Colombian State made use of the transitional provision contained in article 124 of this instrument to declare that for seven years it will not accept the Court's jurisdiction over war crimes committed by its nationals or in its territory.

113. With the ratification of the Rome Statute Colombia showed its "willingness to contribute to the development of contemporary international law, to the struggle of the community of nations against the evil phenomenon of impunity, and to the establishment of a criminal jurisdiction of global scope."[32]

2. Judicial developments

114. Overall, from the judicial point of view, the petition for protection[33], which was presented in detail in the fifth report of the Colombian State to the Human Rights Committee, remains an effective and expeditious remedy to protect and guarantee fundamental rights of the population. It is worth noting, in response to the Committee's concern in its observations on the fifth periodic report (see CCPR/CO/80/COL, para. 10), that it has not been amended, since the proposal referred to by the Committee was not approved by the Congress.

115. The petition for protection (*tutela*) is now widely known by the population and millions of Colombians have turned to it seeking protection of their rights[34]. Vulnerable populations, displaced persons, the illiterate, the marginalized and excluded have had the option to access this expeditious procedure, which has benefited them and the country, bringing the people ever closer to the administration of justice.

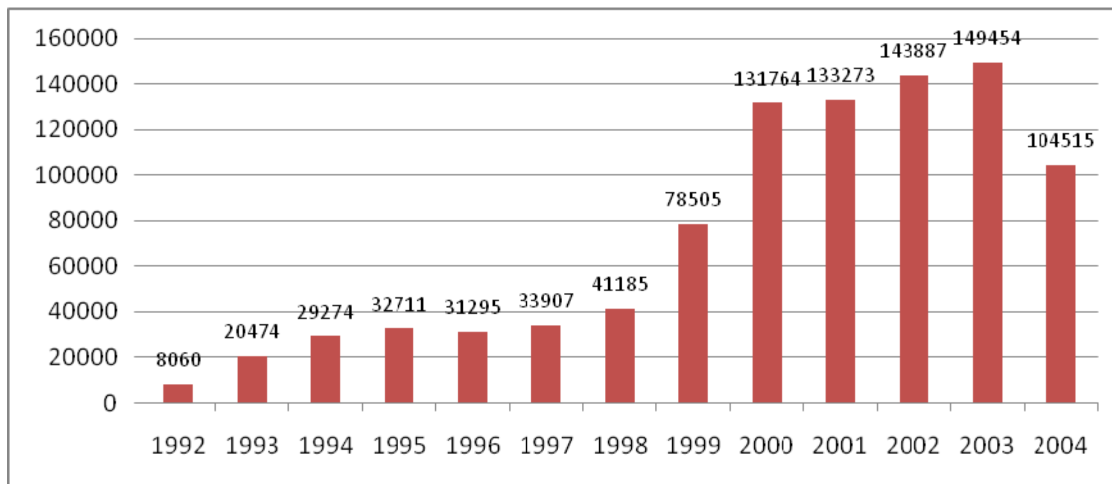
116. The information contained in the table below makes clear the growing consolidation of the action of protection among the population.

[32] Statement by Mr. Amerigo Incalcaterra, Deputy Director of the Colombia Office of the United Nations High Commissioner for Human Rights at the Andean seminar "International Criminal Court: a New Instrument to Combat Impunity."

[33] Under this mechanism, created by article 86 of the 1991 Constitution, any person may petition the courts for immediate protection of his fundamental constitutional rights when they are violated or threatened by the act or omission of any public authority, or by individuals in cases determined by law.

[34] Between 2001 and 2007 more than 1.5 million actions for protection have been filed.

Decisions pursuant to petitions for protection



Source: Constitutional Court, Information Office, Statistics, 1992-2004.

* Data 2004: June.

C. Article 3. Equality between men and women in the enjoyment of human rights

1. Legislative developments

117. In accordance with article 43 of the Constitution, women and men have equal rights and opportunities and women may not be subjected to any kind of discrimination.

118. Further, the said article provides special protection to women during pregnancy and after childbirth, providing for the right to enjoy special assistance and protection by the State and to receive a food subsidy if a woman is unemployed or homeless. Similarly, the State has a duty to provide support to female heads of household.

119. Based on the Constitution, legislative progress in this area has been made during the reporting period.

120. From an international perspective, important instruments were adopted, notably the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, adopted by the General Assembly on 15 November 2000, approved by Law No. 800 of 2003, ratified on 4 August 2004, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 6 October 1999, approved by Law No. 984 of 2005 and ratified by Colombia on 23 January 2007.

121. To improve the quality of life of rural women[35], Law No. 731 of 2002, the "Law on Rural Women", gives priority attention to low-income women, devoting specific measures to accelerate equality between rural men and women.

122. In the criminal sphere, to combat the crime of human trafficking, Law No. 747 of 2002 has been adopted, amending and supplementing Law No. 599 of 2000 (Penal Code).

123. In the labour arena, Law No. 790 of 2002 aims to renew and modernize the structure of the executive branch, in order to ensure, within a framework of financial sustainability of the nation, a proper implementation of the State's objectives with promptness and immediacy. In this context, a “social retention” measure seeks to ensure job security for women heads of household and disabled persons.

124. The National Development Plan under the byword "Towards a Community State 2002-2006" approved by Law No. 812 of 2003 established the policy "Women: Builders of Peace and Development".

125. Law No. 823 adopted in 2003 contains rules on equal opportunity for women. The law aims to establish the institutional framework and guide policies and actions by the Government to ensure fairness and equal opportunities for women in the public and private spheres. To fulfil this goal, the Government commits to ensuring that actions aimed at implementing the equal opportunities plan must: a) promote and guarantee for women the full exercise of their political, civil, economic, social and cultural rights and the development of their personality, skills and abilities, to enable them to participate actively in all aspects of the life and progress of the nation; b) remove barriers that prevent women from fully exercising their civil rights and gaining access to the benefits that sustain the democratic and multicultural development of the nation; and c) incorporate policies and actions for gender equity and equal opportunities for women at all levels and in all actions of the State, national and local.

126. Law No. 905 of 2004 amends Law No. 590 of 2000 on promoting the development of micro-, small and medium-sized enterprises in Colombia and contains other provisions, laying down rules that seek especially to protect women heads of household.

127. Finally, **Law No. 1009 of 2006** establishes a permanent Monitoring Centre for Gender Issues.[36]

2. Judicial developments

128. Rulings of the Constitutional Court have developed and extensively protected the right to equality. The following are some noteworthy Rulings:

129. Ruling T-400/02, which held that different treatment on grounds of sexual condition with no objective and reasonable justification is contrary to the fundamental right to equality.

[35] For purposes of this Law, rural women are women, without distinction of any kind and regardless of where they live, whose productive activity is primarily rural, even if the activity is not recognized by State information and measurement systems or is unpaid.

[36] Accountable to the Office of the President through the Presidential Advisor for Women’s Equity, this monitoring unit aims to identify and select a system of gender indicators, analytical categories and monitoring mechanisms for critical reflection on policies, plans, programs, regulations, and case law for the improvement of the status of women and gender equity in Colombia.

130. Ruling C-482/03, in which the Constitutional Court reviewed the constitutionality of paragraph 11 of article 140 of the Civil Code which states: “A marriage shall be null and without effect in the following cases (…) 11-when it is contracted between an adopting father and an adopted daughter, or between an adopted son and an adopting mother or the woman who was the wife of the adopting party.” The Court upheld the validity of the ground for annulment but conditioned *exequibilidad*[37] (constitutionality) on its being applied on the same terms to men and women.

131. Ruling C-507/04 declared unconstitutional the word "twelve" years contained in the text of article 142, paragraph 2, of the Civil Code, which established a difference in treatment between men and women in setting the minimum age for marriage, disregarding the equal protection guaranteed especially to girls and adolescent women.

132. Order No. 092/08 issued by Constitutional Court, for the protection of fundamental rights of women victims of forced displacement caused by armed conflict in the context of overcoming the declared unconstitutional state of affairs addressed in Ruling T-025 2004. In this Order, the Court adopted comprehensive measures for the protection of fundamental rights of women in a situation of displacement and for the prevention of disproportionate gender impact generated by this situation. Those measures include, in sum: a) orders to create 13 specific programmes to fill public policy gaps in the response to forced displacement from the perspective of women; b) establishment of two constitutional presumptions that protect displaced women; c) issuance of individual orders of specific protection for 600 displaced women in the country; and d) communication to the Office of the Public Prosecutor of numerous accounts of sexual crimes committed in the context of Colombia’s “internal armed conflict.”

3. Administrative developments

133. The Government has been implementing a social policy based on the principle of equal opportunities for women and men. Under that policy, the Office of the Presidential Advisor for Gender Equity has been given responsibility for developing and leading the implementation of the *Affirmative Policy: Women Builders of Peace and Development*, included in the National Development Plan (2002 - 2006 and 2007-2010), which comprises a set of programmes, initiatives and strategies in the areas of: a) employment and enterprise development; b) education and culture, c) prevention of violence against women; d) political participation; and e) institutional strengthening.

134. This policy focuses its actions on lower-income women, especially women heads of household, entrepreneurs, micro-entrepreneurs, and social and community leaders from different ethnic groups, and fosters their relationship to public policies, programmes, projects and strategies of the national Government.

135. **Programme for women micro-entrepreneur heads of household**. This programme focuses on micro-entrepreneur women heads of household of strata 1 and 2[38] of the urban and rural sector. It has coverage of 245 municipalities in 24 departments and the city of Bogota, and between 2002 and 2007 has benefited 26,400 women with training and 6,956 with credits. The amount disbursed for the period was 14,739,161,429 pesos.

136. Providing micro-credit to low-income women entrepreneurs is an option for income generation, employment and poverty alleviation.

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[37] *Exequibilidad* means constitutionality.

[38] The poorest sectors of the population.

137. **National Women Entrepreneurs Fair Programme** – “**Expoempresaria”**. The aim is to build a commercial showcase to boost entrepreneurial activities of women, present micro-enterprises that are competitive in the national, regional and local market, and establish linkages between micro-entrepreneurs, consumers and government institutions working for development of the micro-enterprise sector. The programme subsidizes the costs of those participating for the first time in the show as exhibitors. Nationally 10,000 women micro-entrepreneurs were made visible through fairs and the Colombian Association of Women Business Owners and Entrepreneurs was created, an association which seeks to become the largest network of women entrepreneurs in the country.

138. **Colombian Women Writers’ Encounter Project**. This project aims at gender mainstreaming in the field of culture by enhancing and making visible the literary production of women and their contribution to literature in Colombia. In the reporting period there were four meetings of Colombian women writers and three volumes of the proceedings of those meetings were published, with a total of 2,100 copies. Similarly, during the Fourth Congress of the Spanish Language held in Cartagena on 27- 28 March 2007, the fourth Colombian Women Writers’ Encounter, in tribute to novelist Ángela Becerra, took place.

139. **Women and Sport**. In 2005, the Women and Sport Commission created by the Office of the Advisor for Gender Equity, Coldeportes[39] and the Colombian Olympic Committee designed and launched the Campaign "Women, join sports!”. Between January 2006 and in January 2007, 700 women were trained to increase participation of girls and women in physical activity, recreation and sports, three regional sports meetings for women were held, and an Action Plan for Women and Sports was submitted in March 2007, which seeks to increase women's participation in physical activity, recreation and sports.

140. **Women's Community Councils Programme**. This programme seeks to promote, in municipalities and departments, political participation and citizenship-building for women, and simultaneously to help consolidate Networks of Women against Violence. In the period 2003-2007, 323 community councils of women were constituted, of which 27 were formed in 2006. Work also proceeded on legal literacy training for 90,000 women, as well as training of 349 women through meetings, forums, workshops and educational sessions in 25 departments. Over 140,000 copies were published and distributed, of which 90,000 contributed to the literacy process referred to.

141. **Preventing violence against women**. To eliminate all forms of violence against women a Strategic Plan for the Defence of Women's Rights in Colombia was formulated and conducted through meetings, forums and workshops nationwide, women's legal literacy on rights, international and national legal instruments, mechanisms for citizen participation, tools to prevent domestic violence and policies pursued by the national Government to promote the advancement of women and gender equity.

142. Also worth stressing is the monitoring work done from a gender perspective by the Monitoring Centre for Gender Issues on public policies, laws and judicial decisions. This work not only allows information to be distributed through its newsletters, with over 50,800 copies distributed nationally and internationally on the results of its work but also leads to public policy recommendations. Also, the Monitoring Centre aims to raise awareness of the differential impact on men and women of policies, laws and jurisprudence, based on 81 indicators of 5 key themes.

143. In parallel, Colombia has been at work on cross-cutting incorporation of the gender perspective to ensure the mainstreaming of gender in policies, plans, programmes, laws and judgments of the high courts, through technical assistance to institutions and frameworks for cooperation with other branches of Government and the private sector.

[39] The Colombian Sports Institute.

144. A significant development in this regard is the agreement signed with the Office of the United Nations High Commissioner for Refugees (UNHCR), which encompasses the design of a Guideline on Prevention, Care and Socio-Economic Stabilization for Displaced Persons with a Gender Perspective, designed to promote the inclusion of a gender-differentiated perspective in policies, programmes and projects aimed at improving the lot of displaced populations.

145. A gender perspective is also adopted in the context of the Social Protection Network for Overcoming Extreme Poverty – RED JUNTOS ("TOGETHER NETWORK") in the National Human Rights Plan of Action [40] and the National Strategy and Inter-agency Committee to Combat Trafficking in Persons.

146. **The Strategic Plan for the Defence of Women's Right in the Colombian System of Justice** was formulated in 2006 by a team of Colombian and Spanish experts. It originated in the protocol which the Colombian Government signed with the Autonomous Community of Madrid in June 2005 and the collaboration agreement with the Bar Association of Madrid. The Plan includes measures related to three lines of work: a) women's rights in situations of domestic violence; b) women's rights following the breakdown of the marital union; c) protecting women against employment discrimination. Of these, 16 relate to legislative reforms.

147. The Strategic Plan includes 116 measures to be implemented in the medium and long term, of which 25 were prioritized for implementation in 2007-2008. The measures are aimed, firstly, to enhance the actions of the Government of Colombia for rights and equality of women, and secondly, to introduce new measures to perfect the application and practice of the rights already recognized by Colombian law.

148. Finally, it is worth taking note of the monitoring work conducted by the Office of the Attorney General on the issue of gender equity in discharging its obligation to ensure the proper exercise of the functions set out in the Constitution and the law on public servants.

149. Pursuant to that oversight duty, the Office of the Attorney General's recent report[41] pointed out the breach of the Law No. 581 of 2000, the Quotas Act[42] in State entities. According to the report, 73 State agencies -- executive, legislative, judicial, local authorities, mayors and governors-- are not meeting the quota law that guarantees women's access to public employment.

150. According to this office, based on the figures provided by the Administrative Department of the Civil Service (DAFP), it was found that in 17 of those 73 entities the level of participation by women in leadership and decision-making positions is 0%. However, there are entities that stand out in their compliance with the law, such as the Ministry of Culture with 91%.

151. The Attorney General noted in his report that the "quota law" is considered one of the most significant advances in the fight against inequality and exclusion because it gives women the opportunity to participate and make decisions in the process of shaping public life and democracy, but there is still a long way to go to achieve effective enforcement, as a decline has been noted in female participation in public administration.

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[40] Under the National Human Rights Plan of Action, the Office of the Advisor has taken active part in the Thematic Dimension against Discrimination and for Promotion of Identity.

[41] Report presented by the Office of the Attorney General on 7 March 2008.

[42] Act referred to in the Fifth Report of Colombia to the Human Rights Committee, paragraph 856.

152. In addition, the Office of the Attorney General, in furtherance of its constitutional duties, has been pursuing enhanced oversight of the enforcement of rights from a gender perspective, which, as per the report to the country on the occasion of the International Day against violence against women in 2005, showed: a) the inequitable situation of women and the most violated women's rights; b) the failure to implement international rules on gender; c) a low level of awareness and knowledge about the national and international rules on gender; d) the scant degree of information among local authorities regarding the rights to health, employment, education and participation; and e) it was further confirmed that at the national level "there are no systematic efforts to counter discriminatory cultural traditions and change stereotypes."[43]

153. As a result of the above, Attorney General in 2006 issued Directive No. 009, which calls upon national authorities, departmental and municipal governments to take measures aimed, inter alia[44], to ensure the effective enforcement of the principle of equality and non-discrimination, through policies, programmes, plans and actions, including the gender perspective and the necessary resources to implement them, and give priority attention to women victims of all forms of violence.

154. In 2007, enhanced oversight was conducted of the guarantee of rights from a gender perspective aimed at ensuring the rights of youth and adolescents, which resulted in a call from the Office of the Attorney General to the national and territorial authorities[45]:

a) To clearly establish in their development plans a policy aimed at youth and adolescents, and to systemize the information reporting on the status of the rights of these groups;

b) To take action, implement policies and focus efforts on fostering a society that promotes the realization of the potentials and capabilities of its young population, with particular emphasis on education for work and on creating employment opportunities:

c) To design and implement policies to promote life, its value and its meaning, and to prevent the causes that trigger suicide and homicide among youth and adolescents:

d) With regard to the persistence of gender-based, sexual and intra-family violence, where female adolescents and young women are the main victims, especially those in situations of displacement, the figures continue to show that efforts have not been effective and there is no indication of concerted and comprehensive efforts by the institutions competent to respond to them;

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[43] Office of the Attorney General and UNFPA. Oversight of rights from the gender perspective. Instructional and operational guide for monitoring and oversight, 2nd edition, Bogotá, December 2006.

[44] Other measures indicated by the Attorney General are: disseminating binding international legal standards for Colombia on gender and women's rights; reviewing and adjusting the management and use of information on women's issues, gender and sexual and reproductive rights to systematically break down the statistics at least by sex and age, ensuring that they are kept current and available to the institutions engaged in planning, monitoring and oversight; ensuring that all cases of gender violence are the subject of a full and impartial inquiry and ensuring appropriate punishment of the perpetrators and reparations to victims; reviewing and strengthening measures to prevent and punish trafficking in women and children, as well as the means necessary to respond comprehensively to the victims of this crime; including the agendas of the departmental and municipal Social Policy Councils strategies to: i) make visible the situation of women's rights, ii) pursue the construction of public policies from a gender perspective, and iii) foster compliance with international undertakings on gender and women's rights.

[45] Office of the Attorney General. "Pursuing equity", Nº 1. Bogotá, November 2007.

e) In the framework of international humanitarian law, the Office of the Attorney General stresses the recommendation of the United Nations Secretary General, who stated that the protection and promotion of human rights of women and girls in armed conflict is a matter of compelling urgency;

f) With regard to sexual and reproductive health, it is of paramount importance at the local level to have specific resources aimed at strengthening the public policy for sexual and reproductive health, which should highlight and give a special and differentiated treatment to the identification of needs of female adolescents and young women regarding health in general and sexual and reproductive health in particular, in relation to violence, pregnancy, contraception, and STDs / HIV.

155. In 2008, enhanced oversight was conducted regarding compliance with Constitutional Court Ruling C-355/06, in which the Office of the Attorney General presented a report to the country[46] containing conclusions framed as admonitions to institutions with regard to: a) the imposition of requirements additional to those covered by the aforementioned decision concerning voluntary termination of pregnancy, which set arbitrary barriers that undermine fundamental rights pregnant women and imply inobservance of applicable regulations, b) the lack of complete, clear, detailed and updated information on the availability of services in the field of voluntary termination of pregnancy in the jurisdictions of territorial entities and information on the number of applications for such services responded to, which constitutes de facto discrimination against women, undermining the effectiveness of their rights pursuant to Ruling C-355 of 2006 and its subsequent regulations.

D. Article 4. Protection of human rights in states of emergency

156. As presented in full in the fifth periodic report, our Constitution provides for two kinds of states of emergency: foreign war and internal disturbance.

157. Specifically with regard to the state of internal disturbance, the Constitutional Court has laid down[47] certain material limits and requirements to be satisfied in order to comply with the Constitution. The state of internal disturbance:

> (...) Must conform to constitutional principles as to purpose, necessity, proportionality, grounds of the incompatibility, justification for the limitation and inviolability of certain fundamental rights as laid down in articles 213 and 214 of the Constitution and articles 8, 9, 10, 11, 12 and 13 of Law No. 137 of 1994. Human rights or fundamental freedoms may not be suspended. The normal operation of the branches of government or organs of the State may not be interrupted. The basic organs and functions of prosecution and trial may not be altered or suppressed, as this is expressly prohibited by article 15 of the aforementioned law. All must be done in harmony with the American Convention on Human Rights and article 4 of the International Covenant on Civil and Political Rights.

158. As to formal requirements, the Court said:

> Regarding the latter, i.e. the requirements of a formal nature, the declaration of the state of internal disturbance must be effected by a decree issued by the President with the signature of all his ministers,

[46] Office of the Attorney General. "Pursuing equity", Nº 2. Bogotá, May 2008.

[47] Constitutional Court, Ruling C-327/03.

setting out expressly the grounds for its issuance, determining the territorial scope within which it shall apply, since it may encompass the whole national territory or be circumscribed to a portion thereof, and spelling out the term of its duration which, in any event, shall not exceed ninety days.

159. Paragraphs 6 of article 214 and 7 of article 241 enshrine the powers of the Constitutional Court to review fully and automatically each and all of the legislative decrees issued during states of emergency.

160. This power of review, which covers both form and substance, serves as a counterweight to ensure that the Executive does not overstep its powers, upholding the supremacy of the Constitution.[48]

161. During the reporting period the national Government, by Decree No. 1837 of 11 August 2002, declared a state of internal disturbance[49] throughout the national territory for a period of 90 calendar days in view of the difficult situation of insecurity facing the country due to attacks by illegal organized armed groups against defenceless citizens and violations of their human rights.

162. Based on the declaration, the national Government adopted a series of emergency measures designed to restore institutional stability, State security and social peace.

163. The Constitutional Court held in Ruling C-802 of 2002 that the aforementioned Decree No. 1837 was constitutional[50]. In its reasoning, the Court elaborates upon an issue vital for the purposes of this report, namely the nature of restrictions upon inviolable rights. In this regard the Court states that "Merely by dint of having declared a state of emergency, it is not possible to restrict *per se* rights that are not enshrined as inviolable in articles 4 of the Covenant and 27 of the Convention. That is so because such restriction is justified only when the requirements laid down by international instruments for declaring a state of emergency have been satisfied."

164. Additionally, the Court said:

> The principle of inviolability of rights also extends to rights other than those listed in articles 27 of the Convention and 4 of the Covenant. This extension arises in three ways: first, when the content of the rights expressly excluded from exceptional restriction involves not one but a set of privileges that are linked together, all of these are shielded by the safeguard. Second, given the prohibition placed upon States from taking emergency measures inconsistent with other international norms, the number of rights excluded is also expanded, unless there are in the instruments signed provisions on their suspension which mirror the terms of articles 27 of the Convention and 4 of the Covenant. And third, since judicial safeguards remain in effect during states of emergency, these safeguards, especially the remedies of *amparo* and habeas corpus, are also excluded from restriction upon their exercise. It is also important to note that rules which are considered peremptory in international law, although not included amongst the

[48] Constitutional Court, Ruling C-375/94.

[49] Constitution, article 213: "In the event of a serious disruption of public order imminently threatening institutional stability, the security of the state, or the peaceful coexistence of the citizenry, and which cannot be resolved by the use of the ordinary powers of the police authorities, the President of the Republic, with the approval of all the ministers, may declare a state of internal disturbance throughout the Republic or part of it for a period no longer than 90 days, extendable for two similar periods (…)".

[50] Consistent with the Constitution.

inviolable rights, also cannot be disregarded by virtue of the powers arising from a state of emergency. So it is with respect for human dignity; the prohibition of torture, cruel and degrading treatment; kidnapping and hostage-taking and respect for the rules of international humanitarian law.

The abnormal state of affairs that leads to the declaration of a state of internal disturbance confers exceptional powers upon the President, but the exercise of those powers is not exempt from the showing of legitimacy that is required for any act of public authority for, although the abnormal situation justifies the exceptional presidential powers, it alone is not sufficient to assert their legitimacy. This situation is addressed by the system of safeguards designed by the framers of the Constitution and, in this context, political checks help to bestow legitimacy upon the exercise of those powers.

165. Upon expiration of the state of internal unrest, the Government found it necessary to renew it for another 90 days by Decree No. 2555 of 8 November 2002 because, although the measures taken so far were effective averting the crisis, the causes that led to the initial declaration still existed, since it remained the clear intention of the illegal groups and organizations to create a climate of instability and violence, threatening the normal conduct of civic activities and institutions. This decree was declared constitutional by Ruling C-063/03 of the Constitutional Court.

166. The national Government, upon the expiration of the extension, deemed necessary a second extension of the state of internal disturbance[51], by Decree No. 245 of 5 February 2003, under the rationale that the risk continued to exist, making it necessary and urgent to continue the emergency powers to enable it to deal with and punish such actions and to prevent the spread of their effects, to respond immediately and forcefully to organizations posing an imminent threat to institutional stability, State security and social peace.

167. This decree was declared unconstitutional by the Court in Ruling C-327/03 because the procedural requirements established by the Constitution had not been complied with.

E. Article 5. Guarantee of the rights recognized in the Covenant

168. In the national legal system, the precept contained in article 5 of the Covenant is contemplated in article 94 of the Constitution, which states that "the enunciation of rights and guarantees contained in the Constitution and in international conventions in force must not be understood as negating others inherent to the human person that are not expressly mentioned in them."

169. This precept has been developed in the context of case law by the high courts. During the reporting period, a noteworthy decision was that of the Council of State[52], handed down in an action of protection which

[51] The Court notes: “As to the temporal and material scope of the state of internal disturbance, the Constitution in force, unlike the previous one, has established specific limits which the President may not exceed. In particular, it was the concern of the framers of the 1991 Constitution to eliminate the former indefinite state of siege to which, unfortunately, the 1886 Constitution had been almost completely reduced.

This being the case, article 213 of the Constitution lays down an initial time limit to the declared state of internal disturbance, since it may initially not exceed 90 days. However, since it may not be possible within that time to fulfil the aim of restoring public order or removing the causes which gave rise to the declaration, the President is authorized, with the approval of all his ministers, to extend the time for another like period with the prior approval of the Senate, all of the foregoing in keeping also with the provisions of articles 35, 39 and 40 of Law No. 137 of 1994.”

[52] Council of State, third section, Action for protection Nº 0026801.

sought to protect the right to life in dignity, housing and work for a displaced citizen. In its reasoning, the Superior Administrative Court recalled what had been stated by the Constitutional Court, expressing its understanding that although there was no written rule protecting displaced persons with regard to housing, they were covered by the Martens Clause or by article 94 of the Constitution. Consequently, the rules and conventions established for refugees would apply by analogy.

170. In this regard the Court has said:

> Displaced persons have a right to housing as expressed in article 21 of the Convention on the Status of Refugees, domestically applicable pursuant to article 93 of the Constitution, the Constitution in article 51 and Law No. 387 of 1997 in its article 2 (Council of State, section three, Exp. AC-4279). In addition, special consideration must be given to people who are in situations of manifest weakness as indicated by article 13 of the Constitution, Principle of the shifting burden of proof - displaced persons and refugees. The principle of the shifting burden of proof, which results in shifting the burden of proof to the party with greater ability to prove or disprove a fact, is applicable not only domestically, since it applies also in international human rights law and in and refugee law, as in statements by the United Nations High Commissioner for Refugees, by courts of the United States, Canada and the House of Lords. The Honourable Constitutional Court of Colombia also uses this principle, which is related to that of good faith, because if the latter is presumed in the actions of individuals, it reverses the burden of proof, and therefore it is the authorities that must prove fully that the person in question is not a displaced person (T 321, 2001).

F. Article 6. Right to life

A. Legislative developments

171. From a legislative standpoint, the country has advanced in recent years in protecting and guaranteeing the right to life from different perspectives. The following are the most significant changes.

172. The Inter-American Convention on Forced Disappearance of Persons was approved by Congress through Law No. 707 of 2001 and ratified on 12 April 2005.

173. Through Law No. 782 of 2002 the national Government undertakes to implement a protection programme for people who are at imminent risk to life, integrity, security or freedom for reasons related to political or ideological violence or the "internal armed conflict", and identifies the categories of persons who may seek protection. Decree No. 2816 of 2006 regulates aspects pertaining to administration, procedures, risk classification, benefits and obligations of the protected persons and evaluation criteria including those of the Human Rights Protection Programme, Ministry of the Interior and Justice.[53]

174. The Congress approved the Unified Disciplinary Code, Law No. 734 of 2002. This law seeks to harmonize legislation and provide it with a disciplinary structure that guarantees legal security to beneficiaries, in addition to streamlining procedures. It significantly expands the catalogue of forms of behaviour constituting misconduct, and ranks them according to their gravity. With regard to behaviours that violate human rights, it

[53] The Human Rights Protection Programme of the Ministry of the Interior and Justice seeks to support the national Government in safeguarding the life, integrity, liberty and security of the target population that is facing certain, imminent and exceptional risk as a direct result and because of the conduct of their political, public, social or humanitarian activities or functions.

provides that those that constitute crimes against humanity, including genocide, forced disappearance, torture, arbitrary executions, forced displacement and illegal deprivation of liberty are violations or the utmost gravity that are punishable by dismissal and disqualification, ranging from 10 to 20 years, from holding public office. The foregoing is in line with international human rights instruments of which Colombia is a party.

175. Also noteworthy is Law No. 1015 of 2006, promulgating the National Police Disciplinary System, which recognizes the special function assigned to members of the police force, according to the many pronouncements in that regard made by the Constitutional Court.

176. The law establishes a rigorous list of sanctions commensurate with the degree of misconduct, contemplating dismissal and general disqualification, among others. Thus, the most serious intentional or wilful offenses will always be punished by dismissal. The law seeks, according to the parameters outlined by the Constitutional Court, to tailor the classification of faults and sanctions to the principle of proportionality and reasonableness.

177. However, this scheme does not apply with respect to crimes against humanity or gross violations of human rights or international humanitarian law, in which case the Attorney General's Office, the highest disciplinary body, has jurisdiction.

178. Along the same lines, Law No. 836 of 2003 enacts the Disciplinary Regulations for the Armed Forces. This law regulates matters relating to the disciplinary process applicable to members of the Army, Air Force and Navy, where disciplinary authority resides with the Armed Forces, without prejudice to the disciplinary powers of the Attorney General's Office. It exhaustively identifies the principles that should inform the system and the rules of conduct that must be observed in the midst of any public order situation. It also regulates in detail the types of faults, degrees of fault and sanctions to be applied, respecting the principle '*nullum crimen, nulla poena sine lege*'.

179. The system prescribes three kinds of penalties for officers and volunteer soldiers, ranging from outright discharge when the crime is "serious and wilful" to the 90-day suspension without pay and simple, formal or severe disciplinary actions.

180. Moreover, the provision makes clear that the penalties and rules provided in the scheme will be applied to all members of the military on active duty and that prisoners of war shall be subject to the standards set by international humanitarian law.

181. Regarding punitive measures, of particular note is the issuance of Law No. 890 of 2004 which amends and supplements the Penal Code to increase sentences for all crimes, including homicide, by one third of the minimum and one half of the maximum as from 1 January 2005.

182. Law No. 971 of 2005 governs the urgent search mechanism, which is a public oversight strategy to protect freedom, personal integrity and other rights and guarantees of persons believed to have been subjected to enforced disappearance. The aim is that the judicial authorities carry out immediately all necessary steps aimed at locating such persons, as an effective mechanism to prevent the commission of the crime of enforced disappearance. In this regard, mention should be made of the launch of the National Missing Persons Search Plan, developed in concert by all entities that are part of the National Committee for Emergency Search for Missing Persons[54], whose primary aim is finding the missing alive or promptly returning the bodies to their relatives so they can fulfil their mourning in accordance with their customs and beliefs.

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[54] Law Nº 589 of 2000.

183. Another important development is Law No. 975 of 2005, the Justice and Peace Act, which contains provisions for the reintegration of members of organized armed groups outside the law who effectively contribute to achieving national peace, and other provisions for humanitarian agreements. After an extensive process of consultations and discussion, which lasted at least two years, with the participation of the national and international community, the Congress adopted this instrument proposed by the national Government, whose aim is to provide a framework that makes viable the individual or collective reintegration of members of organized armed groups operating outside the law who effectively contribute to the attainment of national peace, including guerrillas and paramilitaries, in keeping with the rights of victims to truth, justice and reparations.

184. This body of law does not allow impunity for outrageous crimes, which will not be subject to any form of amnesty or pardon, and for the first time recognizes in law the right of victims to know the truth and reiterates the recognition of their rights to justice and full reparations. Those seeking the benefits established by this law must confess their crimes before a prosecutor from the Justice and Peace Unit and must compensate the victims with their assets, legal and illegal. To secure for victims their involvement in judicial fact-finding and the realization of their rights, the law created the National Commission for Reparation and Reconciliation[55], composed of ranking governmental and State officials, representatives of victims' organizations, and other persons appointed by the President, of whom at least two must be women.

185. These rules were subjected to constitutional review pursuant to public actions brought before the Constitutional Court. By Ruling C-370/06, the Court declared certain articles unconstitutional or conditionally constitutional, tightening the enforcement of the law for the benefit of victims. This matter was discussed by the Committee in its observations on the fifth periodic report.[56]

186. With regard to the landmines problem affecting several regions of the country by the action of organized illegal armed groups, Law No. 759 adopted in 2002 prescribes rules to implement the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction[57] (Ottawa Convention) and lays down provisions aimed at eradicating their use in Colombia.

187. It should be recalled that Colombia signed the Ottawa Convention on 4 December 1997 and ratified it on 6 September 2000, becoming the 103rd State Party.

2. Judicial developments

188. The Constitutional Court, particularly through the petition for protection, has played an important role in ensuring the right to life.

189. Under the situation of violence the country has faced for years, the Court has strived to protect the population at risk through a large number of decisions. In this regard, it held in Ruling T-539/04 that it is the duty of the State to afford effective protection to all citizens and especially to those who are close to the "conflict". Court observed that: “(...) the view is taken that such protection should be afforded to all persons whose lives are

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[55] Art. 52.1, Law Nº 975 of 2005.

[56] Document CCPR/CO/80/COL, para. 8.

[57] On 6 September 2000, Colombia ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, following approval by Congress through Law Nº 554 of 2000 and review by the Constitutional Court, which declared it constitutional in Decision C-991, of 2 August 2000.

objectively threatened, without distinction and regardless of the degree of impact, meaning that in these cases the extent or degree of probability of the threat does not matter, provided the threat is certain." The Court also considers it irrelevant to identify the subject whose action threatens the fundamental right to life, since the State's obligation to ensure its inviolability is enforceable under any circumstances."

190. According to the Court:

> Constitutional decisions have generally developed certain criteria to be taken into account when assessing the facts recounted by persons allegedly affected or threatened by surrounding conditions of disturbance of public order: i) the existence of a real and certain threat, either "because they are engaged in activities that expose them to the direct action of those who have taken up arms (e.g. tasks of political, humanitarian or social activism), or because they live in a region where clashes are occurring between the army and the subversives"; ii) that said situation is communicated to the competent authorities; and iii) that there is a need for State intervention, either through: a) a direct decision to protect the complainant, or b) taking such steps as may be appropriate.

191. The Court also considers it irrelevant to identify the subject whose action threatens the fundamental right to life, since the State's obligation to ensure its inviolability is enforceable under any circumstances.

192. In this regard the Court, in Ruling T-1026, 2002, said:

> "Whether the unlawful action arises from common crime, from armed groups operating outside the law or even from the State itself is immaterial for purposes of ordering the protection of citizens' fundamental right, since, as underscored in Ruling T -1206, 2001, the request for protection by way of an action of protection does not seek to ascribe individual responsibility for offenses, or to recover damages resulting from the wrongful act, or to establish the disciplinary responsibility of a public servant . Given the nature of the action of protection, the purpose of the protection sought is safeguarding the right to life, demanding State protection as laid down in articles 2, 5 and 11 of the Constitution."

193. Regarding the importance of Colombia's adoption of the Rome Statute of the International Criminal Court for the protection of rights such as the right to life, the Constitutional Court, applying constitutional review, noted in Ruling C-578 of 2002, finding the Statute constitutional:
"(...) The definitions of crimes against humanity contained in the Statute protect the realization of the right to life, the prohibition of torture and disappearances, equality and the prohibition of slavery." The Court also explained that the definition in the Rome Statute differed from that used previously in international criminal law, because it expanded the concept to expressly include sexual offenses (other than rape), apartheid and enforced disappearances, and because it made clear that such crimes could be committed in peacetime or armed conflict and did not have to be committed in connection with another crime. The Court said that the Rome Statute, in providing the system of human rights protection with an additional tool to combat impunity in cases of grave human rights violations, echoed the international commitments of Colombia."

194. Ruling T-025 of 2004 established the minimum protection of the rights of displaced persons:

a) Right to life;

b) Right to dignity and physical, psychological and moral integrity;

c) Right to family and family unity;

d) Right to minimum subsistence;

e) Right to health;

f) Right to protection;

g) Right to education;

h) Assistance in becoming self-supporting;

i) Right of return and resettlement.

195. In Ruling C-473/05 the Constitutional Court declared constitutional the draft statute (Act 971 of 2005) which governs the so-called Urgent Search Mechanism as a means of protecting the right to life. The Court stated:

> In addition to the fundamental rights protected directly by the Urgent Search Mechanism, namely freedom and integrity, this mechanism is also important to safeguard many other fundamental constitutional rights, especially the right to life of the persons subjected to enforced disappearance. As time passes the risk to the life of those persons increases significantly, making it necessary that the mechanism actually operate quickly and with a sense of urgency. Sometimes, the impairment of physical or moral integrity of the disappeared can lead to their death. Additionally, this mechanism also aims to safeguard the fundamental right to family since the missing person is forced to completely disrupt family relationships. That is why this draft refers specifically to the families of the missing, for whom specific rights are recognized to advance the search mechanism and to receive timely and accurate information on its progress, among other matters. It is stressed that the scope of the urgent search mechanism goes beyond recognition or declaration of rights of victims or their families to extend into the field of full and effective enjoyment of fundamental constitutional rights violated or threatened by enforced disappearance. In that sense the whole draft was inspired by the principle of the effective enjoyment of rights in keeping with article 2 of the Constitution.

196. Another important development in the area was Constitutional Court Ruling C-394/07, extending the framework of protection and enforcement of Law No. 986 of 2005 to the families of victims of the crimes of enforced disappearance and hostage-taking. Through this law measures are adopted to protect victims of kidnapping and their families, based on the principle of social solidarity and fulfilment of State duties enshrined in the Constitution, seeking to alleviate the impact that is generated with a kidnapping, particularly the burdens which the family must bear in terms of civil obligations.

197. The Constitutional Court also made progress in analyzing the scope of so-called political crime, stating in Ruling C-695/02[58]:

> *Ab initio*, there are crimes that do not qualify as political or related crimes, since they are incompatible with the scope and conceptual, philosophical and legal definition of such offenses, for instance crimes against humanity, terrorism, kidnapping, extortion, wilful killing, forced disappearance, torture, etc. Therefore, behaviours that rely on violence or terror and disregard man as an end in himself will never qualify for exclusion from an action or punishment through the legal institutions of amnesty and pardon, since they cannot be viewed as offenses of a political or related character but rather as atrocities and acts

[58] Dissenting Opinion, Judge Rodrigo Escobar Gil.

of barbarism that undermine the foundation of a democratic State, namely the dignity of the human person, which is the beginning and end of any political society.

198. By Ruling C-004 of 2003 the Constitutional Court declared constitutional paragraph 3 of article 220 of Law No. 600 of 2000, the Criminal Procedure Code, extending the range of grounds for the Action for Review in support of the right to justice, "with the understanding that (...) the Action for Review also applies in cases of preclusion of the investigation, stay of proceeding and acquittal, provided that the case involves human rights violations or grave breaches of international humanitarian law and that a domestic judicial decision or a decision of an international human rights monitoring forum formally accepted by our country has established the existence of new facts or evidence not known at the time of the proceeding." Similarly, the Court held that the Action for Review applies against "preclusion of the investigation, stay of proceeding and acquittal in cases involving human rights violations or grave breaches of international humanitarian law even without new facts of evidence unknown at the time of the proceeding, provided that a domestic judicial decision or a decision of an international human rights monitoring forum formally accepted by our country establishes a conspicuous breach of the obligations of the Colombian State thoroughly and impartially to investigate said violations."

199. In Ruling T-496/08 the Constitutional Court held that the Ministry of Interior and Justice and the Office of the Public Prosecutor should proceed to "develop the necessary actions aimed at conducting a comprehensive review of the Programme for Protection of Victims and Witnesses under the Justice and Peace Act, in order to make it consonant with the minimum elements and principles of rationality … that under international law and practice should guide and frame a comprehensive strategy for successful protection of victims and witnesses in cases in which grave or systemic criminal acts are under investigation, such as the cases involving judicial inquiry under the Justice and Peace Act." To that end, the Court itself provided that a comprehensive review and adjustment of the protection strategy should take place within a maximum of six months.

3. Administrative Developments

200. The state democratic security policy, which guided Government actions during the reporting period, provides for strengthening the rule of law throughout the country as a means to protect the entire population against human rights violations and breaches of international humanitarian law. However, inasmuch as some Colombians are in a situation of special vulnerability which requires special attention by the State, the Government has worked to strengthen programmes geared to the protection of that population, without neglecting the preventive perspective.

201. **Decentralization of implementation of human rights policy**. From a preventive point of view, efforts have centred on decentralizing implementation through training and advice to local authorities to include strategies to prevent human rights violations and breaches of international humanitarian law in departmental and municipal development plans and to design departmental and municipal plans that include specific tasks to be undertaken in keeping with local needs.

202. **Early Warning System**. Similarly, efforts have continued to give impetus to the Early Warning System[59] referred to in the previous report[60] and to consolidate a State information system aiming to anticipate and prevent

[59] The Early Warning System is a mechanism created administratively as key element in preventing displacement and protecting communities and individuals who may be affected by it. It comprises the Early Warning System of the Ombudsman, which produces risk reports and follow-up notes to them as a result of its ongoing monitoring in the regions and the Inter-Agency Early Warning Committee -CIAT-coordinated by the Ministry Interior and Justice and also including the Defence Ministry and the Presidential Program for Human Rights of the Presidency of the Republic, which must, among other functions, evaluate the reports of the Ombudsman and produce a response in accordance with his assessment which is entrusted to the security forces and civil authorities.

the occurrence of human rights violations and breaches of international humanitarian law or to ensure that new ones do not occur.

203. The effort has focused on seeking a comprehensive response to the threat, not limited to the actions of the police forces. The Government, through the Inter-Agency Early Warning Committee (CIAT), has taken responsibility for the entirety of the process of risk reports prepared by the Office of the Ombudsman for all aspects of decisions aimed at preventing the occurrence of events that violate human rights at the departmental and municipal levels and for monitoring implementation and compliance.

204. In this regard, valuable analysis and observations are offered by the Attorney General's Office, which performs oversight on matters pertaining in particular to the operation and efficiency of the mechanism[61]. The reports submitted by this Office have helped to show the areas in which institutions must work to improve the system for ensuring rights.

205. Progress has also been made in designing and implementing community-focused educational strategies with a view to generating a sense of ownership in regard to human rights as the basis for a civic response to prevent and deter threats and aggressions of various illegal armed actors.

206. **Project on Communities at Risk**. This project began in June 2005 and was designed in response to the recommendations of the United Nations High Commissioner for Human Rights (Recommendation No. 3 of 2004) and to the State's interest in having mechanisms for addressing the interim measures or provisions issued by the organs of the Inter-American Human Rights System. This is an inter-agency initiative involving the Human Rights Directorate of the Ministry of Interior and Justice, the Presidential Human Rights and International Humanitarian Law Programme, the Presidential Agency for Social Action and International Cooperation, the Ombudsman and the Attorney General's Office. Its purpose is to raise standards of protection of the rights to life, integrity, liberty and personal security of residents of disadvantaged communities located in remote rural areas, which are often challenged by illegal armed actors, are difficult to reach and have low institutional presence.

207. The foregoing is pursued through the following strategies:

a) Strengthen communities to determine the risk;

b) Strengthen protection and prevention capacity of State institutions at national, regional and local levels;

c) Restore or improve relations between the State and the community to develop action plans that reduce the vulnerability of communities;

d) Provide technical assistance for the formulation of public policy in prevention and protection for communities at risk.

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[60] See CCPR/C/COL/2002/5, paras. 415 and 416.

[61] The comments of the Office of the Attorney General have focused on the timeliness of assessment of risk reports; the dismissal of risks that were considered high by the Ombudsman; non-response to risks ranging from intermediate to high; updating of the monitoring of alerts; and periodicity of monitoring. Analyses have also been issued concerning the nature of CIAT (a coordinating forum which seeks to unify criteria for action in risk situations) and the scope of its conclusions.

208. The project focuses on communities located in the following regions: the Urabá area of Antioquia and Choco, eastern Antioquia, the Eje Cafetero coffee-growing region, Córdoba, lower Putumayo, Arauca, southern Tolima, Montes de Maria, Pacific Nariño, Province of Ocaña and Catatumbo, Sierra Nevada of Santa Marta, the central Colombian mountains, and Cauca.

209. In pursuing this project there has been progress in the development of diagnostic assessments for each of the communities, in the design of concerted prevention and protection plans, and in the design of regional projects funded in the amount of 514,856,960 pesos.

210. **National Action Plan for Human Rights and International Humanitarian Law**. This Plan, which was referred to in the preceding chapter (Fundamental aspects of the Colombian State, No. 7, Government policy on human rights) has as one of its themes the protection of the rights to life, liberty and personal integrity.

211. **Protection Programme**. In the area of protection, we should note the strengthening of the Protection Programme, unique in the world, created in 1997 as a result of a joint effort between Government and civil society to protect certain population groups particularly vulnerable to the actions illegal armed organizations in regard to their rights to life, integrity, liberty and personal security.

212. Initially, this programme sought to protect rights to life, integrity, personal liberty and security of trade union leaders and leaders of human rights NGOs, but its coverage has been extended to the following population groups:

a) Leaders and activists of political groups, opposition groups, social, civic, community, trade-union, farm and ethnic associations, human rights NGOs and members of the medical mission;

b) Witnesses in cases of violation of human rights and international humanitarian law;

c) Leaders and members of the Patriotic Union (UP) and the Colombian Communist Party (CCP);

d) Journalists and communicators;

e) Mayors, councilmen, representatives and deputies;

f) Officials and former officials responsible for designing, coordinating and implementing the policy of peace or human rights of the national Government.

213. The aim of the Protection Programme, which is currently governed by the parameters outlined in Decree No. 2816 of 2006, is "to support the national Government in safeguarding the life, integrity, liberty and security of the target population that is facing certain, imminent and exceptional risk as a direct result of and because of their political, public, social or humanitarian activities or functions."

214. Additionally, the national Government, aware of the particular risk of certain population groups and supported by pronouncements of the Constitutional Court[62], has designed special protection programmes in line

[62] Ruling No. 200 of 2007 concerning displaced persons and Decree No. 3570 of 2007 joined to Ruling T-496 of 2008, concerning victims in the context of the Justice and Peace Act.

with the specific and special threats and vulnerabilities of the displaced population and victims and witnesses in the context of the Justice and Peace Act.

Population benefiting directly from measures protection, 1999-2007

	Number								
Target group	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Aldermen	0	0	0	404	1.120	832	1.195	1.198	2.150
UP-PCC	0	77	378	775	423	1.158	1.402	1.648	2.058
Trade unionists	84	375	1,043	1,566	1,424	1,615	1,493	1,504	1,959
Leaders	43	190	327	699	456	545	552	516	951
NGO	50	224	537	1.007	1.215	733	554	683	613
Displaced Ruling T-025	-	-	-	-	-	-	59	92	594
Mayors	0	0	0	212	344	214	87	76	390
Institutional	-	-	-	-	-	-	-	69	320
Journalists	0	14	69	168	71	125	46	64	128
Spokesmen	0	0	0	26	125	65	45	94	101
Deputies	0	0	0	0	43	45	33	58	74
Peace agreements	-	-	-	-	-	-	-	68	69
Witnesses	-	-	-	-	-	-	-	21	32
Medical mission	-	-	-	-	-	-	-	4	4
Ex-mayors	0	0	0	0	0	114	41	2	1
Total	**177**	**880**	**2,354**	**4,857**	**5,221**	**5,446**	**5,507**	**6,097**	**9,444**

Source: Ministry of the Interior and Justice.

215. The security measures that are delivered through the programme can be preventive or protective.

216. Preventive measures aim to complement physical protection measures and prevent the consummation of the risk. Among the main measures are courses intended to provide self-protection tools to the target population to identify their own risks and manage them without resorting to the use of arms; and regular preventive patrols conducted by the National Police of the residences of the beneficiaries or the headquarters of organizations to which they are linked.

217. The physical protection measures may be soft or hard. Among the former are:

a) Communications measures: these aim to facilitate timely and effective communication between the beneficiaries, as well as the organizations to which they belong, and State agencies participating in the Protection Programme in order to report a emergency situation, avoiding the risk involved in using other public means of communication;

b) Transportation;

c) Domestic Air Transportation: domestic air tickets issued to the beneficiary and / or his family, for transfer to an area that offers greater safety;

d) Support for land transportation: payment for private transportation service, enabling the beneficiary to enjoy greater safety when moving through an area at risk;

e) Temporary relocation support: granting of a monthly payment in view of the urgent need to leave the risk area, to facilitate transport and resettlement in a different place;

f) Support for moving: financial assistance for the transport of the beneficiary's essential personal property if it is necessary for him to move to a safer area.

218. The hard measures can be:

a) Hard protection schemes: assignment for individual or collective use of: bodyguards, a regular or armoured vehicle, bulletproof vests, weapons and communications equipment;

b) Shielding of buildings: installation of safety equipment for controlling access to buildings owned by the organizations to which beneficiaries belong;

c) Bulletproof vests: assigning protective body armour;

d) Shielding of vehicles: installation of armour on vehicles owned by municipalities or departmental or municipal public corporations;

e) International Air Transportation: granting of an international air ticket for the beneficiary and / or his family when deciding to leave the country for security reasons, with approval by the host country, for a period exceeding one year.

219. Despite the nation's fiscal constraints, the Government has allocated significant resources to this programme, which resulted in increased and effective protection for the vulnerable population. For the fiscal period 2002 to 2007, resources were allocated for the programme with a value of 305,679,610,000 pesos from the General Budget of the Nation. The United States Agency for International Development (USAID) allocated 26,970,694,000 pesos over the same period.

Strengthening of budget, 1999-2007

(Thousands of pesos)

Period	National budget	International cooperation USAID*	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	70,981,065	1,843,994.27	72,825,059
2007	74,717,775	2,273,718.51	76,991,494
Total	**305,679,610**	**26,970,694.66**	**332,650,305**

Source: Ministry of the Interior and Justice, USAID-MSD

220. **Programme for Victim and Witness Protection under the Justice and Peace Act**. In implementing Law No. 975 of 2005, the Justice and Peace Act, the need arose to provide security for victims and witnesses, to facilitate their judicial interventions. For this purpose, through Decree No. 3570 of 2007, the Programme for Victim and Witness Protection was designed in order to "safeguard the life, integrity, liberty and security of the population that is in a situation of threat or danger as a direct result their involvement as a victim or witness in the justice and peace process."

221. This programme, led by the Human Rights Directorate of the Ministry of Interior and Justice, operates through a Technical Risk Assessment Group and a Subcommittee on Protection of Victims and Witnesses. The first is comprised of representatives from the Office of the Public Prosecutor, the National Police, the Ministry of Interior and Justice and the Administrative Department of Security (DAS) and its functions are to assess the risk or threat to victims and witnesses seeking protection and to authorize the adoption of interim measures of protection.

222. The Subcommittee on Protection of Victims and Witnesses, for its part, is comprised of the Office of the Public Prosecutor, the National Police, the Ministry of Interior and Justice, the DAS, the Attorney General's Office, the Ombudsman, the National Planning Department and the Presidential Human Rights and International Humanitarian Law Programme, and its main functions are to develop and update a risk map; to supervise the work of the Technical Risk Assessment Group; to suggest, when appropriate, adopting other special measures of protection; and to serve as a review body for decisions taken by the Technical Risk Assessment Group.

223. The Programme covers two types of measures in case of extreme or extraordinary risk. The first type consists of prevention measures targeted to municipalities which, according to the risk map prepared by the Subcommittee for the Protection of Victims and Witnesses, have a high risk for victims and witnesses under the Justice and Peace Act. The second type of measure, aimed at the individual, is the award of protective measures appropriate and sufficient to prevent the risk from materializing.

224. It is important to note that a person who applies for protection under this programme may receive initial assistance in the form of food, cleaning, medical care and lodging for himself and his family for 15 days, after which, in accordance with the evaluation done by the Technical Risk Assessment Group, appropriate measures will be taken according to their situation.

225. Other notable developments for victims under the Justice and Peace Act are the following:

a) As regards justice, as of June 2008 there had been 1,141 volunteered accounts that resulted in the confession of a large number of criminal offenses. Currently, another 283 volunteered accounts are in progress[63].

b) Mobile volunteered-account chambers have been arranged to transmit to victims the testimony of demobilized paramilitaries applying to receive the benefits of the law.

c) A National Register of Victims has been created which has approximately 150,000 entries.

[63] Judicial prosecutors of rank II, in their capacity as agents of the *Ministerio Público*, have intervened in the taking of 1,216 statements.

d) Additional resources have been allocated to strengthen the National Unit for Justice and Peace of the Office of the Public Prosecutor in accordance with real needs, increasing the number of prosecutors from an initial staff of 20 up to a current staff of 59 prosecutors for trials and 125 for support, with 400 investigators.

e) 1,056 graves have been opened and 1,559 bodies have been exhumed, of which 513 can be identified and 202 have been identified and handed over.

f) To inform victims, use has been made of the mass media. Additionally, the Ombudsman has set up mobile legal units and has provided advice, assistance, psychosocial support, and judicial and extrajudicial representation to people who consider themselves victims.

226. With regard to reparations to victims, demobilized individuals have to date handed over 4,619 items of property to the reparations fund. Similarly, the Government issued Decree No. 1290 of 2008, by which it created the Programme of Individual Reparations through Administrative Channels (parallel to reparations through the courts), which plans an investment of 7 billion pesos (US$ 3,668,820,788) over the next three years. This decree is applicable in cases of crimes including murder, forced disappearance and kidnapping, among others.

227. Thanks to financial and technical support from IOM-USAID, a project has been implemented for specialist legal advice to ensure the effective participation of victims and the full realization of their rights to truth, justice and reparations.

228. Also noteworthy is the creation of the National Prosecutors’ Unit for Justice and Peace to address investigations in a more specialized and flexible way, given the scope and characteristics of the Justice and Peace Act.

229. **Protection Programme for the Population Displaced by Situations of Violence**. In monitoring compliance with the orders issued in Ruling T-025 of February 2004, the Constitutional Court, on 13 August 2007, issued Order No. 200, which identifies a number of shortcomings in the design and implementation of the Protection Programme for the Population Displaced by Situations of Violence, which the Court prescribes must be overcome to ensure effective enjoyment of the rights of this population to life, integrity, liberty and personal security.

230. To that end, the Court, in its Order, instructed the Human Rights Directorate of the Ministry of Interior and Justice to design a specific programme of protection for leaders and representatives of the displaced population and for people in situations of displacement who are facing special or extreme risk, responding to the specific features of this population and ensuring preferential and differentiated treatment.

231. To comply with this order, the Directorate designed and is implementing a Programme of Protection of Persons in Situations of Forced Displacement, which includes the following components:

a) Mechanisms to relate its programme with the public policy of attending to this population, which means adjusting processes and procedures of each of the entities comprising the National System for Comprehensive Care of the Population Displaced by Violence (SNAIPD) with the aim of defining complementary modes of intervention to secure, through preferential and expeditious treatment, the enjoyment of other rights and the subsistence of persons protected by the Programme and their families;

b) Review of appropriateness of processes and procedures of the Human Rights Directorate of the Ministry of Interior and Justice to meet the criteria of suitability, timeliness and differentiated approach.;

c) Design and implementation of a protection road-map at the territorial level to ensure preferential and suitable treatment for this population, improving the coordinated response capacity of local authorities. This road-map starts from the powers and functions of municipal and departmental authorities to articulate a clear and expeditious response procedure which identifies the roles, tasks and deadlines for action to prevent, resolve and mitigate the threat factors faced by this population;

d) Definition and implementation of differential procedures in conducting risk studies by the DAS and the National Police.

e) Redefinition of protective measures that meet the differential approach criteria and extension of these measures to the nuclear family when the risk situation so warrants.

232. It should be noted that the scope of each of the components set was fully discussed with the State entities concerned: the Presidential Human Rights and International Humanitarian Law Programme, the Presidential Agency for Social Action and International Cooperation, the National Police, DAS, the National Department of Planning, Office of the Ombudsman and Attorney General's Office. Forums for analysis and discussion were also provided with representatives of the displaced population before the CRER, before the National Council for Comprehensive Care of the Population Displaced by Violence (CNAIPD) and before the National Working Group to Strengthen Organizations of Displaced Persons. Work on the issue proceeded in parallel with both UNHCR and the Human Rights Programme of USAID.

233. **Programme of Protection of Victims and Witnesses of the Attorney General's Office**. Since the entry into force of the Constitution of 1991, the Government has sought to establish effective mechanisms for justice to ensure the effectiveness of the social State under the rule of law and to guarantee the fulfilment of the rights and freedoms enshrined in the Constitution. The Witness Protection Programme is one of them.

234. The Witness Protection Programme was created in 1992 in response to the need to address the terrorism besetting the country at that time. Colombia became, after the United States and Italy, the third country to form a witness protection programme, in order to address the problem of violence and increased terrorism, which increasingly affected witnesses in criminal investigations.

235. Today the programme is a unit of the Attorney General's Office responsible for providing comprehensive protection and assistance to witnesses and victims who contribute to criminal proceedings by providing information that contributes to achieving a successful criminal investigation and who, by reason of their cooperation with the administration of justice, are threatened or at high risk.

236. **Victim Reparations Programme**. In parallel with the demobilization of organized armed groups outside the law, the Government has focused its attention on the victims of violence and has designed an administrative reparations programme with the cooperation of the *Ministerio Público*, which submitted a number of comments[64], and civil society, among others. The programme seeks the restoration of the rights of victims, rehabilitation, satisfaction and guarantees of non-recidivism. Reparations are based on the principle of solidarity and involve an historic investment, unprecedented in the world, of approximately 7 billion pesos.

237. It should be noted that the programme is not at odds with the compensation which persons found criminally liable must make to victims following a court ruling.

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[64] Regarding matters related to the imbalance between programmes conducted and resources earmarked for the demobilized population and victims, and coverage of damage, among other matters.

238. **Land mines**. In January 2001 the Antipersonnel Mine Monitoring Unit was established under the Presidential Human Rights and International Humanitarian Law Programme, under the supervision of the Vice President. The Unit is the Government mechanism for the implementation of the Ottawa Convention through different lines of action: care of survivors, prevention and awareness programmes, humanitarian de-mining, information management and institutionalization and sustainability of the National Mine Action Plan.

239. Ten years after the adoption of the Ottawa Convention, on 1 March 2001, Colombia has taken important strides in comprehensive mine action thanks to the work of the national Government in coordination with local and departmental governments, the teamwork with NGOs and the international community's support. In compliance with the commitments undertaken by ratification of the Convention, all mines stockpiled by the State have been destroyed.

240. Even amid the constant and severe terrorist attacks of which our country is the victim, the Government has organized and launched the Humanitarian Demining Campaign, which deals with the demining process, in order to strengthen the protection of affected communities.

241. Under the 2006-2010 National Development Plan, which is the law of the land, a budget allocation has been ensured for comprehensive and retroactive care for antipersonnel mine victims. Further, cross-cutting inclusion of disability issues and care for mine victims in the policies and action plans of all Government institutions has been instituted.

242. Despite the efforts of the national Government, Colombia is currently the country with the highest number of victims of these inhuman devices, all because of organized illegal armed groups which continue to plague the country.

243. The presence of landmines is one of the most serious problems spawned by internal violence in Colombia and constitutes a serious threat to civilians.

244. According to the Monitoring Unit on Antipersonnel Mines of the Vice President of the Republic, Colombia has an average of three victims a day, of whom 40% are civilians, half of them innocent children. The existence of minefields has been confirmed in 31 out of 32 departments and, because the devices are made of plastic and are difficult to detect, the country will have to live with this problem for at least the next 50 years.

245. **Combating impunity for violations of human rights and international humanitarian law**. In July 2003, the national Government and the Government of the Netherlands signed an international cooperation agreement on "Bases for a management strategy and inter-agency coordination to combat impunity for human rights violations and breaches of international humanitarian law". This agreement, which has been in operation to date, aims to: i) develop and implement a policy to combat impunity, and ii) pursue and follow up on a number of proceedings for human rights violations and breaches of international humanitarian law.

246. In pursuit of one of its aims, and through inter-agency action and cooperation from the Netherlands, with advice from the Colombia office of the United Nations High Commissioner for Human Rights, a public policy has been designed to combat impunity in cases of human rights violations and breaches of international humanitarian law which seeks, from a comprehensive State perspective, to ensure that each of the entities involved in investigation, punishment and reparations for these violations develops a set of actions aimed at strengthening the rule of law.

247. The policy, which was formalized through document CONPES[65] 3411 of 2006, begins with the recognition that the Colombian State must have comprehensive short-, medium- and long-term measures against impunity for human rights violations and breaches of international humanitarian law, regardless of specific conditions or changes in the dynamic of the key players in the violations. These conditions involve strengthening some elements of the "Policy of combating impunity for human rights violations and breaches of international humanitarian law by strengthening the capacity of the Colombian State for investigation, prosecution and punishment" in order to ensure compliance with its overall objective and specific goals.

248. The policy is geared primarily to overcoming obstacles that prevent or hinder investigating cases of human rights violations and breaches of international humanitarian law, punishing perpetrators and compensating victims. This implies the strengthening of existing organizations, practices and procedures for detecting the occurrence of violations, resolving cases, punishing perpetrators and compensating victims. At the same time it implies improvement of the regulatory framework to ensure the harmonization of its various sources.

249. In this context, significant progress has been made in training staff involved in the research phase and in expediting cases of human rights violations. A selection was made of cases deemed most critical, according to the Colombia office of the High Commissioner and, among other measures, a special group of investigators was created exclusively to execute outstanding arrest warrants in such cases.

250. Moreover, the Special Action Committee approved the signing of a cooperation protocol with the Armed Forces, the National Police and the Ministry of National Defence, to protect and ensure the safety of commissions formed by investigative entities entrusted with fact-finding in specific cases selected by the Committee.

251. Action was also taken to strengthen entities responsible for investigation and prosecution, namely the Unit for Human Rights and International Humanitarian Law of the Public Prosecutor’s Office, the Office of the Attorney General and the Judicial Council, for institutional strengthening of criminal courts and specialized circuit courts. Work also went ahead on assessments of information systems in the field of human rights violations and breaches of international humanitarian law in institutions with competence in the field. This was done in order to design a system that affords access to comprehensive and updated information about investigations of violations of human rights and international humanitarian law under way.

252. The issue of protecting the exercise of trade-unionism has also been the subject of government policy. In that regard, the national Government and the Public Prosecutor's Office signed inter-agency agreement No. 15406 to move forward investigations in cases of human rights violations against trade union members in order to: a) generate fact-finding strategies, b) identify and punish perpetrators and participants in these violations, and c) prevent crimes against the human rights of trade unionists, adopting necessary inter-agency plans and programmes, national and local.

253. On 31 October 2006, the Public Prosecutor's Office created, under the Human Rights Unit, a Sub-unit for Trade unionists and has boosted investigative work with new human resources, appointing 13 prosecutors and their respective investigators of the Judicial Police and the Technical Investigations Group, comprising 78 persons. Additionally, there is a group of 24 lawyers who are in charge of conducting investigations of cases in which trade unionists have been victims.

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[65] National Council on Economic and Social Policy

254. The increased impetus given to the processing of cases includes those reported to the ILO in Case 1787, initiated in 1994 by a complaint filed by the International Confederation of Free Trade Unions (ICFTU) regarding murders and other violence against trade union leaders and members of these organizations in Colombia.

255. To contribute to the strategy of the Colombian State in its fight against impunity, the Judicial Council appointed three specialist judges to take up the cases reported by the Public Prosecutor's Office in Case 1787.

256. The Government has allocated resources to this endeavour of over 5,000 million pesos.

Work load of ILO Unit from its inception to 20 January 2008

Cases assigned	1,244
Cases at preliminary stage (investigation)	727
Cases in preparation (accused identified)	117
Preventive detention security measures	82
Charges	21
Convictions	36
Persons convicted	61
Victims	1,517

Source: Office of the Public Prosecutor.

257. **Security forces and human rights**. The action of organized illegal armed groups in Colombia has demanded of the authorities the highest standards of efficiency and legitimacy. The security forces are facing criminals who will stop at nothing and who constantly disregard the principles of international humanitarian law at the expense of the civilian population.

258. In this context, the national Government, through the Ministry of National Defence, is making enormous efforts to ensure that members of the security forces are trained and adhere strictly to the principles of legality, protection, necessity and proportionality when confronting criminals. The international law of human rights and international humanitarian law have been incorporated into the training programmes and doctrine of the armed forces and National Police. Concrete evidence of this approach may be seen in the Comprehensive Policy of Human Rights and International Humanitarian Law of the Ministry of Defence that was formed in February 2008 before the national and international community (see General Comment No. 12 of the Human Rights Committee).

259. In Colombia there is an institutional policy of zero tolerance against violations of human rights, as well as stronger security guarantees and more and better mechanisms for citizen participation and contact with enforcement agencies and public authorities, which has fostered a atmosphere of trust that, among other things, is reflected in increased reporting and greater citizen demand for institutional responses.

260. In that vein, the Ministry of Defence has issued the following directives:

a) Directive No. 9 of 2003, aimed at strengthening the policy of promoting and protecting the human rights of workers, trade unionists and human rights defenders;

b) Standing Ministerial Directive No. 6 of 2006, which aims to take measures to prevent the enforced disappearance of persons, to support investigation of this crime and the search for missing persons under the Emergency Search Mechanism;

c) Ministerial Directive No. 7 of 2007 which seeks to strengthen the policy of recognition, prevention and protection of human rights of black, Afro-Colombian, *Raizal* and Palenquero communities;

d) Standing Ministerial Directive No. 16 of 2006 aims to strengthen the policy of recognition, prevention and protection of human rights of indigenous communities in the country by the police.

261. Of particular concern to the national Government are reports about alleged killings of protected persons and non-combatants by the security forces. These allegations have been taken very seriously and in response to them the following measures have been taken (see General Comment No. 15 of the Human Rights Committee, on the status of aliens under the Covenant):

a) Issuance of Directives Nos. 10 and 19 of 2007 by the Ministry of Defence which reiterate the obligation to prevent these deeds, establish the Committee to Monitor Reporting to address these cases, mandate strict observance of the restrictive character of military criminal law, and lay down the obligation to ensure the presence of the Prosecutor at the scene of the events;

b) Issuance of Directive No. 300-28, 2007 of the Armed Forces General Command, revising evaluation criteria and incentives applied to measure the operational performance of the security forces by reducing the importance of "downings" and increasing the value of "demobilizations and captures" as a benchmark for evaluating officers and units;

c) Provisions for the Prosecutor's Office so that prosecutors will immediately undertake investigations when civilian deaths occur in the context of clashes;

d) Creation of a special sub-unit of the Human Rights Unit of the Office of the Public Prosecutor for the conduct of investigations concerning such complaints;

e) As at 30 July 2008, 748 members of the security forces have come under scrutiny, arrest warrants have issued for 242 of them, and 110 have been charged in court. Currently, there have been 14 convictions pertaining to 42 members of the Army;

f) In association with the United Nations High Commissioner for Human Rights, visits during took place in 2007 and 2008 in all divisions of the army, in order to jointly review the cases reported, the methods of investigation and oversight, lessons learned and implementation of the directives mentioned above;

g) The security forces have been issued instructions with a view to strengthening the dialogue with the International Committee of the Red Cross, making best use of the advice it provides and facilitating the implementation of international humanitarian law in partnership with the ICRC.

h) Implementation by the Military Criminal Justice System of criteria issued by the Constitutional Court on jurisdiction. As a result, as of July 2008, 226 investigations have been referred to the ordinary courts without being challenged on grounds of jurisdiction (General Comment No. 16 of the Human Rights Committee).

i) Training for members of the Prosecutor's Office and the Military Criminal Justice System in investigating these cases and application of international standards.

j) The Office of the Attorney General has been asked to address these cases on a priority basis. Currently, the Attorney General is pursuing over 700 disciplinary investigations concerning these cases.

262. **Decreased homicides**. The prevention and protection strategies adopted by the national Government under the Democratic Security Policy have yielded positive results in reducing homicides. For especially vulnerable population groups there is a declining trend. These results point to progress but also highlight the need to continue working to ensure the right to life of all people in a context of continuing violence in our country.

Figures concerning the human rights situation and operational results of security forces; comparative 2000 - 2007

Violations	2000	2001	2002	2003	2004	2005	2006	2007
Killings, indigenous	142	181	196	163	85	49	45	40
Killings, unionists of other sectors	86	123	99	47	42	14	25	8
Killings, unionized teachers	69	82	97	54	47	26	35	18
Killings, non-unionized teachers	n.a.	n.a.	n.a.	n.a.	20	17	20	5
Killings, journalists	n.a.	9	11	7	3	2	3	2

Source: Human Rights Monitoring Unit of the Presidential Human Rights Programme

G. Article 7. Prohibition of torture and cruel, inhuman or degrading treatment or punishment; prohibition of medical or scientific experimentation without consent[66]

1. Legislative developments

263. The regulations contained in Article 178 of the Penal Code (Law No. 599 of 2000) relating to the crime of torture provide stronger guarantees when compared with international, regional and universal instruments[67] on the

[66] The Colombian State presented its fourth report to the Committee against Torture in January, 2008.

[67] The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture

subject ratified by Colombia. Thus, in accordance with domestic regulations, no specific qualifications need be met regarding who commits the offense; i.e. the perpetrator can be anyone. Moreover, if the perpetrator is a member of the family of the victim, a public servant or an individual acting with his acquiescence, the offense is considered to be aggravated for purposes of determining the penalty.

264. During the reporting period the criminal laws underwent reforms which render the penalty harsher. By Law 890 of 2004, sentences for the crime of torture were increased by one third at the minimum and one half at the maximum, rising from 96 to 128 months and from 180 months to 270 months.

265. At the same time, with the promulgation of the Code of Criminal Procedure, Law No. 906 of 2004, a broad range of safeguards was enacted for persons deprived of liberty.

266. Thus, Article 38 provides for "judges for execution of sentences and security measures," who have the function, among others, of overseeing the place where a sentence or security measure is to be served, of overseeing the manner of fulfilment of security measures imposed upon persons not subject to criminal liability, and of taking appropriate corrective measures.

267. With regard to persons not subject to criminal liability, the Code provides that judges will participate, with managers and directors of rehabilitation centres in all matters relating this class of persons under sentence and may order the modification or termination of the respective measures in keeping with the reports provided by the therapeutic teams responsible for the care, treatment and rehabilitation of these persons. If the judge deems it appropriate, he may order that necessary verifications be carried out by public or private personnel.

268. The rules also provide for the participation of the *Ministerio Público* at all procedural stages --in the inquiry, investigation and prosecution-- as guarantor of human rights and fundamental rights. In this regard, its functions, among others, are to exercise oversight over activities by the judicial police that may affect fundamental rights; to participate in those proceedings or actions undertaken by the Public Prosecutor's Office and judges that may impact upon or impair a fundamental right; and to ensure that the conditions under which deprivation of liberty is used as a precautionary measure and as a penalty or security measure comport with international treaties, the Constitution and the law.

269. Article 23 of the Code of Criminal Procedure contains the so-called exclusionary rule, whereby any evidence obtained in violation of fundamental rights is null and void and therefore should be excluded from the proceedings[68]. In implementing the principle of evidentiary due process, the rules governing the submission of evidence, in particular those pertaining to the person of the subject himself, must be observed.

270. Similarly, in regard to evidence involving bodily search of the suspect, article 247 of the Code of Criminal Procedure provides that in the event that the State Public Prosecutor or the prosecutor dealing with the case have probable cause, consistent with the means of inquiry contemplated in the Code, to believe that the body of the accused presents evidentiary materials and physical evidence necessary to the investigation, he may order the

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[68] In accordance with articles 457 and 455 of the Code of Criminal Procedure, a mistrial will be declared for violation of the right to a defence or the right to due process as to substantive aspects and for violations arising from unlawful evidence, among others. In that regard, the Constitutional Court, in Ruling C-591/05 of 9 June 2005, in an opinion delivered by Judge Clara Inés Vargas Hernández, stated "…with the understanding that a mistrial shall be declared when the unlawful evidence has been presented at trial in disregard of the exclusionary rule and that unlawful evidence was the result of torture, forced disappearance or extrajudicial execution, and it shall be remanded to a different judge. (…)"

bodily inspection of said person. To safeguard his rights, it is provided that the person's defence counsel must be present at the inspection and that due consideration for human dignity must be observed.

271. With respect to questioning of the suspect, the law lays down a number of rights, among which are the right to remain silent and the right not to be obliged to testify against oneself or against one's spouse, permanent partner or relatives to the fourth degree by blood or second degree by marriage. If the suspect waives his rights and expresses the desire to make a statement, he may be questioned in the presence of a lawyer.

272. Admission by the accused to having participated in some manner or to some degree in the commission of the criminal conduct being investigated should be free, informed and spontaneous.

273. On the other hand, with regard to activities that can be conducted by the judicial police in inquiries and investigations, that of questioning is available when public officials, in the exercise of their official duties, receive reports, complaints or other information from which they can infer that a crime has been committed. In carrying out their work, they are to identify, collect and technically prepare items of evidence and exhibits, record the interviews and examinations in writing or by audio or video recordings and place them in the chain of custody.

274. Based upon these urgent actions and their results, the judicial police shall, within 36 hours, submit an executive report to the competent prosecutor so that he can assume responsibility for directing, coordinating and supervising the investigation.

275. In any case, the judicial police authorities must report that their activity has been initiated so that the Office of the State Prosecutor can immediately assume direction and control over it.

276. In the event that the prosecutor, after considering the report of commencement of work by the judicial police, finds that activities were conducted in disregard of governing principles and procedural safeguards, he shall order the rejection of such proceedings and report the irregularities noted to the competent criminal and disciplinary authorities.

2. Judicial developments

277. The Constitutional Court, by Ruling C-148/05[69], declared unconstitutional the word "grave" used in the Penal Code to qualify the pain or suffering inflicted, both in regulating the crime of torture of protected persons (article 137)[70] and that of torture (article 178)[71], which means that in order for the crime to be considered torture it is not necessary that the suffering or pain inflicted on the victim should be characterized as grave.

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[69] Opinion delivered by Judge Álvaro Tafur Galvis.

[70] Article 137 of the Penal Code read: "**Torture of a protected person**. One who, during and in pursuance of an armed conflict, inflicts (grave) physical or mental pain or suffering upon a person in order to obtain from that person or from another information or a confession, or to punish said person for an act committed by him or which he is suspected of having committed, or to intimidate him or subject him to duress for any reason involving some type of discrimination (…)".

[71] Article 178 of the Penal Code read: "**Torture**. One who inflicts (grave) physical or mental pain or suffering upon a person in order to obtain from that person or from another information or a confession, or to punish said person for an act committed by him or which he is suspected of having committed, or to intimidate him or subject him to duress for any reason involving some type of discrimination (…)".

278. For the crime of torture, the Constitutional Court, in its role as guardian of the Constitution, independently of its decisions in cases seeking immediate protection of fundamental rights, has established guidelines and parameters which delineate the crime of torture from several perspectives:

279. In Ruling C-148/05[72] the Constitutional Court, referring to the scope of international instruments relating to torture, took into account the principle *pro homine*: "It should be noted that the Convention is not only the instrument that offers greatest protection of the rights of victims of torture but other international instruments to which reference has been made clearly allow for the application of the aforementioned Inter-American Convention. Thus, paragraph 2 of Article 1 of the Convention against Torture and Other Cruel, Cruel, Inhuman or Degrading Treatment provides that said article, which defines what is meant by torture in that treaty signed before the Inter-American Convention "shall be without prejudice to any international instrument or national legislation which contains or may contain provisions of broader scope". This means that the text of the Inter-American Convention prevails in such circumstances. Similarly, article 10 of the Rome Statute of the International Criminal Court states that "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." That is, the fact that this statute --whose approval by Colombia is more recent-- includes a provision that does not coincide with the definition of torture set out in the Inter-American Convention in no way prevents taking into account the more extensive protection afforded under said Convention with respect to the crime of torture.

280. In Ruling C-102/05[73] the Constitutional Court elaborates upon the relationship between the privilege against self-incrimination and torture:

> What is known as the privilege against self-incrimination, the right to remain silent, not to testify against oneself or against one's closest relatives… (…) constitutes one of the most important safeguards in criminal proceedings and is directly related to the prohibition of torture. The immediate origin of these prohibitions is the response of the liberal world against inquisitorial practices of the Tribunal of the Holy Inquisition, which was present in several places in the world. It will be recalled that the trials held by the Inquisition were intended to investigate the accused, extract confessions and "save their souls". The confession was the supreme proof –*probatio probatissima*—and, in order to achieve it, the judges were to obtain a confession from the accused using any means: torture, threats, bribes, all in order to spare officials the burden of having to prove the charges, since the confession was enough. Moreover, these were dark and secret trials in which the judges did not inform the accused of the reasons for their detention and yet obliged them to answer questions which not only incriminated them but could constitute evidence on which to base further charges other than those which had led to their detention, thus giving rise to another equally obscure and secret trial.

281. In this same decision, the Court establishes the prohibition of torture as a right of immediate application, i.e. not subject to interpretations by the authorities which may become violations. The Court states:

> Against these practices, the right against torture (article 12 of the Constitution), and the prohibition against self-incrimination (art. 33 ibid.), are today essential safeguards for the accused. These guarantees do not allow for nuances, modifications or qualifications because they are directly related to values and principles as important as life, dignity --matters that are of the essence of the Colombian Constitution.

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[72] Constitutional Court. Opinion delivered by Judge Álvaro Tafur Galvis.

[73] Constitutional Court. Opinion delivered by Judge Alfredo Beltrán Sierra.

> Furthermore, the prohibition against self-incrimination and torture are enshrined as fundamental rights of immediate application (article 85 of the Constitution).

282. In Ruling C-1076/02[74], the Constitutional Court articulates the principle of precedence being given to the subsequent rule and the stronger safeguard, referring to international rules concerning torture:

> (...) while it is true that Colombia is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and that it is incorporated into our legal system by Law No. 70 of 1986, it is likewise true that there is a subsequent international treaty, of the regional order, that was also adopted by our country and was received into the domestic legal order by Law No. 409 of 1997. Both international instruments, it is true, contain a different definition of the international crime of torture. Consequently, turning to the most authoritative international doctrine[75], the Court must conclude that the subsequent international rule prevails over the earlier one, although it provides much stronger safeguards than the former one.

283. By Ruling C-816/04[76], the Court declared unconstitutional for reasons of form Legislative Act No. 02 of 18 December 2003, which amended Articles 15, 24, 28 and 250 of the Constitution in order to deal with terrorism (Anti-Terrorism Statute), legislation which was referred to by the Human Rights Committee in its concluding observations on the fifth periodic report of Colombia[77], expressing concern about the granting of judicial police powers to the military.

3. Administrative developments

284. The State as a whole has made significant efforts to ensure that custodial authorities and members of the security forces do their work in full compliance with the Constitution and the law, within a framework of respect for human rights.

285. The State's policy of zero tolerance against violations of human rights and the creation of closer ties between monitoring entities and the authorities have fostered reporting by the citizenry of facts that constitute violations of criminal law.

286. On the issue of human rights training, the security forces have issued instructions and provided ongoing training to all their members to act with full respect for human rights and international humanitarian law. With regard to conduct constituting violations, the Government has reiterated its commitment to investigating and prosecuting these cases.

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[74] Constitutional Court. Opinion delivered by Judge Clara Inés Vargas Hernández.

[75] Cited by the Constitutional Court in Decision 1076/02: "In this regard, see, among numerous other authorities: Alain Pellet and Patrick Daillier, *Droit International Public*, Paris, Edit. LGDJ, 1999, page 176 and Manuel Díez de Velasco, *Instituciones de Derecho Internacional Público*, Madrid, Edit. Tecnos, 1999, page 300".

[76] Constitutional Court. Opinion delivered by Judges Jaime Córdoba Triviño and Rodrigo Uprimny Yepes.

[77] Document CCPR/CO/80/COL, para. 9.

287. Similarly, human rights training of staff of the National Penitentiary and Prison Institute (INPEC) is one of the most important strategies for ensuring awareness, respect and protection of the rights of inmates. To that end, a technical cooperation agreement was signed in 2003 by the Colombia Office of the High Commissioner and INPEC. Under that agreement, 34 staff members have been trained to serve as disseminators and trainers in the six regional offices of the Institute for the benefit of other officials and, of course, of the inmates.

288. In parallel, the work of supervisory authorities, the Office of the Attorney General and the Ombudsman[78], is essential to transparency and legality in the actions of the authorities. Their accessibility and approachability have facilitated the reporting of alleged violations of rights by the citizenry.

289. In a related endeavour, the Office of the State Prosecutor has identified as one of its projects the creation of a unified database on cases of torture for monitoring and oversight. In parallel, work is also proceeding in order to shed light on the difficult matter of defining what patterns of conduct constitute violations of the law. Training is being provided to specialized prosecutors and investigators of the Technical Investigation Unit (CTI) throughout the country. The training focuses on the character of the offense as a crime against humanity, its exclusion from the bar of statutory limitations, defining the crime under international and domestic law, defining the illegal conduct, investigation and evidence, and study of the case-law of the Inter-American Court of Human Rights concerning torture and other cruel, inhuman or degrading treatment.

290. In the forensic arena, the National Institute of Legal Medicine and Forensic Sciences in its work applies the definition of torture adopted by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

291. In this regard, it has incorporated the Minnesota and Istanbul Protocols, for which purpose it has trained medical experts practicing autopsies on: a) the application of modern technical-scientific procedures for investigating deaths, to preserve and document physical evidence suitable as clues to locate possible suspects and as evidence at trial, and b) 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[79]. Aspects of the Manual concerning the study of cadavers were included in the Manual of Practice for Forensic Autopsies adopted as an institutional rule by the Agreement of 11 September 2002. Additionally, the Guides to Procedures for the conduct of medical-legal autopsies deal with specific points such as the identification of sexual offenses, the study of decomposing bodies or body parts, whether taken from water or not, injuries caused by electric current and other possible circumstances or findings that may be associated with or constitute torture.

292. Similarly, there has been emphasis on training of staff with subject-matter expertise. In the same vein, in 2006 a course was developed for staff experts, with the assistance of 153 staff members nationwide, dealing with topics related to the Minnesota and Istanbul Protocols, the forensic approach in cases of suspected torture, and digital photography, among others.

293. Additionally, in compliance with the decision of 12 September 2005 of the Inter-American Court of Human Rights in the case of *Wilson Gutiérrez Soler v. Colombia*, which declared the State of Colombia internationally responsible for the violation human rights, a training seminar on the Istanbul Protocol took place in

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[78] Through the Office of the Ombudsman, National Directorate for Processing of Complaints.

[79] Bulletin No. 3 of the Division of Forensic Thanatology, entitled "The Autopsy Protocol proposed by the United Nations for cases relating to the protection of human rights," 1997. Includes table entitled Post Mortem Detection of Torture, page 27.

July 2007 at the request of the Ministry of External Affairs with the cooperation of the Office of the High Commissioner in Colombia.

H. Article 8. Prohibition of slavery, servitude and forced labour and protection against such practices

294. Colombia is considered by the United Nations as having the third-highest number of victims of human trafficking in the world. It is estimated that there are between 45,000 and 50,000 Colombian women abroad who are practicing prostitution under duress, according to Interpol.

295. Unfortunately there are no exact statistics on the magnitude of the problem, due to under-reporting by victims[80], since the modus operandi of criminal networks has been upgraded, transit routes have changed, involving a larger number of countries, and recruitment techniques have been refined. It should be noted that these criminals have a high capacity of intimidation, using violence and violating the rights of victims and their families.

296. The Colombian State is aware of the seriousness of the crime of human trafficking, has made significant progress in addressing the issue, and has received international recognition for its progress in this area, according to the United States State Department Report of 2001[81].

1. Legislative developments

297. From an international perspective, mention should be made of the incorporation of the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, through Law No. 800 of 13 March, 2003 and the ratification of this instrument on 4 August 2004.

298. Also noteworthy is ILO Convention No. 182 of the International Labour Organization (ILO) on the Prohibition of the Worst Forms of Child Labour and Immediate Action for their Elimination of 1999, approved by the Congress through Law No. 704 of 2001 and ratified on 28 January 2005[82]. Importantly, the Ministry of Social Protection, in Resolution No. 04448 of January 2005, issued a list of hazardous and prohibited jobs for minors in the case of Colombia.

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[80] National Police, *Criminalidad* Journal Nº 43, 2000.

[81] It has pointed out in this regard that “Colombia is the only country in the region included in tier one, corresponding to States that have fulfilled the minimum standards in combating this crime.”

[82] At the time of depositing the instrument of ratification, the national Government stated:

> “WHEREAS we recognize the universal importance of the Instrument, pursuant to which governments undertake to use all objectively possible means to achieve the purposes stated therein, as was indicated during discussions of the Committee on Child Labour and as has been indicated by the International Labour Office, the same is hereby accepted and approved, and it is hereby provided in the name of the National Honour that its observance shall be the law of the land.”

299. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict has also been adopted by the Congress through Law No. 833 of 10 July 2003 and ratified on 25 May 2005.

300. Of note is the integration into our regulatory system of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and the use children in pornography, approved by the Congress through Law No. 765 of 31 July 2002 and ratified on 11 November 2003.

301. For its part, Law No. 985 of 2005 takes action against trafficking in persons and sets standards for the care and protection of victims[83], a major legislative step in that it provides stronger safeguards by eliminating the concept of "consent" as one of its elements. The role of consent is thus changed, in that no one can consent to their exploitation, and if they do so the court may not consider it as an extenuating circumstance in the crime. The article also now encompasses the entire course of conduct or operation of trafficking in persons; it now punishes any person who captures, harbours, receives or transfers a human being, as any one of these acts is sufficient in itself to constitute the crime.

302. With the enactment of Law No. 747 of 2002, the penalties for the crime of trafficking were increased from one third to one half when: a) the crime is directed against a person who is suffering from psychological immaturity, mental disorder, insanity and psychological disorder, either temporarily or permanently, or who is under 18 years of age; b) as a result, the victim sustains permanent physical and / or mental injury, mental immaturity, a temporary or permanent mental disorder, or permanent injury to health; c) where the offender is a spouse or life partner or relative up to the third degree by blood or marriage, the second degree by marriage and first by civil status; or d) in the event that the perpetrator or participant is a public servant.

2. Judicial developments

303. In Ruling C-535/2002, the Constitutional Court declared Law 704 of 21 November 2001 and ILO Convention No. 182 constitutional.

304. Similarly, in Ruling C-963/03 the Constitutional Court declared the constitutionality of Law No. 800 of 2003[84], noting that both the Convention and the Protocol mandate the development of internationalization in

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[83] With regard to the crime of trafficking in persons: “Article 188A. Trafficking in persons. Anyone who detains, transports, harbours or receives a person within the national territory or abroad for the purpose of exploitation shall be sentenced to imprisonment of thirteen (13) to twenty-three (23) years and a fine of eight hundred (800) to one thousand five hundred (1,500) times the statutory monthly minimum wage.

For purposes of this article, exploitation is understood to mean obtaining economic advantage or any other benefit for oneself or another by exploiting the prostitution of another or other forms of sexual exploitation, forced labour, slavery or practices akin to slavery, servitude, exploitation of another’s mendicancy, marital servitude, extraction of organs, sex tourism or other forms of exploitation.

Consent by the victim to any form of exploitation defined in this article shall not exonerate from criminal responsibility.”

[84] Approving the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, complementing the United Nations Convention against Transnational Organized Crime.

foreign relations, respect for self determination, the internationalization of political, economic and social relations on the basis of equity, reciprocity and national interest, in accordance with Article 26 of the Constitution.

305. In this ruling, the Court states that the scope of the instrument under review is designed to promote cooperation among States Parties for the purpose of combating and preventing transnational criminal activity and knowing the modus operandi of international organizations devoted to the practice of transnational crimes, with a view to their dismantling and the prosecution of those responsible for such unlawful acts. It also notes that the rules embodied in the Convention and Protocol provide the framework for each State to adopt in its own legislation procedures to prevent and suppress transnational crimes affecting life, liberty and human rights.

306. Further, the Constitutional Court in Ruling C-1235 of 2005, declared unconstitutional the terms "masters", "domestics" and "servants" *("amos", "criados" & "sirvientes")* contained in article 2349 of the Civil Code on the understanding that they will henceforth be replaced by the terms "employers" and "workers".

3. Administrative developments

307. With the issuance of Law No. 985 of 2005, work between institutions responsible for combating trafficking in persons has been enhanced. This has engendered high levels of efficiency, coordination and feedback, which has helped to set in motion the operation of the law as well as to generate a keen awareness of this problem.

308. In 1996, the Colombian Government, by Decree No. 1974 of 1996, established the first Inter-Agency Committee to Combat Trafficking in Women and Children, which brought together various ministries and all the entities with statutory functions relating to prosecution of the crime or care for its victims.

309. According to Law No. 985 this entity was renamed the Interagency Committee to Combat Trafficking in Persons and was granted the status of a national Government advisory body and coordinator of the actions pursued by the Colombian State. Resources from the National Treasury will also be allocated for its operations on three fronts: prevention, care of victims and judicial action.

310. The Committee is composed of 14 entities, including the Ministry of Interior and Justice, which performs the technical secretariat functions and the planning of the crime policy and public policy of the Colombian State for prevention, assistance and protection for victims and potential victims of human trafficking.

311. Progress on the issue is reviewed annually by the Office to Monitor and Combat Trafficking in Persons of the United States Department of State, which analyzes developments in protection, prevention and judicial treatment.

312. In its latest report in 2007[85] the State Department notes the progress made during 2006 in identifying and prosecuting human trafficking crimes and describes as "appropriately severe" the penalties of up to 23 years of imprisonment prescribed by law. It also highlights the number of investigations that were opened in 2006 (49 investigations against traffickers), the number of prosecutions (75 prosecutions for human trafficking), which represents more than twice as many cases compared to 2005. It notes the ten convictions achieved against traffickers, five times more than those achieved in 2005.

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[85] Washington, D.C., 12 June 2007, *Trafficking in Persons Annual Report 2007*, Colombia (*tier* 1).

313. In parallel, the Government has made major efforts in the care of victims and specialized training for consular officials to that effect, as in broad public information campaigns that have been conducted together with NGOs and international organizations. Within this framework, a national action plan against human trafficking was developed and pursued closely with IOM to develop a national emergency hot line for reporting crimes of human trafficking.

314. Regarding the issue of child labour, in 2003 the *Third National Plan for the Eradication of Child Labour and Protection of Young Workers 2003-2006* was published and disseminated; its primary objective was to foster political will and national commitments on the issue.

315. Finally, it should be noted that the Institutional Committee previously referred to developed a "Comprehensive National Strategy to Combat Trafficking in Persons 2007-2010," adopted on 14 August 2006, which is at the core of Government policy in this area. The aim is to develop State policy to combat trafficking internally and externally, in order to abate the problem, from the perspectives of rights, gender and comprehensive protection.

316. The Office of the Attorney General, in performing its oversight of rights from the perspective of gender, stated:

> "(...) i) that the crime of trafficking is invisible, since no records of information exist that can give an account of the modalities, routes, places of origin, transit and destination, for both internal and external trafficking; this in turn hampers the targeting of actions; and ii) the lack of a system of comprehensive care and assistance to victims and their families; another difficulty is the lack of programmes protecting them from networks engaged in this activity and allowing them to turn to the authorities without fear of reprisal. "

317. In that regard, through Directive No. 009/06, the Office of the Attorney General instructed national, departmental and municipal governments to take steps to review and strengthen measures designed to prevent and punish trafficking of women and children as well as measures required to attend to the victims of this crime.

318. Since 2006, an operational mechanism is being implemented that records data on victims and perpetrators of the crime of human trafficking nationally and internationally, by the Office of the State Prosecutor, the National Police, DAS - Interpol and the Attorney General's Office, through an inter-agency cooperation agreement. This system allows the sharing of information from criminal investigations to strengthen the response capacity of the Colombian State in connection with criminal proceedings being conducted by the Attorney General's Office and allows the Attorney General regularly to monitor such criminal investigations in the interests of effective human rights protection.

I. Article 9. Right to liberty and security of person; guarantee against arbitrary arrest

319. Colombia has for years been a victim of abductions, mainly by the action of organized illegal armed groups. The State as a whole and civil society have worked from different perspectives to put an end to these practices that deprive hundreds of Colombians of their freedom.

1. Legislative developments

320. Law No. 733 of 2002 establishes measures to eliminate the crimes of abduction, terrorism and extortion and promulgates other provisions. The rules contained in the Law aim at more severe treatment of the crimes of abduction per se, extortionate abduction, extortion and terrorism. Reductions of penalties and sentencing alternatives are ruled out for this type of crime, so that there can be no reduction through plea bargaining and

confession; not can there be penal alternatives or arrangements by way of an alternative sentence, suspended sentence or sentence of probation. Nor will house arrest be available as a substitute for prison, or any other benefit or legal relief, judicial or administrative, except reductions for cooperation with the authorities prescribed in the Code of Criminal Procedure, provided that such cooperation is effective. It is also provided that in no event may the perpetrator or accomplice of such crimes benefit from amnesties and pardons, nor may the crimes be treated as akin to a political crime, given their outrageous nature.

321. Another important legislative stride is Law No. 986 of 2005, which prescribes measures to protect victims of abduction and their families, together with other provisions. The purpose of this law is none other than to establish, under the principle of social solidarity, a system of protection for victims of abduction and their families, requirements and procedures for its implementation, its legal instruments, its beneficiaries, and the officials responsible for its implementation and monitoring. Thus, it is aimed at blunting the impact created by an abduction, especially as regards the burdens that must be borne by the family, in terms of civil obligations in particular.

322. Regarding the right to an effective remedy under Article 2, paragraph 3 of the Covenant, Law No. 1095 of 2006 regulates matters relating to procedure, jurisdiction and other aspects of habeas corpus. It is defined as a fundamental right and, simultaneously, as a constitutional safeguard of personal freedom when someone is deprived of liberty in violation of constitutional or legal guarantees, or when detention is prolonged unjustifiably. This right may not be suspended even during a state of emergency. It also vests jurisdiction to rule on a writ of habeas corpus in the heads of all courts and tribunals of the judicial branch. It should be noted that by enacting these provisions, the Colombian State complies with international recommendations in this area.

323. In the area of personal safety, Law No. 1121 of 2006 lays down rules for the prevention, detection, investigation and punishment of terrorism financing, and other provisions. With the passage of this law progress was made in fulfilling obligations under the International Convention for the Suppression of the Financing of Terrorism, United Nations Security Council resolutions and the Special Recommendations of the International Financial Action Task Force, FATF. The Law provides, inter alia, for the criminalization of financing of terrorism.

324. In parallel there has been progress in the adoption of the Inter-American Convention against Terrorism, adopted by the Congress through Law No. 898 of 2004, which is pending constitutional review to proceed to subsequent ratification, and adoption of the International Convention against the Taking of Hostages, adopted by the Congress by Law No. 837 of 16 July 2003 and ratified on 14 April 2005.

2. Judicial developments

325. The Constitutional Court has, through numerous decisions, prescribed protection for the rights to personal liberty and security. Below are some of these decisions, in which the Court analyzes in depth the scope of these rights.

326. In Ruling T-773/03, the Court, in analyzing the performance of the National Police in a specific case, indicated that it was "inadmissible, in a social state under the rule of law, for the police authorities to assume the task of imposing undue restrictions on the freedom of association, with the lack of rigor that is patent in the case under review; the police authorities of our country are under an obligation, at minimum, to provide consistent and lawful justification of their decisions in their dealings with individuals, all the more so if they disregard the core of fundamental rights. In addition to this basic obligation of any public servant, the police authorities were required strictly to apply the rules (...)."

327. In Ruling T-719/03, the Constitutional Court sought to protect the fundamental right to personal security and subsistence of the petitioner and her son. There was a high potential for risk due to her status as the surviving life partner of an individual reintegrated from the guerrilla movement and as a displaced person. The Court

conducted a thorough study of the content and scope of the right from the perspective of constitutional law, case law and international law. Noteworthy in this ruling is the historically variable nature of the content of the right to personal security, which must be determined according to the type of risk to which people are exposed in a particular environment.

328. In Ruling C-730/05, the Constitutional Court, in exercising its role as guardian of the Constitution, examined the provision of the Criminal Code (Law 906 of 2004) concerning warrantless arrest by the State Public Prosecutor's Office. For the Court, the adoption of an adversarial criminal justice system implies a fundamental change in the role of the prosecutor in criminal proceedings. Accordingly, the Court stressed the clear intent of the framers of the Constitution to exclude the prosecutor from the power to order deprivation of liberty of the suspect under investigation, which is a power reserved as a general rule to the supervisory judge (*juez de garantías*) (article 250-1 of the Criminal Code). In the Court's view, the rule challenged lacked the clarity and specificity required for the exercise of an exceptional power that restricts personal freedom, and thus it violated the principle of due process and articles 29 and 250-1 of the Constitution. The Court considered that the uncertainty regarding the conditions under which the State Prosecutor could proceed to an arrest violated the presumption of innocence and the right to freedom, since it was left up to the State Prosecutor to characterize the "reasonable grounds" and the reasons why he did not have the opportunity to apply for a judge's arrest warrant, so that the exception became the rule.

329. In recent years, with the growing phenomenon of terrorism, the Council of State[86] has defined the scope of the duty of protection of the authorities towards the citizens, in regard to their safety in the event of an attack of this nature.

3. Administrative developments

330. The national Government, aware of the problems engendered by extortion and abduction in the country and the need for a clear, sustainable and long-term State policy to fight these crimes, approved the Policy against Extortion and Extortionate Abduction[87]. This policy has the general objective of reducing the number of cases of extortion and abduction for ransom. Its specific goals are to increase the cost of committing these crimes and to bolster public confidence and the confidence of the international community in the ability the Colombian State to confront them.

331. In this sense, the Democratic Defence and Security Policy adopts the view that extortion and abduction for ransom are a threat to citizen security, democracy and the vital interests of the nation. At the heart of the fight against these crimes, it stresses the dismantling of criminal organizations engaged in systematically committing them. As mentioned in the previous chapter, (Chapter I, section B, paragraph 8 – Developments), there has been a significant downward trend in the crime of abduction, which shows the positive effect of Government policy in this area.

332. At the same time, the National Fund for the Defence of Personal Liberty (FONDELIBERTAD) has been created. It works to eradicate behaviours that undermine personal freedom, especially abduction and extortion, by

[86] An example is the decision of the third section on 31 October 2001, Opinion delivered by Councillor Jesús María Carrillo Ballesteros. Rad. 25000-23-26-000-1992-7944-01 (12951), in case: *María Gemma Garzón de Jiménez et al. v. Ministry of Defense, Ministry of Finance and National Police.*

[87] Meeting of 4 March 2003 of the National Security and Defence Council.

compiling statistics and by providing psychological, legal and preventive aid to victims and to people vulnerable to these crimes.

333. Also noteworthy, from a political standpoint, is the openness of the national Government to the possibility of a humanitarian agreement to resolve the problem of hostages being held by organized illegal armed groups, particularly those held by the FARC guerrillas. Through the endeavours of the security forces in performance of their duty to secure and protect the rights of the citizenry, hostage rescues have been achieved, including that of former presidential candidate Ingrid Betancourt (CCPR/CO/80 / COL, para. 11), in an operation that has been described by the international community as flawless from the standpoint of international rules and protocols.

334. Regarding the issue of arbitrary detentions, a noteworthy preventive measure is training in human rights and international humanitarian law for the security forces by the national Government through the Ministry of Defence. Similarly, the Ombudsman and the Office of the Attorney General perform ongoing oversight aimed at preventing illegal actions of State agents.

335. Of particular note are the efforts at awareness-raising with regard to the law and respect for freedom conducted by the Ombudsman for police officers and other police personnel.

J. Article 10. Rights of persons deprived of their liberty

1. Legislative developments

336. Decree No. 2636 of 2004 builds upon Legislative Act No. 03 of 2002. This enactment seeks to harmonize the regulatory framework of the country’s prison system with new guidelines stemming from the constitutional reform (adversarial system). It covers such important issues as the legal requirements for arrest and detention, pre-trial detention, and the role of the sentencing judge, in a framework based on the principle of legality and due process.

337. Law No. 1098 of 2006, which enacts the Code for Children and Adolescents, provides in the chapter on criminal liability, article 162, for the serving of custodial sentences in specialized centres always separated from adults.

338. It also provides, transitionally, that so long as there are no special facilities separate from adults to detain youthful offenders, the judicial officer shall grant probation or home detention.

339. By the same token, by Law No. 1122 of 2007, which amends the General Social Security System for Health, the country's prison population will be enrolled in the Social Security System for Health. For this purpose, the rule provides that the Government is to establish national operational mechanisms for this population to receive adequate services.

2. Judicial developments

340. Constitutional cases have led to many decisions guaranteeing the rights of those who are deprived of their liberty by court order.

341. The Constitutional Court, by Ruling T-153/98[88], held that there was an unconstitutional state of affairs in detention facilities and prisons, a situation which the national Government has been endeavouring to correct through various projects.

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[88] Constitutional Court, Opinion delivered by Judge Eduardo Cifuentes Muñoz.

342. Deficient prison conditions, characterized among other things by overcrowding, have created situations that violate various rights of inmates, such as the right to life, dignity, health, education, employment, and equality, among others. Through its case law, the Constitutional Court has intervened in order to improve the situation of inmates and ensure their fundamental rights. The Court has been emphatic in pointing out that while prisoners are subject to special arrangements under the prison authorities, prisons are not a space outside the law; jail, like any other institution, must be governed by constitutional provisions.

343. Through the petition for protection[89], the Court has protected the fundamental rights of inmates. Thus, issues have been addressed with regard to prison overcrowding (Rulings T 1077/01, T-1096/04) and cruel, inhuman and degrading treatment (Rulings T-1030/03, T 690/04, T-622/05, T-624/05, T-848/05, T-1069/05), the foregoing decisions being cited only illustratively. These decisions have sought to give priority to upholding the dignity of inmates and ensuring their rights.

344. With regard to overcrowding, the Court[90] has noted in its various judgments that this phenomenon, along with poor conditions of physical infrastructure and utilities, among other things, violate both the right to dignity and the right not to endure cruel, inhuman or degrading treatment or punishment. According to the Court, overcrowding violates or threatens inmates' rights to life, physical integrity and the family, since, owing to prison congestion and administrative shortcomings, the conditions to secure such rights are not present. Additionally, the Court has warned that the right to the presumption of innocence is broken to the extent that accused persons are mixed with convicted persons.

345. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment is protected from inappropriate application of administrative rules in prisons. In particular, the Court has referred the issue of visual inspections or "surface searches" on persons who are deprived of their liberty in prisons and persons who are entering them, which arise in response to the requirements of order and security of prisons. "Such is not the case with visual intrusions or contact with the naked bodies of inmates and visitors, nor with interventions, checks and body searches. As measures invasive of bodily privacy, personal liberty and the physical, moral and legal integrity of the person affected, such measures require direct and reasonable judicial intervention, following

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[89] Under article 86 of the Constitution every person may file a writ of protection before a judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whomever acts in his/her name for the immediate protection of his/her fundamental constitutional rights when the latter may be violated or threatened by the act or omission of any public authority.

The protection will consist of all 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 competent judge and, in any case, the latter may refer it to the Constitutional Court for possible review.

This action will be available only when the affected party does not have another means of judicial defence, save when such defence is used as an interim measure to avoid irreversible harm. In no case can more than 10 days elapse between filing the writ of protection and its resolution.

[90] Constitutional Court, Ruling T-1077/01.

the constitutional and legal guidelines and standards on this matter, in order to ensure respect for the fundamental rights which such measures compromise."[91]

346. Similarly, with regard to the internal regulations governing the country's prisons, the Court has set limits on the their application, considering that the imposition of such measures under no circumstances can overstep the pursuit of a legitimate purpose, which in the event would be the maintenance of security and order in prisons, always taking respect for human dignity as fundamental. In this regard, the Court has said that the objectives sought should be pursued "using the means least burdensome to human dignity." Against this background, the Court has heard cases concerning haircuts, visits to prisons, cold water baths, the use of uniforms[92], and the use of measures such as "vaginal searches"[93] upon visitors.

347. Precisely on the issue of regulations applicable to visits, with a view to reconciling the rights of persons visiting prisons with the need to maintain prison security, the Court has reaffirmed a previous ruling in which it declared that "in prison centres, in the interests of the general welfare that is sought to be protected, overlooking the rights of persons cannot be countenanced. It falls to the competent authorities to strike a balance between these two factors in order not to endanger the security arrangements of prisons and not to infringe the fundamental rights of visitors. But neither of these values may take precedence over the other."[94]

3. Administrative developments

348. INPEC's policy, made known through its motto "Your human dignity and mine are inviolable," recognizes the inherent and inalienable rights of persons deprived of liberty and, at the same time, of all administrative personnel of the Correctional and Security Corps who are committed to the correctional mission and respectful of international treaties, the Constitution and the law on human rights.

349. Under this framework and in order to ensure the rights of inmates, progress has been made towards resolving the main problems facing the prison system in the country.

350. Concern about overcrowding in the country's prisons is reflected in key aspects of the policy for prisons and jails in the country. To address this situation the Government has embarked on a programme of expansion at different detention centres is based on CONPES[95] documents 3277 of 2004 and 3412 of 2006.

351. The strategy to overcome this problem focuses on expanding the national supply of available spaces so that the country will have 24,887 new spaces in 2008. The strategy includes the expansion of 12 prisons in order to create 3,287 spaces and the construction of 11 new prisons and jails with capacity for 21,600 inmates. As of 2007, 10 new prisons have been built.

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[91] Constitutional Court, Ruling T-690/04. Opinion delivered by Judge Jaime Córdoba Treviño.

[92] Constitutional Court, Ruling T-1030/03. Opinion delivered by Judge Clara Inés Vargas Hernández.

[93] Constitutional Court, Ruling T-624/05. Opinion delivered by Judge Álvaro Tafur Galvis.

[94] Constitutional Court, Ruling T-359 de 1997, Opinion delivered by Judge Jorge Arango Mejía.

[95] National Council for Economic and Social Policy

352. With the expansion in the number of spaces during in the reporting period it proved possible to reverse the growing trend towards overcrowding since 2002, which reached its highest level of 37.2% in 2004. As measured by INPEC, in December of 2007 overcrowding had declined to 21.0%.

353. Mention should be made of the oversight work done by the Attorney General's Office, which, in the work of prosecutorial authorities, has called attention to the problem especially at some prisons in departmental capitals, which implies an asymmetry in approach.

354. Equally important is the follow-up work done by the Ombudsman in order to enhance the effectiveness of human rights for inmates in the country through reports and resolutions (*Resoluciones Defensoriales*)[96].

355. Also worthy of note was the implementation by the Directorate General of INPEC of the "Manual for Special Security and Treatment Units " by issuing Resolution No. 7468 of 29 November 2005, whose purpose is the adoption of corrective measures to make viable respect and protection of the rights of persons deprived of liberty, in keeping with due process and constitutional and legal guarantees, when applying disciplinary measures within the prisons.

356. A further significant step is the Cooperation Project signed by the Directorate General of INPEC with the office in Colombia of the United Nations High Commissioner for Human Rights, which received economic cooperation from the European Union. In 2005 an inspection and verification visit was made by the Special Rapporteur on persons deprived of liberty of the Inter-American Commission on Human Rights.

357. In this regard, it should be noted that the Office of the Attorney General, following more than a year of work with technical assistance from the Office of the High Commissioner, designed and developed the "Preventive Policy of the Attorney General's Office on the rights of persons deprived of liberty ", which aims to bolster the work of effective oversight in prisons and protection of the rights of persons deprived of liberty.

358. This policy was adopted by the Attorney General's Office through Resolution No. 368 of 2006. To exercise preventive oversight, the Attorney General adopted strategic and operational lines of action which encompass the twofold dimension of State responsibility: firstly, "to establish limits on those actions that consciously or unconsciously, and due to their the nature, can break the balance represented by the enjoyment of individual rights and freedoms (and secondly), provide conditions that help to overcome the inactivity of the State that paralyzes the development of human rights as a whole."

359. The policy, as conceptual and operational tool, includes guiding principles of action by the Attorney General based on making a risk map of the prisons and the strategic priorities for preventive action by the office in protecting the rights of persons deprived of liberty; in the latter regard, it establishes "intervention methods and tools for the standardization of institutional performance" and within them a "procedure of general inspection visits to prisons and jails" with its own report on analysis and monitoring.

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[96] For example, Ombudsman's Resolution Nº 14 of 25 July 2001: The Ombudsman prepared an analysis of the circumstances constituting the penitentiary crisis in the country and proposed certain short-term actions to be taken. Overcrowding and lack of adequate preparation for reintegration of inmates into society are the main problems of the prison system.

360. Additionally, the Office of the Attorney General adopted three other procedures: for processing and monitoring of communications; for requesting, processing and analyzing official information on the prison system; and for the organization of work with regard to the Constitutional Court[97].

361. To prevent failings in the operation of "Solitary Confinement" Special Security and Treatment Units at national prisons, training has been arranged under the auspices of the Office of the United Nations High Commissioner and the agreement between the United Nations Development Programme (UNDP), the Ministry of Interior and Justice and INPEC, through workshops (17 in 2005). The topics addressed have included, among others, the absolute prohibition of sensory deprivation and dark dungeons, initial medical examination and daily medical examinations and restrictions on the use and duration of solitary confinement. INPEC has approved the Manual for Operation of "Solitary Confinement" Special Security and Treatment Units, which has been distributed to all correctional facilities in the country.

362. The foregoing, coupled with the alert[98] issued by the Attorney General's Office "on the risk of human rights violations occurring in solitary confinement wards of the country's prisons,"[99] endorsed in its entirety by the Constitutional Court in Ruling T-684 of 2005, has led to progress in disestablishing the practice of solitary confinement.

363. In order to integrate international standards and principles on the rights of persons deprived of liberty into the internal rules of prisons, an assessment and approval process has been conducted for enacting and incorporating such rules and principles into the internal regulations in keeping with the recommendations of the United Nations High Commissioner for Human Rights and in line with national and international standards on human rights.

364. The Office of the Attorney General has taken part in this process by submitting observations and comments that have been evaluated by the administration, namely: a) The regulations of high and medium security prisons should be modified as ordered by the Constitutional Court in Ruling T-1030/03; b) It is necessary to

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[97] The aim pursued by the implementation of these procedures is to "organize and standardize the process of observing and gathering information at the territorial level, promote the writing of relevant and timely reports, secure the systematization of information at the territorial and central levels, and facilitate the production of analytical documents on respect for the rights of persons deprived of liberty. Through the implementation of the procedures, a process of systematization of information on the status of the rights of detainees will be consolidated, fostering the use of information based on the strategic aims of preventive action by the Attorney General, that is, to influence public policy relating to conditions of deprivation of liberty."

[98] As part of the preventive monitoring exercise, the Attorney General has issued, among others, the following alerts:

a) Overcrowding in the country’s prisons is jeopardizing observance and protection of human rights of persons deprived of liberty, 15 August 2003;
b) Colombia’s prison system is operating under rising levels of pressure; human rights of persons deprived of liberty at risk, 10 November 2004;
c) The Attorney General issues an alert regarding the degree of observance of the right to health of persons deprived of liberty, September 2004;
d) Persons deprived of liberty in detention halls of Bogotá Metropolitan Police are subject to conditions that can lead to grave violations of their fundamental rights;
e) Report on evaluation of designs and projects for new prison facilities of the national system (ERON), April 2008.

[99] Issued in August, 2004.

establish clear criteria for classification, and c) The limitation of rights of persons deprived of liberty must be implemented according to criteria that are objective, rational and commensurate with the aim pursued.

365. Social inclusion measures should also be noted. Through the process of Care for Highly Vulnerable Groups developed by INPEC, strategies have been developed to improve the quality of life of vulnerable populations during the imprisonment process through access to comprehensive care and penal treatment programmes.

366. Considering that the issue of social inclusion is a central focus of intervention with these minority groups, a new procedure has been planned since 2006 called Social Integration of Groups with Exceptional Conditions. This procedure clearly outlines the actions needed with respect to minorities, actions that go beyond the usual focus to include introduction of the principles of cultural diversity and respect for differences. In this regard, the completion of the 2006 and 2007 censuses made it possible to identify the prison population and the exceptional conditions that prevail in it.

367. Furthermore, in order to strengthen the system of complaints and grievances available to inmates and their families, Resolution No. 0668 of 2006 has been issued. The Resolution reorganizes and strengthens the system, creating a Citizen Care Group under the Secretary General of INPEC, whose role is focused on responding in a specific and timely manner to the requests of inmates and citizens seeking information on the functions, procedures and requirements regarding services provided by INPEC. The system is also responsible for receiving, recording, managing and following up on complaints, grievances and suggestions.

368. Finally, from a gender perspective, a noteworthy experience is that of the Office of the Attorney General in verifying the situation of women deprived of liberty, which resulted in the publication “Women and Prison in Colombia” (May 2007), containing an analysis with conclusions and recommendations on the issue.

K. Article 11. Prohibition of imprisonment for contractual debts

369. As noted in the fifth periodic report of Colombia to the Human Rights Committee, our criminal laws have establish this principle, based on article 28 of the Constitution, the provision which addresses this principle:
Article 28. (…) In no case may there be detention, imprisonment or arrest for debts nor application of sanctions or security measures that are not subject to limitations of time.

L. Article 12. Freedom of movement

370. This right, enshrined in Article 24 of the Constitution[100], has been affected by violence, particularly as a result of the actions of organized illegal armed groups that have led to the forced displacement of thousands of residents of various parts of the country. Although the phenomenon has diminished since 2002, it remains a matter of great concern to the State, which has launched numerous actions to prevent it and to provide care for victims.

[100] “All Colombians, subject to the limitations prescribed by law, have the right to move freely about the national territory, to enter leave it, and to remain and settle in Colombia.

The national Government may establish the obligation to maintain a record of inhabitants of the national territory, in accordance with statutory law enacted to that end.”

1. Legislative developments

371. With regard to forced displacement, a significant development during the reporting period was the issuance by the national Government of Decree No. 250 of 7 February 2005, instituting the National Plan for Comprehensive Care of the Population Displaced by Violence, together with other provisions, aimed at setting the general policy of the Government and lines of action for the prevention of and response to forced internal displacement in Colombia, allowing the restoration of the rights and obligations of Colombians affected by the same.

372. Further, the Government issued Directive No. 06 of 2005 to effectively enforce Ruling T-025 of 2004 of the Constitutional Court[101].

2. Judicial developments

373. The most important judicial precedent concerning displacement is Ruling T-025 of 2004. In this decision the Constitutional Court declared unconstitutional the state of affairs emerging from the constitutional review of 108 appellate cases arising from suits brought by 1,150 households in situations of forced displacement who sued public entities responsible for their care for failure to protect their rights and to respond effectively to their requests, the suits being joined in case T-653010.

374. By that decision, the Court ordered the National Council for Comprehensive Care of the Displaced Population (CNAIPD)[102] to take decisions to ensure consistency between meeting legal mandates, international treaties, the Constitution, laws and decrees governing the State in providing care to the displaced and the allocation of resources actually to achieve the full enjoyment of their rights, as well as to improve institutional capacity to respond timely and effectively to the needs of the displaced population in order to overcome the unconstitutional state of affairs.

3. Administrative developments

375. On the matter of forced displacement, it is necessary to highlight the significant efforts that have made by the national Government and the State in general, in regard to implementation and effective coordination of the policy of response to the population in situations of displacement (see General Comment 19 of the Human Rights Committee, on the family (article 23 of the Covenant)).

376. One of the main actions carried out in inter-agency coordination is the establishment in May 2004 of the Centre for Coordination and Comprehensive Action[103], led by the Presidential Agency for Social Action, through

[101] The Court issues orders with a view to overcoming the unconstitutional state of affairs with regard to forced internal displacement.

[102] Law Nº 387 of 1997, article 6 of the National Council for Comprehensive Care of the Population Displaced by Violence: “The National Council for Comprehensive Care of the Population Displaced by Violence is hereby established as a consultative and advisory body entrusted with formulating policy and ensuring appropriations for programmes of entities that operate under the responsibility of the National System of Comprehensive Care for the Population Displaced by Violence.”

[103] The Centre for Coordination and Comprehensive Action is composed on a permanent basis of 12 entities, all members of SNAIPD, and more than 20 entities providing liaison between the national and local levels; it has received international recognition, inter alia, by USAID.

which actions are implemented to foster social and economic development in priority areas in the country and in major regions of outflow of displaced population that have been recovered by the security forces under the Democratic Security Policy, recognizing that, although some lacked guarantees of citizen rights and the rule of law, the fact remains that the actual presence of a coordinated State as a whole has brought progress in prevention, emergency humanitarian assistance and social and economic recovery for the population at highest risk of displacement.

377. Another important step forward was the entry into force of the new National Council for Comprehensive Care of the Displaced Population adopted by the issuance of Decree No. 250 of 2005[104], seeking to develop, through the stages of prevention and protection, emergency humanitarian assistance and economic stabilization, a timely response to the needs of households that are victims of forced internal displacement, based on the guiding principles for intervention that determine the focus to be adopted in the different processes that will be generated by the implementation of the Plan.

378. Among the preventive measures of protection, protection is provided of the population in border areas in order to minimize the risk of displacement into neighbouring countries. Educational activities are also provided to prevent the risk of accidents with landmines. Similarly, there are special actions to protect communities at risk in regard to the right to life, physical integrity, freedom, freedom of movement and dignity, seeking always to prevent cruel, degrading, inhuman and arbitrary treatment of these populations, led by the Vice-Presidency, the Ministry of National Defence, the Ministry of Interior and Justice, and Social Action with the participation of Committees for Comprehensive Care of the Displaced Population.

379. In the strategic lines of action at the stage of prevention and protection, a key element is consolidating the Early Warning System, led by the Ombudsman, for analysis of risk in the regions and to encourage rapid and timely action against factors that may cause displacement.

380. There have also been significant strides and achievements by the entities that comprise the SNAIPD[105] to achieve the adoption of corrective measures leading to progressive and sustainable actions.

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[104] The rules and instruments of State policy developed to address the problem of displacement began before the enactment of Law No. 387 of 1997, with the approval of the CONPES 2804 documents of 1995: they defined programs to alleviate the causes of displacement by strengthening comprehensive and sustainable development of outflow and influx areas; it also put forward strategies to fully address the displaced population in the context of voluntary return or resettlement; 2924 of 1997, creating SNAIPD and design of a National Plan of Comprehensive Care to serve the displaced population; 3057 of 1999: proposed plan of action to improve care arrangements for the displaced population in different phases, also proposing to reorganize and streamline the institutional framework and strengthen systems for information on displacement; 3115 of 2001: indicated a sectoral budget allocation mechanism and recommended adjustment of mechanisms and procedures to facilitate the access of displaced persons to programs and institutions that are part of SNAIPD that today constitute an important set of guidelines recognizing the rights of this population, and that finally materialized in 2005 with the approval of the National Comprehensive Action Plan, Decree No. 250 of 2005, CONPES 3400 2005.

[105] Created pursuant to Law Nº 387 of 1997 which adopts measures to prevent forced displacement, care, protection and socio-economic support for persons internally displaced by violence in Colombia, regulated by Decree Nº 2569 of 12 December 2000.

381. Although the unconstitutional state of affairs found in Ruling T-025 of 2004 and subsequent decisions has not yet been overcome, progress has continued, as recognized by the Constitutional Court at its hearing on the effective enjoyment of rights on 1 March 2007, and the Government has exerted a major effort in inter-agency coordination and progress towards implementation and adoption of measures and decisions on prevention and care for the internally displaced, endeavouring to overcome internal displacement in an ongoing, steady and sustained manner. Measures include the following:

382. With regard to advances in identifying and defining the displaced population, more complete registration of displaced persons has been achieved, and thus greater access within the strategies and programmes of care and protection implemented by the national Government to cover the entire population group in that situation, reducing rates of under-reporting differing from the official registration, mitigating the hardships and restoring the rights of the displaced and ensuring the effective enjoyment of these rights, while recognizing that there is still far to go, but stressing a clear and earnest commitment of the Colombian State to prevent and /or counter forced internal displacement.

383. Budgeting and use of resources to serve the displaced population also show a great improvement compared to the years 1995 - 2002, when about 600,000 million pesos were invested to serve this population, while in the period between 2002 and 2006 1.8 billion pesos were spent, and for the next four years (2007-2010) 4.1 billion pesos have been earmarked, according to the CONPES 3400 for 2006 "Target for prioritization of budgetary resources to serve the population displaced by violence in Colombia," which is twice more than what was invested in the previous decade.[106]

384. It should be stressed that SNAIPD is currently developing a Differentiated Care Directive, with emphasis on the gender variable. The purpose of the directive is to promote the inclusion of a differentiated gender perspective in policies, programmes and projects aimed at improving conditions for the displaced population in the phases of prevention and protection, emergency humanitarian assistance and socioeconomic stabilization. This line of action, established as public policy, will have as its basic focus the interrelation of gender, ethnicity, age, territorial location and disability. Similarly, a vital topic is to ensure psychosocial care that encourages the process of adaptation and integration of women in situations of displacement to a new environment --especially if one considers that many women are victims of sexual abuse, forced recruitment, forced prostitution, early pregnancies, and have also been severely affected by the loss of their loved ones and the breakdown of family and cultural ties.

385. It is likewise important to note the work of the Office of the Attorney General in monitoring the orders contained in the aforementioned decision of the Constitutional Court, to verify compliance.

386. Additionally, the Office of the Attorney General, fulfilling its preventive role in human rights, designed and developed the public policy for monitoring of forced displacement[107], a conceptual tool which allows its officials to address more clearly the different lines of action and to improve the work of preventive monitoring.

[106] Executive Assessment of the Policy of Care of the Population Displaced by Violence in Colombia, submitted on 13 September 2006 to the Constitutional Court pursuant to Ruling T-025 of 2004 and Order Nº 218 of 2006.

[107] Resolution of the Attorney General Nº 394 of 2004 "adopting the public policy foundations of the Office of the Attorney General for response to forced displacement in the preventive arena, and the Model for Monitoring and Evaluation of the Entities of the National System of Comprehensive Care of the Displaced Population (SNAIPD) with all the instruments they comprise."

387. To perform the role of preventive monitoring, the Attorney General's Office designed and implemented the Monitoring and Evaluation Model for the entities that comprise the SNAIPD, based on legal principles. The model applies measures through performance indicators for each of the entities in fulfilling their obligations. This model is systematic, and implementation through software is being introduced as from 2007. The software model has become a support tool that makes information more accessible and timely. In this regard, the Constitutional Court in its order No. 027 of 2007, following upon protective Ruling No. 025, stated that "the Office of the Attorney General developed the most comprehensive system of indicators to fulfil its institutional mission and has been applying them."

388. The application of the model has enabled the institution to develop monitoring reports further to Ruling T-025 of 2004 to verify compliance with the effective enjoyment of the rights of the displaced population.

389. So complex a phenomenon implies several challenges for the coming years in the provision of services, mainly in strengthening the identification and definition of the displaced population, security for the process of return, coordination among local authorities and strengthening the preventive approach within services to the displaced population, particularly within the military and security operations conducted by the State.

M. Article 13. Protection of aliens from arbitrary expulsion

390. Article 100 of the Constitution regulates matters relating to the rights and interests of foreigners, providing that they enjoy the same civil rights as those granted to Colombians. However, it notes that according to law and for reasons of public order limitations may be placed upon these rights.

1. Legislative developments

391. With regard to the monitoring of foreigners, in the reporting period the national Government issued Decree No. 4000 of 2004, enacting provisions on the issuance of visas, control of aliens and other measures relating to migration. The law deals with the issue of expulsion, contemplating the causes and procedures which the authorities, in this case the Department of Administrative Security (DAS), must observe in their implementation.

392. To this end, the law provides that the Director of DAS or his delegate may, by an order setting out the grounds therefor, order the expulsion from the national territory of an alien who falls within the grounds stated in the law, in keeping with due process. These grounds are:

a) Failure to comply with an order of deportation within the time specified in the exit permit to leave the country, or returning to the country before the end of prohibited period stated therein or without the appropriate visa;

b) Submitting reports or entries on file with the competent authorities to support the entry of foreigners with false promises of a contract, the provision of visa or entry or residence documents;

c) Having been sentenced in Colombia to imprisonment for which the sentence does not provide for expulsion from national territory;

d) Being fraudulently documented as a national of Colombia or of another country.

393. It is important to note that against an administrative act that prescribes expulsion, administrative appeals (*recursos de la vía gubernativa*)[108] may lie and may have a suspending effect.

394. Notwithstanding the above, the competent authority may expel foreigners considered by the immigration authorities to be engaged in activities that undermine national security, public order, public health, social peace or public safety, or where there is intelligence information indicating that the activities pose a risk to national security, public order, public safety or social peace, or when the Colombian Government has been notified by a foreign authority that a sentence of conviction or an arrest warrant for ordinary crimes has issued against the person in that country or that the person is listed in the records of Interpol.

395. It is also applicable to foreign citizens whose extradition has been requested by their country of origin and who have made known their intention to appear before the authorities of that country, in which case the authorities may proceed to expulsion and surrender to the authority of the requesting country, provided this is satisfactory to that country's Government. To this end, the State Prosecutor may suspend the execution of the arrest warrant for extradition, or suspend the deprivation of liberty of the person sought. In these cases, administrative appeals are not available.

396. Additionally, expulsion may be ordered by final sentence as an additional penalty, in which event the authority, upon completion of the main sentence, may issue an order giving effect to the alien's removal in accordance with the procedure prescribed. Against this administrative act there is no appeal whatsoever.

2. Judicial developments

397. From the standpoint of case law, the Constitutional Court in Ruling C-070 of 2004 addressed the issue of the constitutional rights of aliens, comparing the situation of foreigners with that of nationals under the principle of equality, which, in the Court's view, does not prevent the legislature from establishing a differentiated treatment, provided that there are "legitimate constitutional reasons that justify it."

398. In Ruling C-523/2003, the Court, in reviewing the constitutionality of Decree-Law No. 1355 of 1970 on the "National Police Code," referred at length to the rights of foreigners under the Constitution and the power of the legislature to grant certain political rights to foreigners residing in Colombia.

N. Article 14. Equality before the law, guarantees of due process and principles governing the administration of justice

1. Legislative developments

399. Based on constitutional law as discussed at length in the fifth report of Colombia to the Committee, progress has been made in recent years from the legislative standpoint in ensuring due process, particularly in the area of criminal law and criminal procedure.

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[108] Appeal by *vía gubernativa* implies that the administrative act can be challenged before the administrative body itself, which in turn can review its legality or appropriateness, as the case may be, and accordingly correct insofar as possible any irregularities in its issuance (Council of State, first section, decision 5262, 25 November 1999, Opinion delivered by Judge Juan Alberto Polo Figueroa).

400. Law No. 906 of 2004, which promulgates the Code of Criminal Procedure, introduced the adversarial model with oral trials, under the framework of legislative act No. 03 of 2002. What was heretofore a mixed system now becomes an adversarial system, with clearly differentiated roles for those taking part in the proceedings. An impartial judge, on behalf of the State, evaluates the responsibility of the accused on the basis of evidence submitted to him publicly, orally, in a continuous proceeding, fully observing the right of confrontation and cross-examination. The prosecutor, on behalf of the State, brings the charges and seeks to justify the penalty, with the obligation at trial to present evidence sufficient to overcome the presumption of innocence. The defence, standing on completely equal footing with the prosecution, represents the interest of the accused.

401. This adversarial model seeks to provide stronger safeguards for the parties, including the victims, who are recognized as having a right to truth, justice and reparations, and therefore an opportunity to intervene at all stages of criminal proceedings.

402. Some of the guiding principles of this model are: human dignity, freedom, the priority of international treaties[109], equality[110], impartiality, legality (*nulla poena sine lege)*, the presumption of innocence, the right to a defence, oral proceedings, procedural due process[111], absence of costs, judges of general jurisdiction appointed prior to the proceeding, availability of appeal, and *res judicata*, among others.

403. A notable part of the reform is the creation of supervisory judges (*juez de garantías*). The duty of this judge is to review the powers exercised by the prosecution to determine whether or not they are consonant with the law and the Constitution, and whether they have been exercised in keeping with the fundamental rights of citizens.

404. The new model endorses the role of the Attorney General, through the *Ministerio Público*, under the new penal system, with the aim of ensuring "conservation and protection of substantive and procedural rights of individual and public content, in the conduct of criminal proceedings."[112]

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[109] Article 3. Priority of international treaties. Proceedings shall give priority to the provisions of international treaties and conventions ratified by Colombia which deal with human rights and which prohibit their limitation during states of emergency, inasmuch as they constitute part of the body of constitutional law.

[110] Article 4. Equality. It is the obligation of judicial officers to give effect to equality among the participants in the proceedings and especially to protect those persons who, by reason of their economic, physical or mental condition, are manifestly at a disadvantage.

In no event may sex, race, social condition, profession, national or family origin, language, religious belief, political or philosophical opinion be used in a criminal proceeding as grounds for discrimination.

[111] Article 10. Proceedings. The proceedings shall be conducted with due regard to the fundamental rights of persons participating therein and the need to ensure effective administration of justice. Judicial officers shall ensure that substantive law prevails.

To that end, oral proceedings, the use of relevant technical means to make them feasible, and the setting of time limits by law or by officials for each stage of the proceedings shall be mandatory.

The judge shall have broad powers, in the manner prescribed herein, to hold in contempt any parties, witnesses, experts and others participants who by their conduct may affect the orderly conduct of proceedings.

The judge may authorize agreements or stipulations reached by the parties pertaining to undisputed substantive points, provided they do not imply waiver of constitutional rights.

The supervisory judge (*juez de garantías*) and the trial judge (*juez de conocimiento*) shall have the obligation to rectify harmless error, while always observing the rights and safeguards of the participants.

[112] This issue was addressed in the Constitutional Court's decisions examining the constitutionality of the aforementioned legislative act (C-966/03 and C-1092/03).

405. With regard to due process, it is worthwhile noting the adoption of Law No. 941 of 2005, which organized the National Public Defender System. This system aims to afford people access to the administration of criminal justice, under conditions of equality and in keeping with due process with respect for substantive and procedural rights and safeguards. In that regard, the system will provide services for people who, in light of their economic or social conditions, are in a position of manifest inequality when it comes to defending their interests on their own.

406. Law No. 1098 of 2006 promulgates the Code for Children and Adolescents. This law builds on the principles and guidelines contained in the Convention on the Rights of the Child, based on the comprehensive protection system, in which children are subjects of rights. This law consists of substantive and procedural rules for the comprehensive protection of children and adolescents, enshrining the principle of responsibility shared between the family and society according to their spheres of competence.

407. In regard to due process, this reform represents a step forward as it provides a System of Criminal Responsibility for Adolescents which comprises a set of principles, rules, procedures, specialized judicial authorities and administrative bodies that govern or are involved in the investigation or prosecution of crimes committed by persons aged between 14 and 18 at the time of the offense.

408. The proceeding takes place in the context of due process, with the participation of the defender or family defender and the *Ministerio Público*; it is conducted by prosecutors, magistrates and judges specializing in criminal law, family law and human rights of children, who must undergo continuous training. Pedagogical and educational considerations are stressed in the sanctions applied.

2. Judicial developments

409. One of the most contentious issues surrounding the updating of the Code for Children and Adolescents was the topic of criminal responsibility. The Constitutional Court in Ruling C-203 of 2005[113] helped to shed light on the issue, indicating that adolescents who commit crimes in Colombia are, in the light of international treaties[114], fully liable for their conduct. The Court based its reasoning on international instruments such as the International Covenant on Civil and Political Rights.

410. In implementing the principle of equality, the Court, in Ruling C-799/05, upheld the constitutionality of the words "and especially protect those people who by virtue of their economic, physical or mental condition, are

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[113] International human rights law not only contemplates and accepts the possibility of minors being held fully liable but lays down very clear rules regarding the basic safeguards that must surround prosecutions against persons under the age of 18 in connection with punishable acts they may have committed.

[114] In regard to the possibility of criminal liability for minors, the Court summarizes the following rules:

> “4.6.1 Minors who commit acts that violate the criminal law are legally liable before the State and society. Due to their condition as specially protected subjects, that liability is subject to fulfilment of certain key principles, namely: i) Differentiated and specific treatment under the laws, organs, goals, penalties and manner of proceeding in keeping with juvenile justice, which must be geared to their welfare and guidance and must ensure proportionality between the act and the institutional response; ii) The correctional and socially rehabilitating purpose of the measures imposed upon minors due to their criminal liability, a principle which precludes the repressive approach in their judicial-penal treatment; iii) The pursuit of the best interests of all minors involved in the commission of punishable acts, and respect for their fundamental rights.”

manifestly in a position of weakness" contained in article 4 of Law No. 906 of 2004. It stated that "the obligation of judicial officers under article 4 of Law No. 906 of 2004 flows from the constitutional provision contained in the final paragraph of article 13 above, as an expression of the right to material equality, which especially protects people who are in an unequal position compared to others by reason of their manifest weakness. Accordingly, it does not authorize discrimination prohibited by the Constitution; rather, it prescribes protective measures permissible under the Constitution, which are to be carried out in each case according to the laws in force."

3. Administrative developments

411. The establishment in the country of the adversarial criminal system has implied for the Colombian State an immense effort in budgetary and human resources and infrastructure. For this purpose, policies have been established for continuous follow-up and training of prosecutors, judges and other competent officials in all aspects of the adversarial system.

412. The phasing in of the system was completed on 1 January 2008, the date on which the oral adversarial criminal system came into effect in the entire country. For its full implementation there will be an entire infrastructure with facilities nationwide for user service, immediate response units, courthouses, evidence storage facilities, temporary evidence depots to ensure chain of custody, care centres for victims of domestic violence and care centres for victims of sexual violence (General Comment No. 14 of the Human Rights Committee, on the right to life).

413. In the area of juvenile criminal responsibility, the issuance of Decree No. 4652 of 2006 established the gradual implementation of the Criminal Accountability System for Adolescents, whose development has involved the Attorney General's Office, in conjunction with other authorities, through the National Working Group headed by the Judicial Council, which is defining the actions to be pursued for its effective implementation.

O. Article 15. Principles of legality, non-retroactivity and benefit of criminal law

1. Legislative developments

414. Based on the constitutional requirements outlined in the last report to the Committee, the new Code of Criminal Procedure (Law No. 906 of 2004) incorporates the principles of legality, non-retroactivity and benefit of the criminal law in article 6 as follows:

> Article 6. Legality. No one may be investigated or prosecuted except according to the procedural law applicable at the time of the events, with observance of the forms appropriate to each case.
>
> The procedural law that is permissive or favourable in its substantive effects, even when subsequent to the action, shall be applied in preference to that which is restrictive or unfavourable.
>
> The provisions of this Code shall apply exclusively to the investigation and prosecution of crimes committed after its validity.

415. These principles also apply in regard to the criminal responsibility of adolescents, Law No. 1098 of 2006, particularly article 151, which governs the right to due process and fair trial, and article 152, on the principle of legality.

2. Judicial developments

416. Under the change of the criminal justice system, the Chamber of Criminal Appeals of the Supreme Court, in its order of 4 May 2005 (Chamber of Criminal Appeals), clarified the issue of favourable application of the rules of the new Code. It noted that the rules issued under Colombia's adversarial system may be applicable, as being more favourable, to cases governed by the previous Code of Criminal Procedure provided they do not refer to institutions proper to the new procedural model and the factual references under the two procedures are the same.[115]

P. Article 16. Recognition of the legal personality of human beings

1. Legislative developments

417. In implementing the principle of legal personality, legislative progress has been made with the enactment of Law No. 721 of 2001, which makes amendments in the process of establishing paternity or maternity, providing for the use of scientific tests with a probability index over 99%.

418. Similarly, Law No. 1060 of 2006 was enacted, to amend the rules governing challenges to paternity and maternity.

2. Judicial developments

419. The Constitutional Court has given ample treatment to the right to recognition of legal personality through its cases, with a view to protecting and guaranteeing it.

420. In this regard, we note as an example Ruling T-1229 of 2001, in which the Court reiterates that affiliation is one of the "attributes of legal personality, since it is inextricably linked to the civil status of the person, and in this sense, people have under Colombian constitutional law a true 'right to claim their true parentage,' as it was rightly called by the Supreme Court under the previous Constitution."

421. Another decision on this issue worth mentioning is Ruling 2002 T-277 through which the Court recalls that the right to legal personality "is not limited only to the capacity of the human person to enter the into legal relations and have rights and obligations but also includes the possibility that every human being has, by his very existence and regardless of his status, certain attributes that are the essence of his legal personality and individuality as a subject of law."[116]

422. In this regard the Court, restating constitutional doctrine, notes:

> In this context, the constitutional doctrine notes that the right to legal personality is intimately related to the rights to free development of personality and to personal identity, as both represent expressions of

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[115] Supreme Court, Criminal Chamber, order, 4 May 2005, Rad. 19094, Opinion delivered by Judge Yesid Ramírez Bastidas.

[116] Ruling C-109/95, Opinion delivered by Judge Alejandro Martínez Caballero.

freedom, projected in values or attributes of personal individuality and the distinctiveness of the subject vis-à-vis others.[117]

Similarly, the Court stresses the importance of registration if one considers that it is the means of officially acquiring another of the essential attributes of personality: one's name.

(...) We note that civil status constitutes an attribute of the individual, inherent and inseparable from the right to legal personality and to a name which, in the case of minors, assumes the character of a fundamental and primary right. Therefore, as the Court has said, "the fact that a child should have certainty about his parent is a principle of public policy and is at the core of the fundamental right to legal personality."[118]

3. Administrative developments

423. Regarding civil registration, the State has developed a programme to document all the population, and especially people in vulnerable situations, displaced populations and communities at risk, through the Unit for Vulnerable Populations of the National Civil Registry.

424. The project places special emphasis on populations displaced by violence, returnees, and the population living in remote areas of the country and affected by natural emergencies, giving special attention to children, women, indigenous populations, and populations of African descent.

425. In 2006 alone, work proceeded in 58 municipalities in 12 departments, service being provided to 85,502 people, of whom 7996 were provided with civil registration, 60,334 with an identity card and 17,172 with a citizenship card.

426. In 2007, documentation campaigns covered 85,600 people in 55 municipalities and 15 departments. This year, as in 2006, stress was laid on the under age population with civil registration and identity cards. 20,048 obtained civil registration, 46,692 obtained identity cards and 18,860 adults completed the procedure for their citizenship card.

427. This project was carried out with cooperation and international support provided by UNHCR, IOM and UNICEF, among others.

428. The challenge is to reach all regions of the country, particularly regions of difficult access, within existing budgetary constraints, for which new strategic alliances that strengthen the project will need to be envisaged.

429. Furthermore, pursuant to Ruling T 810/00, the Office of the Attorney General, through an inter-agency committee to monitor the practice of DNA testing, is designing and implementing a new procedure for conducting such tests, thereby reducing the backlog at judicial offices which, by the year 2006, had nearly 50,000 paternity investigations pending, as well as others, held up by lack of DNA evidence.

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[117] Cf. Rulings T-477/95 and T-293/98, among others.

[118] Ruling T-979/2001, Opinion delivered by Judge Jaime Córdoba Triviño.

Q. Article 17. Right to privacy, protection of private correspondence, the inviolability of the home and the protection of honour

1. Legislative developments

430. The criminal policy framework set out in the fifth periodic report remains valid. However, we must note that pursuant to Law No. 890 of 2004, penalties have been increased by one third at the minimum and one half at the maximum.

431. Additionally, it is worth mentioning that the Congress passed a new statute governing the so-called "law of habeas data" laid down in article 15 of the Colombian Constitution, whose main objective is to strike a balance in the conflict between the right of the citizen to know, to update and to rectify information about him that exists in the databases and the collective and general right to information.

432. The project is under formal review by the Constitutional Court. Once this process is completed, it will be submitted for presidential approval.

2. Judicial developments

433. In regard to the principle of inviolability of the home, Ruling C-519, 2007 of the Constitutional Court declared unconstitutional paragraph 4 of article 230 of Law No. 906 of 2004, "Whereby the Code of Criminal Procedure is enacted." According to the Court, the provision challenged disregards articles 28 and 250, paragraph 2, of the Constitution because it allows the search of buildings, vessels or aircraft without the written order of a competent judicial authority, in events other than those referred to in article 32 above, and disregards the jurisdiction over this matter that has been vested in other judicial authorities.

434. The Court noted in its ruling that:

> (…) The democratic principle of protection of fundamental rights presides over the Colombian constitutional order, giving rise to the inviolability of the home as an extension of personal freedom and surrounding it with a panoply of requirements such that it can exceptionally be affected through the practice of search or entry, beyond the circumstance contemplated in the Constitution when there is pursuit of one surprised in flagrante delicto.
>
> The Constitution places upon the legislator the legal duty to spell out and specify those circumstances under which a judicial authority may be empowered to issue a warrant for search or entry into the home, to be carried out by the Judicial Police in the service of the State Prosecutor and the judges, always according to law.

435. Similarly, with regard to violations against honour and good name, Ruling C-392, 2002, which the Constitutional Court based on the fundamental nature of those rights, held that regardless of the existence of mechanisms of protection in criminal matters, "when there are violations of people’s honour and good name, albeit not constituting forms of libel or slander, (...) it will be possible to invoke the writ of protection, where necessary to prevent the consummation of an irreparable injury. "

436. In the same ruling the Court states:

> The Court's cases in this area have also indicated that the protection of the right to dignity, understood as the esteem or deference with which each person should be treated by the other members of the community who know him and deal with him, because of his human dignity, is a right to be protected in order not to

undermine the intrinsic value of individuals in society and in their own eyes, and to ensure adequate consideration and valuation of individuals within the community.

437. Finally it is important to note that the case law of the Court has referred repeatedly to the issue of the right to rectify, as a guarantee of the rights to personal and family privacy and good name protected by the State. In this regard the Court in Ruling T-437 of 2004 stated: "The right of correction in addition to its primary value in defence of the rights or interests of the affected person seeking the rectification, also represents a complement to the freedom of opinion, since it encourages the collective interest in seeking and receiving the truth which is protected by that fundamental right.”

R. Article 18. Freedom of thought, conscience and religion

1. Legislative developments

438. In accordance with the Constitution and Law No. 133 of 1994, freedom of religion includes the following elements:

a) The freedom to profess any religious belief, freely chosen, to change one’s religion or to profess none.

b) The ability to practice it without external interference or coercion, to perform acts of prayer and worship, to receive religious ministrations of one’s own confession anywhere, even in prisons, barracks and medical facilities, to mark festivities, to receive a dignified burial according to the rites and precepts of the religion of the deceased and his wishes or those of his family.

c) The right to marry and to found a family according to the religion one professes and its rules, freely to receive and impart religious education or to refuse it, to determine in accordance with one’s own belief the education of minor children or that of incompetent dependents.

439. Based on this legal framework, which is discussed in the fifth periodic report of Colombia to the Human Rights Committee, the following legislative advances have taken place during the reporting period:

440. The Criminal Code, Law No. 599 of 2000, includes crimes against religious sentiment and respect for the dead. These include the crime of violation of religious freedom (art. 201), the crime of disruption of religious ceremonies (art. 202), the crime of damage and injuries to persons or things devoted to worship (art. 203), and desecration corpses (art. 204).

441. Additionally, in pursuance of the principle of religious freedom, Decree No. 4500 of 2006 establishes rules on religious education in official and private preschools, elementary and intermediate educational establishments. Article 5 states that students exercise their right to religious freedom when they opt to take or not to take the religious education offered in their educational establishment. This decision shall be made by parents or legal guardians of minors or by the students if they are of age.

2. Judicial developments

442. There has been prolific case law on religious freedom, from various perspectives. The Constitutional Court, addressing issues relating to prisons and jails in the country, has afforded protection of the right to freedom of worship through decisions such as Ruling T-376, 2006, which noted that the Court “was of the view that the warden of Dona Juana Penitentiary of the city of La Dorada had to determine whether the church to which the complainant belongs was recognized or not and, having made such determination, should have afforded the complainant, on equal footing with other religious denominations present at the penitentiary, a time and space to

engage in the religious activities proper to his denomination, together with the other followers of the doctrine of the United Pentecostal Church International, provided that the services were performed by the minister of the church in question, duly authorized under the existing rules."

443. The Court went on to note: "The petition for protection is granted for reasons of equality and to avoid discrimination between different religious faiths present in the jail facility. It having been shown that the United Pentecostal Church International is listed in the Public Registry of Religious Entities, it must be granted the right to practice its religion under the same conditions as other religious bodies, and without discrimination regarding the conditions of exercise of freedom of religion."

3. Administrative developments

444. In Colombia there are a total of 810 registered religious entities in the public register maintained for that purpose by the Ministry of Interior and Justice.

445. There is a large volume of applications for issuance of special legal status and for extension of its effects, coupled with other procedures such as amendments of statutes and registration of the legal representatives. In view of this, and given that there is a firm deadline for completing these procedures, it became necessary to create an instrument through which legal recognition of religious institutions by the State could be made more expeditious.

446. These considerations led to Decree No. 505 of March 5, 2003, partially regulating Law No. 133 of 1994, granting the possibility that the legal effect of recognized special legal status could be extended to affiliated or associated religious entities, seeking to expedite the review of applications for legal recognition of religious entities.

447. In the exercise of preventive oversight, the Office of the Attorney General ensures special monitoring of compliance with the duty to guarantee respect for the right to freedom of religion and worship in State educational institution, hospitals, welfare institutions and prisons.

448. This oversight is applied in a special way in the Secretariats of Education, which must ensure that these rights are respected and upheld for all students and their families, which means that minors cannot be forced to receive a religious education different from that professed by their families.

449. Instructions have also been issued to monitor and verify the work of the Ministry of the Interior, the entity responsible for granting legal status to churches, confessions and religious denominations, their federations and confederations and associations of ministers, as requested.

S. Article 19. Freedoms of opinion and expression and responsibilities in exercising those freedoms

450. The Colombian State has a comprehensive legal framework aimed at guaranteeing the right to freedom of opinion, expression, information and communication, which was presented in the fifth periodic report.

1. Legislative developments

451. During the reporting period we note the approval of Law No. 814 of 2003, which contains regulations for promoting the film industry in Colombia.

452. The Government issued Decree No. 1981 of 2003 which regulates the Community Radio Broadcasting Service[119], in order to define the conditions for service provision and clarify the criteria and terms for concessions.

453. In regard to journalism, a noteworthy development is the enactment of Law No. 918 of 2004, geared to employment and social protection and to defining the academic requirements to qualify for the practice of journalism. This law elaborates on article 73 of the Constitution, which states: "Journalism shall enjoy protection to guarantee its freedom and professional independence." Moreover, the law defines the conditions for the practice of this activity, without prejudice to the right of all citizens to have access to the media, occasionally or continuously, to give their views from the standpoint of different professions, occupations and interests.

2. Judicial developments

454. Concerning the remit of the Ministry of Communications, in Ruling T-391 of 2007 the Constitutional Court said that the ministry has powers of regulation, inspection and oversight over radio broadcasting in Colombia because it is a public service and a mass medium subject to State intervention. But the Court said that it was unconstitutional to assert that the control that the Ministry is to exercise over radio should encompass the form and content of radio broadcasts. Accordingly, the Court considered that to give a State authority the power to intervene on the content of constitutionally protected expression would amount to censorship, repression and the imposition of ways of thinking upon the citizens.

455. In this vein, the Court urged the media to launch a self-regulatory process, in the exercise of their autonomy, that would demonstrate their social responsibility in exercising their freedom of expression.

456. In numerous rulings (T-460, 2006, T-1191, 2004, C 650, 2003, among others) the Constitutional Court has elaborated on the scope of freedom of expression, noting that it includes an individual and a social aspect. "The former concerns the right of any person to express his thoughts and use any means to make them known to another. In this sense, it includes freedom to express oneself, freedom of thought, freedom of opinion, freedom of information, freedom of the press and the freedom to establish mass media. The latter includes the right to receive information and know the thoughts of others, the right to be informed."

457. Given its importance for the strengthening of democracy, the Court, in Ruling C-650 of 2003, noted:

> (...) This right is vital for the advancement of democracy and development (...). It contributes to the promotion of democracy because: i) it makes possible the projection of each person as an individual subject and the realization of his plans of life --personal autonomy; ii) it allows the flow and constant confrontation of different ideas and opinions --pluralism of information-- which makes it possible to form critical positions and to advance in the knowledge of oneself and of the world; iii) it ensures that society has sufficient information for decision-making --informed decisions; iv) it is a condition for political parties, trade unions, scientific and cultural associations and any other body that seeks to influence the public to achieve its mission; v) it makes it easier for citizens to exercise political control over public and private powers; vi) it makes possible the principle self-government, i.e. that citizens govern themselves either by electing their representatives or by directly participating in decision-making; and vii) it promotes rational and peaceful resolution of conflicts.

[119] The Community Radio Broadcasting Service is a non-profit public telecommunications service of social interest, under the authority of the State, which provides the service through the indirect management of duly constituted organized communities in Colombia.

3. Administrative developments

458. Government policy has had a decisive effect in restoring citizens' security and strengthening freedom of information and expression. The recovery of the State's monopoly on force and the weakening of organized illegal armed groups have meant for many journalists a new environment that facilitates the free exercise of their profession and the expression of opinion. In this regard it is worth noting that journalists are among the populations protected by the protection programme of the Ministry of Interior and Justice referred to in chapter II, section F.

459. The new political scenario has further invigorated the country's journalistic tradition and is there is a resurgence of investigative reporting on social issues. As evidence of this new dynamism, more than 400 items were entered in the annual award organized by the Journalists' Circle of Bogotá in 2008, an event recognizing the best contributions to radio, television, scientific journalism, photography and cartooning.

460. Colombia has stood out for its important tradition in defending freedom of information and expression and for the presence of a large number of media, representing the pluralism of society and protected by the constitutional order, without prejudice to their expressing opinions that diverge from official actions or policies.

461. The size and diversity of the media may seen by the following inventory: 17 national newspapers and 27 regional ones; television coverage near to 100% of the country with a State, commercial and community operational system; 1,371 broadcasters using the commercial, public-interest and community modalities; and hundreds of magazines and newsletters with news, politics, sports, specialized and entertainment themes managed by professional associations, trade unions, NGOs, universities, organized communities and independent media. An important step in democratization in the use of the broadcast spectrum is the current development of public calls for tenders in all capital cities of Colombia to award a community radio service to non-profit social organizations.

462. The Community Radio Policy was approved by the National Council on Economic and Social Policy (CONPES) in February, 2008. In this document, the Government, under the coordination of Ministry of Communications and in liaison with other sectors, aims to support participatory processes, training, programming, production, management and organization at community radio stations, among others. With these advances, Colombia confirms its global leadership in properly guiding institutional efforts to promote and strengthen community radio services.

463. Colombia leads the world in the award of licenses for community radio and television services. These media are providing an appropriate channel of expression for local communities and are allowing, through programming boards as in the case of radio, the formation of a new social fabric that encourages participation and freedom of information.

464. The Government is pursuing a series of programmes designed to increase the coverage of telecommunication services, especially those that allow the acquisition of knowledge and the mass mobilization of all sectors, stakeholders and community groups with a view to a sustainable human development and thus to narrowing the social divide in our country.

465. An example is the recent (2008) launch of TV Kankuamo, broadcasting from the Sierra Nevada de Santa Marta, which seeks to preserve the ancestral traditions of this indigenous people, one of those hardest hit by violence.

466. This project of the Kankuamo Indigenous Organization (IOK) is handled by 34 young people in the community who received training in design, production and management of ethnic television by the University of Magdalena and financial support from the National Television Commission (CNT), which earmarked 300 million pesos for the project design.

467. The policy on access to telecommunications services is correlated to promoting the right to freedom of expression that is based on democratization in the use of new technological developments. In this regard it is worth noting the Colombian Government's progress in social telecommunications, and the significance they have by affording broad segments of the population access to the benefits of the information age, improving citizens' knowledge for the appropriation of new technologies, expanding their levels of information in order to take informed action to solve community problems, and, in short, empowering them as citizens.

468. In this regard, mention should be made of the project "Government Online," whose aim is to encourage joint efforts among State institutions in order to foster greater citizen participation, create more efficient administrative procedures, and provide improved, effective service to citizens. Specifically as relates to freedom of opinion and expression, the following are the main achievements and best practices of the "Government Online" strategy:

a) 100% of national public institutions have a web site (information phase) and are moving forward on all phases. Significant for freedom of opinion and expression is the range of mechanisms that narrow the gap between citizens and Government, allowing citizens more easily to contact it (interactive phase) and the incentive for citizens to contribute to the development and monitoring of legislative policies, plans, programmes and issues and to participate actively and collectively in making decisions (democratic phase). A clear example is the electronic platform for collective construction of the National Ten-Year Education Plan (PNDE) 2006-2015, recognized by the Organization of American States as the best electronic government solution for public participation in Latin America and the Caribbean.

b) At a local level, implementation of the information phase has directly benefited 1,046 of the 1,098 municipalities the country, which have received connectivity, equipment, web site applications, institutional e-mail and the support and training necessary for local governments to create and maintain their own web site, all under the format www.municiality-department.gov.co. The remaining 48 have received resources to develop their own web sites. According to studies by the Economic Commission for Latin America on municipal Web-sites in Latin America, the foregoing positions Colombia in 2008 as the first Latin American country to have all its municipalities on the Internet.

c) The Colombian State Portal (PEC), www.gobiernoenlinea.gov.co, is the comprehensive Internet access point to all information, services and procedures that national, departmental and territorial public agencies offer on their own web sites. Through the PEC citizens can communicate and interact with the entities that are linked there.

d) The Unified Procurement Portal (PUC), www.contratos.gov.co, is the integrated information query site for contractual processes managed by public entities. It aims to promote transparency, efficiency and use of ICT in Internet publishing for public procurement, as well as to improve access to information about State purchasing and contracts. It facilitates social auditing of public contracts by the general public and citizen oversight entities, making known by whom, for how much, how, when and for what entity a given contract is being made, as indicated by Resolution No. 002507 of 6 October 2006, issued by the Ministry of Communications, which defines the arrangements for announcements on the Unified Procurement Portal in accordance with the provisions of Decree No. 2434 of 2006.

T. Article 20. Prohibition of propaganda for war and of advocacy of national, racial and religious hatred

1. Legislative developments

469. In addition to the regulatory framework described in the fifth periodic report of Colombia, it should be noted that the Criminal Code (Act 599 of 2000) establishes in article 458 the offense of "incitement to war," defined as conduct intended to provoke war or hostilities against the country by another nation or nations.

470. Also worth mentioning the crime of "advocating genocide" contained in article 102 of the Penal Code, whose wording states: "Whoever, by any means, disseminates ideas or doctrines that encourage or justify conduct constituting genocide, or seeks the rehabilitation of regimes or institutions that foster practices conducive thereto shall be sentenced to prison (…)"

U. Article 21. Right of peaceful assembly

1. Legislative developments

471. The new Code for Children and Adolescents (Law No. 1098 of 2006) provides in its article 32 for the right of association and assembly, which may be exercised by children and adolescents for social, cultural, sporting, recreational religious, political or other purposes, subject only to such limitations as are prescribed by law, morality, physical or mental health and child welfare.

472. According to the law this right includes especially the right to belong to associations, including their governing bodies, and to promote and constitute associations made up of boys, girls and adolescents.

2. Judicial developments

473. The Constitutional Court, on the basis of article 37 of the Constitution[120], has examined the legal restrictions on the right of assembly, with a view to safeguarding this right. Thus, in decisions such as Ruling C-711 of 2005, the Court has said that policing standards does not limit or restrict the fundamental right of assembly, since such standards are merely a mechanism for giving effect to fundamental rights, for the sake of social peace, bearing in mind the eminently preventive and persuasive role that falls, by constitutional mandate, to the National Police. Accordingly, the Court finds the statutory requirement of notice prior to conducting meetings and public parades to be constitutional.

474. In that respect, the Court makes the following distinction: "The legal requirement of prior notice declared constitutional by the Court in Ruling C-024 of 1994 is limited to public gatherings and parades that take place in public places or places of public use, implying that such requirements cannot apply in the case of private meetings, events or parades that take place within spaces that are not public or for public use, or on private premises.

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[120] Article 37. Any group of individuals may gather and demonstrate publicly and peacefully. The law alone may establish in a specific manner those cases in which the exercise of this right may be limited.

475. Similarly, the Constitutional Court has on several occasions referred to the right of assembly of inmates in jails and prisons. In Ruling T-881 of 2002, reiterated in T-896A of 2006, the Court said:

> (...) Owing to the special relationship of subjection in which prisoners stand in relation to the State, the exercise of fundamental rights does not always warrant the same degree of protection, because there are clearly three levels that are readily distinguishable, namely: i) rights not to be restricted or suspended by the fact that their holder in prison. These rights are part of human nature and do not distinguish according to the subjective conditions of the holder, (...); ii) duties which, as a result of the special legal regime to which inmates are subjected, are temporarily suspended (...) such as personal liberty, freedom of movement and political rights for people who have been convicted; (...); iii) limited rights, in that, although the inmate has the right, its exercise is not full and must be subject to restrictions inherent in the status of a person deprived of liberty. Among these rights, according to our cases, are those of association, assembly, work, family and personal privacy, inviolability of correspondence and free development of personality.

476. Regarding the latter, constitutional cases have been clear in pointing out that its limitations are subject to the reasonableness and proportionality of the measures restricting fundamental rights. Although “prisoner status implies a drastic limitation of fundamental rights, such limitations should be the minimum necessary to achieve the end proposed. Any further limitation should be understood as excessive and, therefore, a violation of such rights. The extent of rights of a prisoner whose limitation is unnecessary is as worthy of respect, and its constitutional protection is as strong and effective, as those of any person not subject to prison conditions."[121]

V. Article 22. Freedom of association, and in particular the freedom to form and join trade unions

1. Legislative developments

477. Law No. 599 of 2000 (Criminal Code), in article 200, defines the criminal offense of "violation of the rights of assembly and association."[122]

478. Also noteworthy is the issuance of Decree No. 657 of 2006, which regulates the union contract, so that labour unions have the opportunity to be entrepreneurs and thus have greater involvement in managing the companies in which they work.

2. Judicial developments

479. By way of a petition for protection, the Constitutional Court in Ruling T-742 of 2003 addressed the principle of non-discrimination in the employment setting, specifically in the framework of union associations, and it has reiterated its holdings on this issue.

480. The Constitutional Court in Ruling T-285 in 2006 reiterated the centrality of the right to trade-union freedom, pointing to the constitutional and international instruments that enshrine it and constitute the body of

[121] Constitutional Court, Ruling T-596 of 1992.

[122] Anyone who disrupts a lawful meeting or the exercise of rights under labour laws or adopts reprisals against a legitimate strike, meeting or association shall be subject to a fine.

constitutional law, such as the Universal Declaration of Human Rights which recognizes for every person the right of peaceful assembly and association, as well as the right to form trade unions and join them (arts. 20.1 and 23.4) and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, among others.

481. In addition, the Court, by settled law on the subject, has clearly indicated that the Constitution of the ILO and its Conventions Nos. 87 and 98 are also part of the body of constitutional law, noting that they "relate to rights that cannot be suspended even under states of emergency."[123]

482. The concept of the body of constitutional law, in relation to ILO Conventions Nos. 87 and 98, in the case-law of the Court and its development are summarized in Ruling C-401 of 2005.

3. Administrative developments

483. In Colombia there are over 830,000 unionized workers[124] and 7,640 unions registered with the Ministry of Social Protection as of 31 December 2007. In 2007 alone, a total of 73 new unions were registered.

484. The national Government has implemented policies for the protection of trade unionists, which has required a major effort in human and financial resources.

485. The Protection Programme of the Ministry of Interior and Justice, founded in 1997 to protect vulnerable populations, including trade unionists, has seen its budgets strengthened since 2002, reaching US $ 42 million in 2008. Since its inception the number of union members covered by the programme annually grew from 84 to over 1,900 in 2007.

486. The Protection Programme has an Assessment Committee comprising one representative from each of the populations under the protection programme (including trade unionists), a delegate from the Office of the Vice-President, the Administrative Department of Security - DAS, the National Police, the Deputy Minister of Interior, the Attorney General and the Director of Human Rights, Ministry of Interior and Justice. Delegates of the ILO and of the Colombia office of the United Nations High Commissioner for Human Rights also participate. This Committee has several goals, including strengthening the security of the beneficiaries of protection programmes, managing escorts, conducting preventive safety courses, and designing a proposal for the creation of an Emergency Care Centre.

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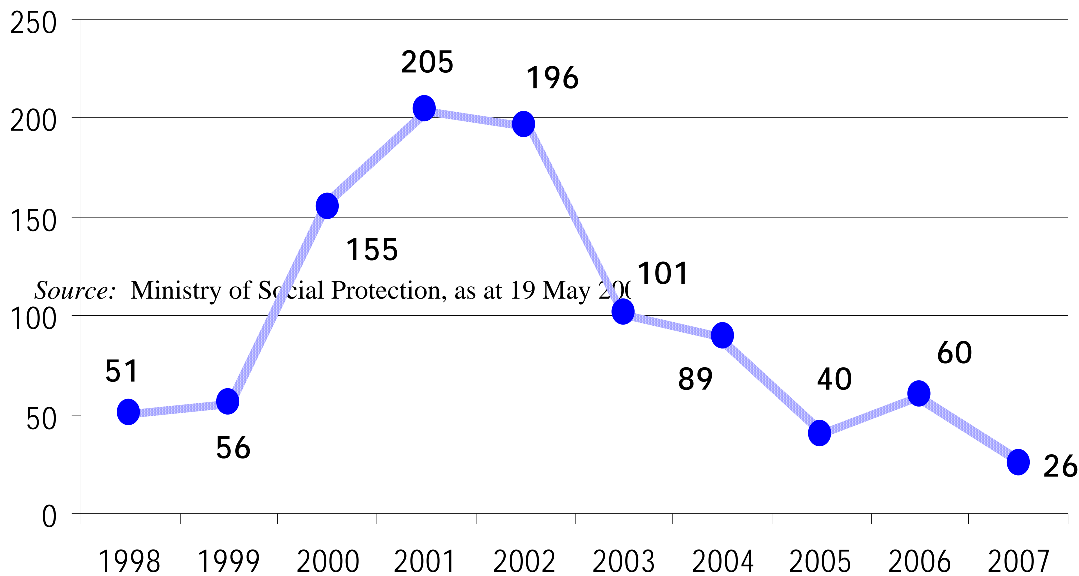
[123] Ruling T-568, 1999, Opinion delivered by Judge Carlos Gaviria Díaz. In regard to this decision, in Case C-401, 2005, this Court states: "In Ruling T-568, 1999, Judge Rapporteur Carlos Gaviria Diaz first proposed the incorporation of international labour conventions into the body of constitutional law to address strictly labour matters. The ruling dealt with the dismissal of union workers at the Empresas Varias de Medellín who continued a work stoppage although the permanent assembly they had convened had been declared illegal by the Ministry of Labour. The relief sought was granted. In the *ratio decidendi* of the ruling it was stated that the government and judicial authorities dealing with the case had disregarded the applicable law, as they had not complied with the provisions of international labour conventions and human rights treaties." Accordingly, the Fourth Appellate Chamber reversed the judgments before it and instead decided: i) to order Empresas Publicas de Medellín to reinstate the 209 workers; and ii) to order the respondent companies *"in genere"* to pay compensation to the union.

[124] National Trade Union School.

487. The implementation of the policy of democratic security has led to a general reduction of violence in the country, which also has resulted in a decrease in violence against trade unionists in the country, which declined by 80 % between 2001 and 2007. However, the situation remains worrisome and the Government has indicated that the goal should be zero killings of trade unionists.

Killings of trade unionists



Source: Ministry of Social Protection, as at 19 May 20(

488. As regards judicial matters, in October 2006 the Attorney General's Office created a sub-unit in the Human Rights Unit specifically to investigate 1,262 cases of crimes against trade unionists, of which a total of 187 cases selected by the unions themselves were given priority. This sub-unit began operating in February 2007 and through April 2008 had opened investigations on 724 cases.

489. In January, 2008 the Government allocated extraordinary national funds for the State Prosecutor’s Office of nearly US $ 50 million for the next two years. These resources have allowed the creation of 2,165 new posts, particularly to include 418 more prosecutors, 545 investigators and 1,202 operational staff positions. The sub-unit for crimes against trade unionists was also enhanced within the framework of this process.

490. In parallel, a policy of participatory unionism has been developing. The national Government, with the issuance of Decree No. 657 of 2006, established the possibility that union contracts will allow activities and services conducted by individuals and third parties to be carried out by the workers of the company. In this way, unions may gain the benefit of contracted work with higher incomes, strengthen their organization, and generate more work. This signals a shift from a trade-unionism of bargaining demands to one of participation, in which workers and unions have the opportunity to be entrepreneurs.

491. In 2003, within a framework of electoral freedoms and safeguards, trade union members in local, regional and parliamentary elections achieved positions such as: mayor of the capital of Colombia, the third most important electoral position; the governorships of several departments, including the third largest department in the country[125]; the offices of mayor of other capital cities; and seven seats in the Senate in 2002.

[125] Department of Valle del Cauca.

492. It is also worth noting that the Government has built a partnership with the ILO and that consultation mechanisms have been expanded nationwide. These efforts have helped to nurture a climate of security and a relationship of mutual respect.

493. During 2005 the Colombian Government extended an invitation to visit Colombia to the Chair of the Committee on Freedom of Association and the Vice-Chairs for workers and employers of the ILO Conference Committee on the Application of Standards, with the aim of enabling them to learn first-hand about the situation of trade union freedom, freedom of association and collective bargaining in our country.

494. After the visit, on the initiative of the Government of Colombia, in June 2006, as part of the Annual Conference of the ILO in Geneva (Switzerland) the "Tripartite Agreement on Freedom of Association and Democracy" was signed among Colombian unions , employers and Government, including among its commitments the establishment of a permanent ILO presence in Colombia.

495. It was further agreed that the national Government would earmark resources amounting to 4,500 million pesos over a period of two years to implement the Technical Assistance Project for the Promotion of Decent Work at the national level. These resources have been included in the national general budget for 2007.

496. The project has four sub-projects: a) Strengthening labour-management dialogue, fundamental labour rights and inspection, monitoring and control of work in Colombia; b) Managerial technical training for 2,000 displaced youth nationwide; c) Implementation of programmes of employment generation for poor women nationwide; d) Training for development and capacity building for promoting local economic development (PRODEL) nationwide.

497. Additionally, mechanisms for consultation and regular meetings have been established between unions, employers and the Government, the President, the Vice President and the Minister for Protection. Among these mechanisms is the Standing Committee on Labour and Wage Policies and the Departmental Sub-committees and Advisory Committees for Economic Sectors.

498. The Government recently issued Decree No. 427 of 2008, allowing the permanent presence of a representative of the ILO on these committees and commissions.

W. Article 23. Protection of family and marriage

499. The fifth periodic report of Colombia presented a comprehensive picture of the constitutional framework with regard to the family and marriage. Nevertheless, it should be recalled that article 42 of the Constitution identifies the family as the fundamental unit of society, constituted by natural or legal ties, by the free choice of a man and a woman to marry or by a responsible resolution to form a family.

1. Legislative developments

500. Law No. 750 of 2002, a measure for protection of the family, provides that women heads of household who are serving a prison sentence shall serve their sentence at their place of residence or alternatively, in the event that the victim of the punishable conduct resides in that place, at a place to be determined by the presiding judge provided that requirements are met. This standard aims to ensure children's rights and to help women heads of household to meet their obligations as such.

501. Law No. 882 of 2004 amends Law No. 599 of 2000, the Criminal Code, on the issue of domestic violence. In its Article 229 it defines domestic violence as “physical, psychological or sexual abuse inflicted on any member of the nuclear family.” Provided that the conduct does not constitute an offense punishable by a heavier penalty, it

provides for imprisonment of one to three years, the punishment to be increased by one-half to three-quarters when the abuse falls on a minor or a woman (General Comment No. 14 of the Human Rights Committee).

502. To provide comprehensive protection to the family, Law No. 854 adopted in 2003 governs the use of the marital domicile, i.e. premises acquired in whole or in part by one or both spouses before or after the conclusion of the marriage and intended as a family dwelling. The sale of such a dwelling, or the formation of a lien or other encumbrance upon it, requires the free consent of both spouses, which is to be expressed by signature.

503. Also, Law No. 861 of 2003 sets up a protection mechanism for the family with only one urban or rural property belonging to the female or male[126] head of household, such that it cannot be attached.

504. Another advance is Law No. 1060 of 2006 which amends the rules governing challenges to paternity or maternity. It amends article 213 of the Civil Code by including a presumption of paternity or maternity for children born during the de facto marital union.

505. Law No. 1181 of 2007, amending Law No. 599 of 2000 (Criminal Code), defines the offense of “failure to provide maintenance” as an unjustified failure to provide food legally due to one’s ascendant or descendant relatives, adoptive parent, adopted child, spouse or life partner. The commission of this offense will be punished with imprisonment for 16 to 54 months and a fine of between 13.33 and 30 times the statutory monthly minimum wage. When failure to provide maintenance is committed against a minor, the penalty is increased to 32 to 72 months’ imprisonment and a fine of between 20 and 37.5 times the statutory monthly minimum wage.

2. Judicial developments

506. Also, by Ruling C-184/03, the Constitutional Court, upheld the constitutionality of article 1 of Law No. 750 of 2002[127] on the understanding that, when the requirements established by law are met, house arrest and community service may be granted by the judge to men who are actually in the same situation as a female head of household, in order to protect, in specific circumstances, the interests of the minor child or disabled child.” The Court extended the benefits granted to women heads of household to men who were in the same situation.

507. Similarly, the Constitutional Court through Ruling C-722, 2004 declared constitutional the term "woman" in Law No. 861 of 2003, with the understanding that the benefit established by that law for minor children of a female head of household will be extended to dependent minor children of a man who is actually in the same situation as a woman head of household.

508. In Ruling T-999 of 2003[128], the Court reiterates the theme of the special protection that pregnant women should enjoy, confirming the importance of such status within the constitutional order.

509. A major advance in case law is provided by Ruling C-355/06 by which the Court decriminalized the practice of abortion in certain circumstances, to ensure the right of women to voluntary interruption of pregnancy when any of the circumstances referred to in the decision applies. This improvement reflects general comment No. 13 of the Human Rights Committee, on the administration of justice (article 14 of the Covenant).

[126] See note to Ruling C-722 of 2004, which extended the mechanism in the case of male heads of household.

[127] By which rules were laid down concerning support, especially with regard to house arrest and community service.

[128] Constitutional Court, Opinion delivered by Judge Jaime Araujo Rentería.

510. The ruling by the Constitutional Court of 10 May 2006 recognized the right of women to safe and legal abortion when one of the following circumstances applies: a) danger to life or health of the woman, certified by a physician; b) serious malformation of the foetus, rendering it nonviable, certified by a physician; or c) pregnancy as a result of conduct constituting carnal knowledge or sexual intercourse without consent, duly reported.[129]

3. Administrative developments

511. The State of Colombia has developed a series of strategies and policies to protect the family and safeguard the rights of its members.

512. **Protection Network against Extreme Poverty**. CONPES 102 of 2006 created a Protection Network to alleviate Extreme Poverty that seeks to promote the effective inclusion of the poorest households in the State's social networks and assist them in overcoming poverty, by: a) integrating the provision of social services so that they reach the family simultaneously; b) transitionally, to provide family support and preferential access in order to ensure that resources and interventions lead to achievement of a minimum quality as to living conditions that are not covered; c) generating a framework of shared responsibility with recipients to engage with families in overcoming their situation. The network is one of the proposals of the Mission to Design a Strategy for Reducing Poverty and Inequality in Colombia (MERPD), formed in late 2004, and is intended to ensure fulfilment of the Millennium Development Goals and goals set forth in the Vision of Colombia 2019.

513. **Family strengthening programmes**. In the context of State action aimed at strengthening the family as the essential and basic unit for the care and upbringing of children, the Government has developed programmes aimed at socially and economically vulnerable population groups, centred on the family as the focus intervention and thus aimed at benefiting children in poverty:

a) *Families in Action*[130]. This programme began operation in 2000 with the aim of providing an efficient and effective direct monetary support to the poorest families in the population, SISBEN[131] level 1, and more recently to displaced families, to improve health, nutrition and education of children under age 18 in exchange for compliance with schooling requirements for children.

b) *Forest Ranger Families*. This programme provides financial and technical support for a definite time to indigenous and Afro-Colombian peasant families located in environmentally strategic ecosystems linked to or threatened by illicit crops, who want to eradicate them and pursue "legal productive alternatives." It promotes

[129] The text of the decision states in pertinent part: "Third. Declaring constitutional article 122 of Law Nº 599 of 2000 on the understanding that there has been no commission of the crime of abortion when, with the woman's consent, interruption of pregnancy takes place in one of the following cases: i) danger to life or health of the woman, certified by a physician; ii) serious malformation of the foetus, rendering it nonviable, certified by a physician; or iii) the pregnancy was a result of duly reported conduct constituting rape or sexual intercourse without consent, abuse, artificial insemination or transfer of a fertilized ovum without consent, or incest."

[130] From 2000 to 2005 this programme benefited 487,215 families at SISBEN level 1, 1,224,586 children and 63,312 displaced families, 139,631 children with an investment of over 810,126 million pesos.

[131] System of identification of potential beneficiaries of social programmes.

legal and sustainable use of natural resources while bolstering community organizations and improving democratic participation.

c) *Food Security Network* (RESA). This programme, targeting small farmers who are displaced or at risk of displacement, promotes projects to produce food for their own consumption in order to achieve recovery of productive capacity and induce them to remain on the farm and/or return to it. This programme is a tool to generate a culture of food production for home consumption to facilitate access, variety and opportunity in the diet of the target population.

d) *Strengthening the Family*. This programme promotes training and development of families to fulfil their role in society and child-rearing. The programme relies on two modalities, the family educator and the family school, with community leaders assuming the role of mediators in family disputes and providing family support. In 2006 the family educator modality achieved coverage of 693,769 users, and the family school modality had a total of 596,127 users in the same year.

e) *Support to Dispersed Rural Population*. Aimed at families, children and adolescents, this programme supports the building of a life plan for them and for farm families, understood as the core of social and community cohesion, and aims at the full exercise of their rights. This programme seeks to improve the situation of children by encouraging them to remain in school and not to fail grades, fostering a sense of belonging to the community, and encouraging rural practices, mores and customs. Coverage was 122,702 recipients in 2005 and 91,956 in 2004, namely 16,375 more than in 2002.

514. **National Policy on Peacebuilding and Family Harmony** – "Make Peace." This policy was formulated with a view to preventing and addressing sexual and domestic violence and child abuse, commercial sexual exploitation of children and adolescents, through a strategy designed to support individuals, families and communities in their mission of transmitting the principles and values of democracy and coexistence, as well as providing the basic units of the community with appropriate instruments to resolve conflicts peacefully, and increasing the provision of qualified services to families in conflict and victims of domestic violence through the combined work of national institutions and local authorities. In this regard, the Colombian Family Welfare Institute-ICBF- has been at work since 2003 on the realization and implementation of this policy on the ground through the "*National Plan for Peacebuilding and Family Harmony 2005*" and provides technical assistance to departments and municipalities for the formulation and implementation of their own plans.

X. Article 24. Rights of children and measures to protect them[132]

1. Legislative developments

515. The most important advance with respect to children during the reporting period is the passage of Law No. 1098 of 2006, enacting the Code for Children and Adolescents, which recognizes children and adolescents as subjects of rights, pursuant to the Convention on the Rights of the Child, in a framework of comprehensive protection and responsibility, shared between the State, society and the family, for the full enjoyment of their rights.

[132] On this subject, see the first report submitted by Colombia on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (1 September 2008) and of the Optional Protocol to the Convention on the Rights of the Child on the sale of children**,** child prostitution and child pornography (August 2008).

516. The Code seeks to ensure full and harmonious development for children and adolescents so that they will grow within the family and community in an atmosphere of happiness, love and understanding. It prescribes recognition of equality and human dignity without discrimination of any kind.

517. Another important development is the amendment of article 96 of the Constitution by Legislative Act No. 1 of 2002. The legislature determined that foreign-born children of Colombians acquire Colombian nationality at birth by registering at a Consulate of the Republic without having to prove domicile in Colombia, in order to avoid the phenomenon of statelessness. The law provides as follows:

Article 96. [Article amended by Article 1 of Legislative Act No. 1 of 2002. The new text is as follows:] The following are Colombian nationals:

1. By birth:

a) Natives of Colombia, under one of two conditions: that the father or mother were natives or nationals of Colombia; or, if they are children of foreigners, either parent is domiciled in the Republic at the time of birth,

and

b) Children of a Colombian father or mother who were born abroad and subsequently became domiciled in Colombian territory or registered in a consular office of the Republic.

2. By adoption:

a) Foreigners who apply for and obtain a certificate of naturalization, according to the law, which shall define the cases in which Colombian nationality is lost by adoption;

b) Latin Americans and Caribbeans by birth domiciled in Colombia, who, with Government approval and in accordance with the law and the principle of reciprocity, request to be registered as Colombians in the municipality in which they have settled, and

c) Members of indigenous peoples who share border areas, pursuant to the principle of reciprocity according to public treaties.

No Colombian by birth may be deprived of his nationality. Colombian nationality is not lost by acquiring another nationality. Nationals by adoption shall not be required to renounce their nationality of origin or adoption.

Anyone who has renounced Colombian nationality may recover it as provided by law.

518. Also noteworthy is Law 704 of 2001, approving ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, ratified by Colombia on 28 January 2005.

519. Law No. 724 of 2001 institutionalizes the Day of Childhood and Recreation, together with other provisions.

520. Law No. 765 of 2002 approved the Optional Protocol to the Convention on the Rights of the Child on the sale of children**,** child prostitution and child pornography, adopted in New York on 25 May 2000. This instrument

was ratified by Colombia on 11 November 2003 and entered into force for Colombia on 11 December 2003 in accordance with the provisions of article 14 (2).

521. Further, Law No. 833 of 2003 adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which was ratified by Colombia on 25 May 2005 and entered into force on 25 June 2005 in accordance with the provisions of article 10 (2).[133]

522. Note should be taken of the issuance of Law No. 880 of 2004, which adopted the Inter-American Convention on the International Return of Children of 1989, which is pending ratification.

523. With regard to children, Law 975 of 2005 (Justice and Peace Law), previously mentioned, provided the following among the eligibility requirements for collective demobilization:

> "The benefits of this law shall be available to members of an organized armed group outside the law who have been or may be charged, indicted or convicted as perpetrators or participants in crimes committed during and in connection with membership in these groups, when they will not be beneficiaries of any of the mechanisms established by Law No. 782 of 2002, provided that they are on the list that the National Government has transmitted to the Attorney General's Office and also fulfil the following conditions: 10.3 That the group makes available to the Colombian Family Welfare Institute all children recruited."

524. Similarly, in the chapter on the Right of Victims to Reparations, this law states: "Members of illegal organized armed groups who will benefit from the provisions of this law have a duty to compensate the victims of punishable conduct for which they are convicted by a court."

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[133] Upon depositing the instrument of ratification of the Optional Protocol, in keeping with article 3 (2) of the Protocol, the national Government made the following declaration:

> "The armed forces of Colombia, pursuant to the rules of international humanitarian law, in the interests of protecting the best interests of children and in accordance with domestic legislation, shall not induct minors into their ranks even with their parents' consent.
>
> Law No. 418 of 1997, extended by Law No. 548 of 1999, amended by Law No. 642 of 2001, established that persons under age 18 shall not be inducted into the ranks for military service. For students in 11th grade who are selected for service under Law No. 48 of 1993 induction shall be deferred until they have reached the age referred to.
>
> When a youth whose military service was deferred becomes of age, if he is enrolled or admitted to an undergraduate programme in an educational institution, he shall have the option of immediately fulfilling his service or deferring it until he has completed his studies. If he opts for immediate fulfilment, the educational institution shall keep his place open for him under the same conditions; if he opts for deferral, the corresponding degree shall be granted to him only upon completion of the military service required by law. Interrupting university studies shall make the obligation to join military service mandatory.
>
> A civil or military authority which disregards this provision shall be held accountable for misconduct punishable by dismissal.
>
> A youth called to the ranks who has deferred his military service until the end of his professional studies shall fulfil his constitutional duty as a university professional or technologist in the service of the armed forces in activities of social service to the community, in public works and tasks of a scientific or technical nature, as required by the unit to which he is assigned. In that case, military service shall last for six months and shall be deemed equivalent to the rural year, internship, industrial semester, judicial year, mandatory social service period or like academic requirements which the corresponding professional training curriculum establishes. For those graduating from legal studies, said military service may take the place of the graduation thesis or monograph and shall, in any case, replace the mandatory social service referred to in article 149 of Law No. 446 of 1998.

525. Along the same lines, Law No. 1106 of 2006 (which extended and amended Law No. 782 of 2002 and Law No. 418 of 1997) directs the Colombian Family Welfare Institute to design and implement a special protection programme to respond to all cases of minors who have taken part in hostilities or have been victims of political violence under the "internal armed conflict."

526. Similarly, we should note the legislative steps taken to prevent recruitment and use of children and adolescents by illegal organized armed groups and to provide care and support to those who have left those groups, through Decrees Nos. 395 and 4690 of 2007. The latter decree created the Inter-sectoral Commission for the prevention of recruitment and use of children and adolescents by organized groups outside the law.

527. Finally, Law No. 1146 of 2007 has issued rules for prevention of sexual violence and comprehensive care of sexually abused children and adolescents, and provides, among other measures, for the Inter-agency Advisory Committee for the Prevention of Sexual Violence and Comprehensive Care of Child and Adolescent Victims of Sexual Abuse, a consultative mechanism for inter-agency coordination and interaction with organized civil society.

2. Judicial developments

528. Ruling C-535, 2002 of the Constitutional Court declared constitutional Law No. 704 of 2001, approving ILO Convention No. 182.

529. In Ruling C-482 of 2003, the Constitutional Court ruled on the challenge to constitutionality filed against the paragraph 11 of article 140 of the Civil Code which provides: "Marriage is null and void in the following cases (...) 11. When contracted between the adoptive father and adopted daughter, or between the son and the adoptive mother or the woman who was the wife of the adoptive parent." The Court found the provision constitutional on condition that it apply on the same terms to both men and women.

530. In Ruling T-025 of 2004 the Constitutional Court places on the State the obligation to adopt measures of prevention and protection for children and young people who are victims of forced displacement and are at risk of labour exploitation. Also noteworthy is Order 251 of 2008, based on the same ruling, in which the Court deals specifically with the issue of displaced children.

3. Administrative developments

531. Currently the country is embarked on an important reform process and projects aimed at the development of a Public Policy for Children and Adolescents based on a rights approach and in line with the needs and specificities of different population groups. The salient aspects of this process are summarized below.

532. **Comprehensive protection**. Through the new Code for Children and Adolescents (Law No. 1098 of 2006) Colombian law is brought into line with the principles enshrined in the Convention on the Rights of the Child. Procedural and substantive rules are laid down for the comprehensive protection of children and adolescents, to ensure enjoyment of the rights and fundamental freedoms which are granted them under international human rights instruments, the Constitution and laws, as well as for the recovery of those rights.

533. Comprehensive protection is embodied in the set of policies, plans and actions that are applied at the national, departmental, district and municipal levels with the corresponding financial, physical and human resources.

534. The foundation is constituted by basic principles such as the best interests of the child, the priority of children’s rights, the shared responsibility of the family, society and the State as guarantors of rights, and the enforceability of rights of children and adolescents. The development of regulations and implementation of the law are currently under way.

535. The Attorney General has contributed to the development of Law No. 1098 of 2006. By Directive No. 011/06, the Office of the Attorney General instructed all authorities and agencies with specific responsibilities for the comprehensive protection of children and adolescents to initiate the process of implementation of Law No. 1098/06 and to define, with the coordination and technical support of the Colombian Family Welfare Institute (ICBF), guidelines for the fulfilment of the legal obligations.

536. The Office of the Attorney General, with technical support from UNICEF, undertook the task of promoting the implementation of the Code for Children and Adolescents through national macro-regional forums, in three stages with different goals for each, aiming to reach the population concerned, clearly defining areas of competence, the framework and legal roles of those involved, the administrative authority and the role of the Attorney General's Office in respect of each, as well as the creation of inter-agency working groups at the departmental and municipal levels to conduct monitoring of implementation of the legal provisions:

a) First stage (2007). Building awareness of the legal instrument, with a view to ensuring that each of the actors found his place in the new legal framework and defined his social responsibility. A commitment was assumed to motivate, encourage and alert all players involved as to the constitutional and legal duty to "Implement the Code for Children and Adolescents" in its two dimensions of safeguarding and restoring rights, which should be a State policy and a social imperative.

b) Second stage (2008). Monitoring the implementation of the legal provisions, the aim being to identify through regional diagnostic assessments the advances made and difficulties encountered in implementation and regulation, and thus to determine actions to overcome the difficulties.

c) Third stage (2009). Evaluation of the implementation process.

537. **Strategy of Municipalities and Departments for Children and Adolescents**. In 2004, ICBF drew up a national proposal for a public assessment of managerial performance on childhood issues at the territorial level, promoting processes of monitoring and accountability regarding the living conditions and quality of life of children and adolescents in the departments and municipalities. The proposal encouraged public presentation of diagnostic assessments, local management and results.

538. During 2005, this proposal was linked to a national process led by the Office of the Attorney General and UNICEF, entitled: "Strategy of Municipalities and Departments for Children and Adolescents." The matters to be monitored were defined as follows: 1) inclusion of the theme of childhood in development plans, and 2) the conditions and quality of life of children and adolescents.

539. With the participation of local authorities, eight priority areas were identified: maternal and child health; breast feeding and nutrition; early childhood education; sexual and reproductive health (with priority on preventing teenage pregnancy); prevention of violence and child abuse; drinking water and basic sanitation; civil registration; and prevention and restoration of violated rights.

540. As part of this strategy, baselines for key indicators were defined and meetings were held with governors to set commitments in key areas. In 2007 a six-year strategic plan was formulated and the road map for local technical assistance is being developed, with emphasis on the two goals to be tracked. There have been three meetings of governors, at which leaders have reiterated their commitment to prioritizing the eight thematic areas in their work, seeking to have an impact on the National Development Plan and analyzing and evaluating public expenditure on children and adolescents.

541. In 2004, the Attorney General's Office, for the purpose of implementing the fundamental rights of children and adolescents, began monitoring local public policies to ensure that programmes and projects to

safeguard and restore the rights of children and adolescents were included in municipal and departmental development plans; to that end, in 2005, 964 municipal development plans and 32 departmental development plans were evaluated, with technical and financial support from UNICEF.

542. In the exercise of preventive monitoring, the Office of the Attorney General issued the following directives, which call upon the authorities of the executive and legislative branches at the national, departmental and municipal levels, to ensure the restoration of the rights of children and adolescents:

a) **Directive No. 07 of 2004** refers to the obligation to formulate and develop plans, programmes and projects of comprehensive social welfare for the benefit of children, adolescents, youth and pregnant women, and to form councils or committees for social policy, including a subcommittee or a standing sub-commission responsible for child and family policy.

b) **Directives Nos. 08 and 09 of 2004** call on municipal and family court attorneys nationwide to conduct monitoring of development plans in order to verify the inclusion therein of prevention, promotion and restoration of rights of children and family, and also to note the existence and operation of Social Policy Councils in the municipalities and in the fulfilment of investment plans.

c) **Directive No. 013, 2007** calls on governors and mayors to comply with article 366 of the Constitution by formulating and presenting a draft capital budget for fiscal 2008, with programmes and projects that prioritize social investment for children and adolescents and that ensure the general welfare of children and adolescents. It further calls upon the authorities to appropriate necessary resources to continue implementation of the Code of Children and Adolescents. It also urged members of departmental assemblies and municipal councils to ensure that the budget of income and expenditures for 2008 includes items which implement policies for children and adolescents.

543. **National Plan for Children and Adolescents**. In keeping with the commitment at the Special Session of the United Nations General Assembly in New York in May 2002, a process began in 2003 of formulating the National Plan for Children and Adolescents, with the participation of national and local entities. Throughout this process, objectives, goals and strategies were defined with a view to improving the quality of life of children and adolescents in the next ten years.

544. The plan, known as "Plan País" (“Country Plan”), is developed under a rights approach, is part of the system of social protection and social risk management and incorporates co-responsibility of the family, society and the State. Thus, it aims to give general guidelines for the formulation of development plans at the local level in the coming years, respecting cultural and ethnic diversity and the principle of non-discrimination. In the long term, it aims to strengthen care of and investment in children and adolescents as a priority in the country's public agenda.

545. Its inclusion in the Government Development Plan for 2006-2010 was also approved.

546. **Early Childhood Policy**. In compliance with international agreements signed by Colombia and the commitments established by the international community at the World Education Forum held in Dakar in 2000, the Programme of Support for the Formulation of Early Childhood Policy was developed in 2004, with participation by 19 national institutions under the coordination of the Colombian Family Welfare Institute. Early Childhood Policy is designed to improve the living conditions of children below six years of age. As part of this effort there have been two international forums which have discussed various aspects of the issue, sharing national and international experiences in this field.

547. To implement the policy, its objectives embodied in the Development Plan 2006-2010 will be harmonized with the Millennium Development Goals, Vision Colombia 2019 and the National Plan for Children and Adolescents. Additionally, implementation of the public policy will emphasize comprehensive care in early

childhood. To this end, work will proceed jointly with the National Planning Department and the Ministries of Social Welfare and Education. In this four-year period, comprehensive service --care, nutrition, health and education—will be provided to 400,000 children in SISBEN levels I and II. Additionally, the community education plan will be reviewed and adapted in order to align it with the framework of life skills being used by the country's education system. Such harmonization is essential for children to experience a pleasant and satisfying transition between the patterns of care of the ICBF and their entry into the formal education system. Similarly, available resources and resources from cooperation will be used to continue the transformation of traditional community homes into multiple homes and social gardens or modalities of similar or higher quality.

548. As part of the construction of this policy, a key partnership was forged between the ICBF, the Ministries of Education and Social Protection, universities, NGOs, *Raizal*, communities, and others, to determine jointly the goals and strategies of intervention to be followed with children of this age group in Colombia.

549. **Rural Youth**. This programme is conducted by the National Training Service -SENA- in partnership with local governments. With this programme SENA has managed to reach the most remote areas of the country, giving the opportunity for the most vulnerable populations to access this training. The training offered is designed in accordance with patterns of production in the region, in order to provide jobs for youngsters and the ability to generate new businesses. During 2004-2005 SENA brought the "Rural Youth" programme to 147,600 students.

550. **Comprehensive care programme for abused and sexually exploited children and youth**. During the last four years, State action pursued in the context of inter-agency coordination with ICBF as coordinator of the National Family Welfare System (SNBF) promoted the programme of comprehensive care for children and adolescents who are sexually abused and exploited; the programme seeks to provide protection to minors who are victims of these crimes or who are at risk or in danger.

551. The Attorney General's Office, in exercising the function of protecting human rights and ensuring their effectiveness, issued Directive No. 001 of 2006 on prevention of domestic violence, child abuse and sexual violence, which:

a) Urges all entities at the national, departmental and municipal levels to process the resources necessary for physical and psychological care of victims of violence against children, adolescents and other family members, in order to ensure the restoration of their rights; to investigate cases of infringement of the rights of this population in a timely, effective manner on a priority basis; to immediately apply the special measures provided for in national legislation to protect the mental and physical integrity of people, especially children and adolescents, who are subjected to threats of violence and to ensure the functioning of family police services nationwide;

b) Directs all national entities, the State Prosecutor's Office and the Judicial Council to have the necessary qualified staff for the timely investigation and prosecution of crimes of domestic and sexual violence, giving priority to cases in which the passive subject is a child or adolescent and to take all necessary measures to ensure strict compliance with the law, non-impunity, and protection of those affected in their physical or moral integrity, their dignity and the right of all human beings to live free from fear and violence; to investigate and punish those responsible; and to fully ensure compensation of damage caused and restoration of rights violated;

c) Calls upon all authorities of the national, departmental and municipal levels to undertake to provide timely protection and care to children, adolescents and other family members, to prevent these types of child abuse, sexual violence and domestic violence with measures designed to make the institution of the family the kind of place for cultivating democracy, harmony and participation that befits a social state under the rule of law.

552. Regarding the question of eradicating the worst forms of labour by children and adolescents, the Attorney General's Office, in compliance with preventive measures to monitor management by mayors and governors, and

with the continued support of the ILO, has defined a protocol and guide that is permitting annual measurements of progress regarding inclusion of the issue in municipal and regional development plans, formulation of action plans, and earmarking and delivery of resources in annual operational investment plans. In effect, measurements have been made in the years 2005 and 2006.[134]

553. The analysis of the problem of child and adolescent workers and the monitoring of endeavours by mayors and governors to eradicate the worst forms of child labour served as an input for the ILO, the British Embassy, the Colombian Family Welfare Institute, the Ministry of Social Protection and the Attorney General's Office to develop a brochure that reflects the current situation, rates of child labour, the reasons why children and adolescents are involved in the worst forms of child labour, the provisions in national legislation, the progress of municipalities in the prevention and elimination of the worst forms of child labour, advances by municipalities in preventing and eliminating the worst forms of child labour, the result of the monitoring of mayors and governors, and the challenges faced by mayors and governors in fulfilling the commitment to prevent and eliminate the worst forms of child labour. This document has been sent to mayors and governors nationwide for use as a tool that brings to the fore the situation of children and adolescents involved labour activities, especially in their worst forms.

554. **National Action Plan for Prevention and Eradication of Commercial Sexual Exploitation of Children and Adolescents, 2006-2011**. The institutions responsible for enforcement of Law No. 679 of 2001, which establishes a body of rules to prevent and counter child exploitation, pornography and sex tourism, have performed vigorously and have taken actions that go beyond the law's provisions, as is the formulation of the National Action Plan for Prevention and Eradication of Commercial Sexual Exploitation of Children and Adolescents: 2006-2011.

555. The Plan responds to the need to develop and enable effective mechanisms between the entities with expertise in the subject with respect to the following components: prevention, detection and reporting; making its occurrence intolerable and rejecting any kind of justification; systematizing and disseminating strategies to help all children, especially those who have been excluded from social benefits and services, in order to restore their rights; better understanding their lives; strengthening them as subjects of rights; and creating environments that allow them to attain greater self-esteem and to make plans for a more decent and hopeful life. Impact on self-esteem is perhaps one of the most critical aspects in cases of child and adolescent victims of exploitation and abuse; consequently, strengthening and recognizing their dignity and potential constitute one of the fundamental means of sustaining them in making plans for a new life.

556. **Care for families, children and youth in situations of displacement**. Under the Policy Assistance to the Population Displaced by Violence, the purpose of the action plan of the Colombian Family Welfare Institute-ICBF is to reach families and communities that have been forcibly driven from their territory and habitat. It is a mobilization of the entire institution for the lives and safety of children, adolescents, women and families, groups affected primarily by violence, for whom the social situation of the country has excluded them, denying them opportunities for quality of life and the enjoyment of their rights.

557. The ICBF participates in the National System of Care for Displaced Persons and designs and executes a special plan. Its work focuses on four dimensions: timely, priority response for the displaced population without barriers to access; promotion of family unity, prevention and care of domestic violence in situations of population

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[134] "Elements for identification, prevention and eradication of the worst forms of child labour," Office of the Attorney General – International Labour Office, 2006 Edition.

displacement; promoting participation by the displaced population and their organizations in fora of the ICBF and promoting rights and duties of the displaced population.

558. The ICBF serves through various methods that provide psychosocial care activities with emphasis on crisis intervention, food aid and support for psychosocial and community reintegration; those affected have an opportunity to be included in regular programmes of the ICBF.

559. **Modalities of protection for the restoration of violated rights of children and adolescents offered by the ICBF**. The Institute conducts programmes and services in keeping with its institutional responsibilities aimed at protecting and restoring the full exercise of the rights of children and adolescents under 18 years of age in situations of abandonment or danger, in conflict with the criminal law, victims or former members of organized illegal armed groups, in order to achieve their integration into the family, community and society.

560. Care is provided through modalities such as the family environment, which emphasize family ties, through day services, semi-residential facilities and foster care, among others. For serious situations, where it is difficult to maintain the link with family, or where it does not exist, services are provided through the institutional environment in closed centres (institutions for protection and rehabilitation). In this regard, the role of the 201 area centres in the country, which offer permanent care in response to spontaneous requests, is significant.

561. The following table presents coverage for the protection and restoration of rights (2002-2005).

Programmes and services aimed at protecting and restoring the full exercise of the rights of children and adolescents

		2002	2003	2004	2005
Protection through family environment	Substitute homes, support, friends and protective home shelters	15,801	14,292	16,157	16,395
	Therapeutic care	21,519	28,345	40,388	74,674
	Semi-residential care, day care, and support intervention	32,408	23,853	28,512	23,542
	Support subsidies			1,057	3,225
Care in institutions	Adolescent children facing inobservance, threat or violation of their rights	27,374	33,945	32,182	28,125
	Adolescent children disengaged from illegal armed groups **	561	1,159	2,871	1,981
	Youthful offenders	15,475	14,934	54,875*	15,663
Care in social / family setting	**Substitute homes for children with disabilities facing violation of their rights ***	-	1,792	1,834	1,881
	Care for children with disabilities and mental disorders	-	2,864	3,319	2,737
Institutions for residential care and protection of children	With disabilities	1,480	1,588		1,812
	With mental disorders	289	384		463

Source: ICBF, Directorate of planning, sub-directorate of programming, execution of social goals 2002 – 2005
* Data under review.
** Includes rotation of quotas, revenues and expenditures for the year.

562. For the year 2006, the family-setting modality had 140,220 beneficiaries, while for the institutional environment modality there were 66,334 beneficiaries.

563. **Support for community mothers - strategies under the policy of qualifying community welfare homes**. The ICBF is interested in improving the conditions of Community Mothers, offering them support through various programmes aimed at improving their quality of life so that they can continue to deliver good care during times when children are under their care in Community Welfare Homes.

564. **Demobilized children and adolescents**. In Colombia, children and young people disengaged from organized illegal armed groups are different from the adult demobilized population and have special characteristics. Therefore, the legal definition of victims of violence emphasizes the State and social obligations. Since 1999, a specialized programme has been designed with the aim of helping to consolidate a road map for life among children and adolescents disengaged from illegal armed groups, in the framework of safeguarding and restoring the Rights of the Child, building citizenship and democracy, with a gender perspective and a view to social integration[135] and shared responsibility, stressing preparation for social and productive life.

565. The programme of care for children demobilized from illegal organized armed groups conducted by the Colombian Welfare Institute follows three lines of action: preventing recruitment; specialized care; monitoring and supporting the demobilized.

566. The Government faces a daunting challenge in providing quality care to 100% of the target population and gradually increasing the coverage of services, which must be accompanied by a strengthening of training processes for public servants, staff and educators in order to achieve satisfactory performance.

567. The Attorney General, in order to guarantee the rights of children demobilized from armed conflict and in light of the impending legal action by the Colombian State for the crime of rebellion, issued Directive No. 013 of 2004, which directed prosecutors to intervene in criminal proceedings brought against this population in order to move for their termination, since, according to international standards, children in these circumstances no are not victimizers but victims of armed conflict, and should consequently be treated as such and made available to the ICBF for the restoration of their rights. The same directive called on the armed forces, in case of demobilization of children, to hand them over to the ICBF within a period not exceeding 36 hours. As a result, the termination of the investigation in more than 700 proceedings was achieved, with the direct involvement of family court attorneys. In addition, this monitoring body has initiated more than ten disciplinary investigations against members of the security forces for use of the child population in intelligence activities; proceedings based on the same facts are likewise being pursued by the Inspector General of the Armed Forces.

568. As regards the bringing to trial of members of organized illegal armed groups, the Attorney General filed a complaint with the State Prosecutor's Office for the crime of illegal recruitment of children under 18 years of age, but as yet no persons have been identified and individualized. The *Ministerio Público* requested the prosecuting authority that members of the AUC (United Self-Defence Forces) involved in the processes of truth, justice and reparation be investigated with respect to the involvement of children and adolescents in their groups, the place where they were recruited, and whether they have information about the recruiters.

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[135] Consisting of building sustainable tools of income generation, employability, and creation of productive family units, in addition to linking various institutional offerings in an effort to improve both public and private supply, enabling real access to services available in the rural and urban settings.

569. The Office of the Attorney General evaluated the Public Policy on demobilization and as a result of this it was determined that children and adolescents had not received exposure. Consequently, the national Government has been requested to give an accounting of what happened with the massive surrender of children and adolescents to the ICBF. At present, the Attorney General is working with the media, other entities and international cooperation to ensure that the crime of unlawful recruitment is given due coverage and that those responsible are convicted.

Y. Article 25. Political rights and right to take part in the conduct of public affairs

1. Legislative developments

570. The so-called "Political Reform" enacted by Legislative Act No. 01 of 2003, introduced important changes from the electoral point of view, through the establishment of a new form of apportionment of seats, unlike the so-called electoral quotient of the previous electoral system, through which members of popularly elected public entities, Senate, House of Representatives, departmental assemblies, municipal councils and local boards were elected by receiving a given ratio or a larger residual vote.

571. The new rule implemented the so-called "electoral quotient" to apportion seats in proportion to the votes obtained by various political parties or movements and independent movements, allowing the use of a variant of the D'Hondt method, which has been adopted in several Latin American countries.

572. The rule states:

> To ensure equitable representation of political parties and movements and significant groups of citizens, the seats of public entities will be distributed through the quotient system among the lists of candidates obtaining a minimum of votes, which may not be less than two per cent (2%) of votes cast for the Senate, or fifty per cent (50%) of the electoral quotient in the case of other entities, as required by the Constitution and the laws.

573. The "electoral quotient" system applies only to those parties or movements that exceed the threshold required, which for entities such as councils corresponds to half the electoral quotient.

574. Another important advance in participation is Law No. 772 of 2002, which sets out rules concerning the election of kidnapped citizens. This rule represents, on the one hand, an attempt to protect the right to political participation, and specifically the right to be elected to public office, of citizens who have been victims of kidnapping, and secondly also the right to political participation of the voters, who might see their political options limited by the kidnapping of a particular candidate for elective office. The above purposes stem from the imperative to ensure that the grave wrongdoing of kidnapping, which is unfortunately affecting our country, does not become a burdensome limitation upon the political rights of citizens.

575. Finally, mention should be made of Law No. 815 of 2003. This law provides incentives for voters, specifically discounts in the cost of some administrative procedures.

2. Administrative developments

576. In terms of political participation, the Constitution of 1991 established a special indigenous constituency for the Senate and a special ethnic constituency for the House of Representatives. It also established a special constituency for Afro-Colombian communities, enabling them to achieve two mandatory seats in the House of Representatives. These measures led to electoral gains of ethnic political movements. In fact, they have facilitated

political processes for indigenous people and Afro-Colombians, as candidates for these seats are only required to have held positions of traditional authority in their respective community or to have been the leader of an indigenous or Afro-Colombian organization.

577. As mentioned previously, in 2003, within a framework of electoral security and freedom, trade union members in local, regional and parliamentary elections won such positions as mayor of the capital of Colombia, the third most important electoral post, the governorships of several departments --including the third largest department in the country[136]—and mayors of other capital cities, in addition to seven seats in the Senate in 2002.

578. In 2006, congressional and presidential elections, held in March and May respectively, took place in a safer environment. In this voting, President Alvaro Uribe Vélez was elected with the 62.35% of the vote while the candidate of the left opposition party, Polo Democrático Alternativo (PDA), won 22% of the vote.

579. The most recent elections, held in October 2007, resulted in the election of governors and deputies to the assemblies of 32 departments, mayors and municipal councillors in 1,094 municipalities and four districts, as well as members of local administrative boards. A total of 86,449[137] candidates stood for office, which confirms "the political pluralism of the country."[138]

580. To mention only the municipalities in departmental capitals, the Indigenous Social Alliance Movement won the mayorships of two major cities, Cúcuta, and Medellín, the second largest city in the country, as well as the governorship of Caquetá, while the Afro-Colombian National Movement "Afro" won the governorship of Cauca and mayorship of the city of Florencia. Also, the major opposition parties made important gains, including the mayorship of Bogotá (national capital).

581. The country currently has a total of 16 political parties or movements, which shows national diversity. The country is now a democracy that popularly elects its leaders and representatives at both the local and national level, and there is a plurality of political parties which enjoy extensive guarantees. In Congress ten parties are represented, and none holds more than 20% of the seats.

Z. Article 26. Right to equality before the law and guarantees against discrimination

1. Legislative developments

582. There has been progress from various perspectives in building a legal framework aimed at guaranteeing the rights to equality and to non-discrimination.

583. With regard to people with disabilities, based on the Constitution, which provides for the State's obligation to provide special protection to people whose economic, physical or mental status places them in a manifestly vulnerable position, the Government has adopted Law No. 762 of 2002 approving the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, ratified by Colombia in December 2003.

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[136] Department of Valle del Cauca.

[137] Elections of 2007, electoral results. Information at web page of the National Civil Registry.

[138] Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, 2007.

584. At the sectoral level, laws have been adopted which, while covering the whole population, contain specific regulations on disability.

585. With regard to occupational hazards, Law No. 776 of 2002 establishes the mandatory coverage of economic and welfare benefits for workers who have suffered work accidents and occupational diseases, and requires re-employment and reassignment of workers with disabilities of occupational origin.

586. Law No. 909 of 2004, enacting rules governing public employment, the civil service and public management, provided protection mechanisms for persons with disabilities. The National Civil Service Commission[139], in coordination with the respective State agencies, will promote the adoption of measures to ensure, with equal opportunity, conditions of access to public service in career civil service positions to citizens with physical, auditory or visual disabilities, in order to provide a job consistent with their condition.

587. Also noteworthy is Law No. 982 of 2005, which establishes rules aimed at the equalization of opportunities for deaf and deaf-blind persons, together with other provisions.

588. Through Law No. 1081 of 2006 other benefits are granted to families of the Heroes of the Nation and veterans of the security forces, providing incentives for the hiring of disabled veterans and incentives for employers. The law also grants them priority care at public facilities.

589. In regard to accessibility, important provisions have been issued for people with disabilities, among them Law No. 1083 of 2006, which sets some standards for sustainable urban planning, Decree No. 1660 of 2003 which regulates accessibility of modes of transportation for the general public and especially for people with disabilities, and Decree No. 1538 of 2005, which partly regulates Law No. 361 of 1997 to establish basic conditions of accessibility to public spaces and housing.

590. On the subject of education, the Government issued Decree No. 3020 of 2002, regulating Law No. 715 of 2001, which states that in setting the personnel requirements for institutions that serve students with special educational needs, the local authority must meet specific criteria and parameters set by the Ministry of Education. It also indicates that professionals engaged in educational and therapeutic activities aimed at academic and social integration should be assigned to educational institutions identified by the local authority for that purpose.

591. The new Code for Children and Adolescents, Law No. 1098 of 2006, elaborates on the subject of the rights of children and adolescents with disabilities and addresses it from different perspectives, establishing that this population is entitled to enjoy a full quality of life and that the State should provide the necessary conditions to enable them to fend for themselves and become integrated into society.

592. A measure recently passed is Law No. 1145, 2007, organizing the National Disability System, which aims to foster the formulation and implementation of public policy on disability, in coordination with public agencies at the national, regional and local levels, organizations of disabled persons and persons in situations of disability, and civil society in order to promote and guarantee their fundamental rights within the framework of human rights.

593. From an international perspective an important development is the signing of the International Convention on the Rights of Persons with Disabilities in March 2007, an instrument which the national Government is committed to ratifying following the internal constitutional procedure that must be followed to that end.

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[139] Entities responsible for the administration and monitoring of the career civil service, with the exception of special careers.

2. Judicial developments

594. In implementing the principle of non-discrimination the Constitutional Court has issued numerous judgments positively affecting populations vulnerable to discrimination, such as homosexuals, the disabled, foreigners and ethnic minorities in the country.

595. In regard to same-sex couples, the following decisions are noteworthy:

596. Ruling C-075, 2007, through which the Court recognized the economic rights of same-sex couples, holding that Law No. 54 of 1990, which governs the de facto marital union, should apply to both heterosexual couples and same-sex couples.

597. Mention should also be made of Ruling C-811 of 2007 of the Constitutional Court, which declared constitutional article 163 of Law No. 100 of 1993[140], with the understanding that the system of protection contained therein applies also to same-sex couples so that, under the principle of equality, permanent partners of same gender couples can register the couple for health coverage.

598. Another important development is Ruling C-336 of 2008, in which the Constitutional Court recognizes the right to pensions for same-sex couples.

599. Through Ruling C-238 of 2006, the Court reviewed the constitutionality of statutory bill No. 285 of 2005, Senate, No. 129 of 2004, House, (Law No. 1070 of 2006) "which regulates the voting of foreigners in Colombia." The Court found it consistent with the Constitution, discussing the issue of the granting of political rights to foreigners in the framework of a participatory democratic system such as Colombia's and in the context of "the phenomenon of integration and reciprocity in the satisfaction of the rights of foreigners in Colombia and those of Colombian nationals in other countries."

600. On the issue of ethnic minorities, the Constitutional Court in Ruling C-169 of 2001 addresses the subject of consultation with indigenous communities, and observes that true democracy, representative and participatory democracy, is one in which the formal and material make-up of the system bears a proper correspondence to the various forces shaping society and allows them to all participate in making decisions that concern them.

601. As for the differentiated treatment which, from the perspective of rights, should be given to indigenous communities in relation to other associations of individuals, the Court has handed down several rulings, among

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[140] The measure provides as follows: "Article 163. Family coverage. The Mandatory Health Plan shall have family coverage. To that end, beneficiaries of the System shall include the spouse or life partner of the person enrolled whose relationship is over two years; children under age 18 of either spouse who are part of the nuclear family and are economically dependent on it; children over age 18 with permanent disabilities or those under 25 who are full-time students and economically dependent on the person enrolled. Absent a spouse, life partner, and entitled children, family coverage may be extended to the relatives of an enrolled person who are not in receipt of a pension and are economically dependent on him.

Paragraph 1. The national Government shall regulate the inclusion of children who, due to permanent disability, are included in family coverage.

Pararaph 2. Every child born after the entry into force of this law shall automatically become a beneficiary of the health plan to which the child's mother belongs. The General Social Security System shall grant said health plan the corresponding unit of payment for training, in accordance with the provisions of article 161 of the present Law."

which one worth mentioning is T-1130/03. In the same vein, case law has extensively dealt with the concept of indigenous law, Ruling T-118/2004, establishing the rules of interpretation applicable to conceptual differences and conflicts of values in the implementation of different legal orders, as well as the issue of political participation by indigenous communities, Ruling T-778/2005.

602. On the issue of racial discrimination per se, the Constitutional Court in Ruling T-190/2005 upheld the conviction of a commercial establishment for not allowing the entry of a woman of African descent due to her ethnicity.

603. Regarding the rights of people with disabilities, the Court has taken up this issue. A noteworthy ruling is Ruling T-219 of 2002 which noted that access to public social security and health care services should be more effective when it is required for those who suffer from some type of disability and therefore State policies in these areas must follow the principles of efficiency, universality and solidarity.

604. Also noteworthy is Ruling C-401 of 2003, which upheld the constitutionality of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities and the Law approving it, as well as Ruling C-076 of 2006, which declared unconstitutional the provision in Decree No. 960 of 1970 according to which "deaf" and "mute" persons could not practice as Notaries.

3. Administrative developments

605. Importantly, during the reporting period, the National Development Plans (2002-2006 and 2006-2010[141]) have included specific components aimed at improving the living conditions of vulnerable population groups, ethnic minorities, the displaced and the disabled, among others. This means that public policy in these respects, has been a State priority for several years, and will remain so until 2010.

606. All Colombian entities must adopt the ethnic and gender perspective in their actions and are required also to preserve the right to equality and non-discrimination in all their activities. However, there are a number of specific entities responsible for ensuring the rights of Colombian minority groups in various spheres.

607. With the recent issuance of Decree No. 1720, 2008, the former Directorate of Ethnic Affairs of the Ministry of Justice was restructured through the creation of two directorates, with the purpose of giving specific treatment to ethnic minorities and other minorities[142]. Thus, there is now a Directorate of Indigenous, Minority and Roma Affairs, a Directorate for Black, Afro-Colombian, *Raizal* and Palenquero Community Affairs, the Directorate for Ethnic Culture and Advancement of the Ministry of Culture, a Deputy Ombudsman for Ethnic

[141] With respect to the 2006-2010 National Development Plan, it should be borne in mind that the Constitutional Court in its press release of 14 May 2008 on Ruling C- 461/08 stated:
“ (…) In the specific case of the Law on the 2006-2010 national development plan, the Court found that a careful reading of its provisions reveals that several programmes, projects and budgets are likely to have a direct and specific impact as such upon indigenous communities and Afro-descendant groups residing within its area of application. Accordingly, there was a specific State obligation to conduct prior consultations fully complying with constitutional requirements prescribed under the constitutional case law; having failed to do so constitutes an unconstitutional flaw. … The Court proceeded to declare Law Nº 1151 of 2007 conditionally constitutional, so that until direct consultations are held, projects, programmes and budgets that may directly and specifically affect indigenous peoples or Afro-descendant ethnic communities are to be suspended.”

[142] Lesbian, gay, bisexual and trans-gender population.

Minorities of the Ombudsman's Office, and the Deputy Attorney General for Prevention with respect to Human Rights and Ethnic Affairs.

608. To tackle the discrimination and vulnerability faced by Afro-Colombian and indigenous communities in our country, which have fundamentally cultural and historical roots, our country has made significant progress on poverty, especially where it is more latent[143], and has also achieved better forms of participation, equality and preferential treatment towards its minority communities in recent years.

609. One of Colombia's efforts in regard to ethnicity has been to strive for useful statistical information, comparable into the future and capable of justifying specific public policies to combat all forms of discrimination in the country. In 2005 it conducted a national census in which it introduced the variable of ethnic self-recognition. This effort should be accompanied by other measures of other State entities that seek to include the ethnic variable in all measurements. Thus, stress should be placed on the examples given by the measurements of the Attorney General's Office regarding the incidence of criminal acts committed for racial motives, as well as measurements of the National Penitentiary and Prison Institute on the specific conditions of inmates belonging to minorities.

610. Another important development was the introduction in January 2008 of the Comprehensive Policy on Human Rights and International Humanitarian Law of the Ministry of National Defence. This initiative reflects efforts over several years within the defence policy of the State to mainstream human rights concerns into the various activities of members of the security forces. Although this is a cross-cutting effort that reaches every aspect of police operations, it includes new measures relating to "personal security" of people who are particularly vulnerable. Thus, in addition to its general purposes, it frames a differential approach to indigenous and Afro-Colombian communities, displaced persons, children who are victims of violence, human rights advocates and other groups at risk. Especially important among its various measures is the consolidation of a priority care and rapid response centre for individual requests from members of these groups; the possibility of expediting administrative remedial measures; and measures of education and training for all members of the security forces, with particular emphasis on the differential approach that these groups require.

611. In 2004, the Victim Protection Programme conducted by the Ministry of the Interior and Justice, which oversees the personal safety of individuals who are at risk or particularly vulnerable, created a forum for consultation and specific recommendations for measures to protect ethnic communities called the Regulatory and Risk Assessment Committee with an ethnic approach (ETNOCRER), with the participation of indigenous and Afro-Colombian communities.

612. Another measure is the determination, by Decree No. 4427 dated 28 November 2005 that the community councils of legally established black communities may, on an equal footing with private entities and local authorities, be suppliers of planned rural social housing schemes qualifying for the family housing subsidy.

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[143] In this regard, it is important to note the statement by Mr. Bruno Moro, Resident Coordinator of the United Nations System in Colombia, during the High Level Meeting between the Government of Colombia and the United Nations System, held in New York on 23 April 2007, in which he outlined the gains in overall protection of human rights mentioned in the latest report on Colombia by the United Nations High Commissioner on Human Rights, and referred to the advances made towards achieving the Millennium Development Goals. On the latter point, he noted that Colombia is the only country in the region where they have been incorporated as a central component of its strategic development policies, and one of only seven countries in the region whose progress points to achievement of the Millennium Development Goals, according to surveys by UNDP and ECLAC in Latin America and the Caribbean.

613. Colombia currently has three CONPES[144] documents, in effect since 2002, regarding prioritization of development needs of the Colombian Pacific region and in particular its majority Afro-Colombian population. CONPES 3169 of 2002 "Policies for the Afro-Colombian Population," sets out the main institutional commitments aimed at improving the living conditions of the Afro-Colombian population living in the Pacific Rim departments of Antioquia, Cauca, Chocó, Nariño, Risaralda and Valle del Cauca; for its part, CONPES 3180 of 2002, "Programme for Reconstruction and Sustainable Development of Antioquia and Urabá- Antioquia/Chocó and Lower and Middle Atrato – Expansion of CONPES 3169 Policies for the Afro-Colombian population," presents the Programme for Reconstruction and Sustainable Development of Urabá- Antioquia/Chocó and Lower and Middle Atrato, inhabited largely by an Afro-Colombian population that has been the victim of armed violence in its territory.

614. CONPES 3310 of 2004 on "Affirmative Action Policy for the Black or Afro-Colombian population" was prepared partly in response to the recommendations of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban (South Africa) and those of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. It contains the policy of affirmative action for the Black or Afro-Colombian population, aimed at focusing national Government actions towards these communities, increasing coverage targets of national programmes, implementing affirmative action for the Black or Afro-Colombian population in the short term, improving systems for identifying, quantifying and registering that population, formulating a comprehensive long-term plan and conducting monitoring as specified in the National Development Plan and CONPES 3169 of 2002. Based on this rationale, the document sets out guidelines, programmes and administrative measures aimed at creating conditions for improving access to opportunities for economic, social and cultural development and promoting the integration of the Afro-Colombian population.

615. In October, 2007 the Government, by Decree No. 4181 of 2007, set up the Inter-sectoral Commission for the Advancement of Afro-Colombian, Palenquero and *Raizal* Populations. With a mandate lasting six months, the Commission will evaluate the living conditions of this community and make recommendations to the central Government to overcome the barriers to their advancement, particularly in the economic and social domains and as regards the protection and effective enjoyment of their civil rights. Among the members of this body are the Vice-President, who presides, and the Ministers of Interior and Justice, External Relations, Social Welfare and Culture.

616. The Commission, chaired by the Vice-President of the Republic, has the task of identifying the critical barriers that impede economic and social advancement of this population in Colombia, as well as successful international experiences in the field of equal opportunity for this community. Following six months of deliberations, the Commission will submit to the President recommendations for overcoming the difficulties hampering the progress of this population, particularly for women and children. It will also present the main lines of action and appropriate mechanisms to adopt the recommendations to be made and to manage resources allocated for their implementation, for which they must take into account international cooperation.

617. As regards the displaced population, in view of the complexity of the problem of forced displacement in our country, work has been proceeding on a differentiated approach to displaced persons, women and children. Through public policy in providing care to the displaced population, services for children, and gender equity, the Government has exerted enormous efforts to build the differentiated approach into each of its activities. Progress

[144] National Council for Economic and Social Policy.

has been substantial and efforts are made to comply with the comments made by the Constitutional Court[145] and several United Nations bodies.

618. The national Government through the Presidential Agency for Social Action and International Cooperation, as coordinator of the National System of Comprehensive Care of the Displaced Population (SNAIPD), has been developing measures to protect the victims of forced displacement due to violence, in order to prevent and prohibit racial discrimination. Given the vulnerability of these people, the National Council for Comprehensive Care of the Displaced Population (CNAIPD) adopted Decision No. 03 of 2006 "which defines actions to ensure the right of the displaced population to be protected against discriminatory practices".

619. The aforementioned Decision No. 03 lays down a duty on the part of State agencies to provide preferential and differentiated attention to this population group in order to ensure real and effective equality. It provides that no public official who is part of SNAIPD will engage in conduct that discriminates against the displaced population, under penalty of investigations and disciplinary sanctions as appropriate.[146]

620. Aware of the need for officials to identify what a discriminatory practice is, the CNAIPD developed a brief catalogue of such practices, without prejudice to other discriminatory practices such as those in the Durban Declaration. These practices include the following:

a) To deny, restrict or impede access to and enjoyment of the rights of persons in a position or situation of displacement, when they have fulfilled the requirements for those rights;

b) To engage in intolerant, degrading and inhuman treatment that affects the dignity of the population in a position or situation of displacement;

c) To issue administrative regulations that discriminate negatively against the population in a position or situation of displacement;

d) To promote or carry out acts of persecution against this population;

e) Not to provide effective care to this population.

621. As for the disabled population, there have been actions by the national Government on several fronts, as this issue has been incorporated as a component of human rights policy. Accordingly, in recent years the population with disabilities in Colombia has received more attention from governments at the national, departmental and municipal levels. This support has increased due to a change in vision that is making gains at the international level.[147]

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[145] Ruling T-025 of 2004.

[146] It is worth recalling that article 35 of the Uniform Disciplinary Code stipulates that every public servant is prohibited from making distinctions, exclusions, restrictions or preferences based on race, colour, descent or national or ethnic origin whose purpose or result is to nullify or impair the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other sphere of public life.

[147] According to the bulletin *The right to be different and equal opportunity: the rights of persons with disabilities*, published on 10 October 2005 by the Presidential Programme of Human Rights and International Humanitarian Law.

622. In Colombia, the Americas Report 2004[148] acknowledges that the country has increased the number of disabled beneficiaries in education, health, and public spaces, among other areas. Several institutions within the national Government are concerned with disability; however, the Ministry of Social Welfare is the lead Government agency on the subject and has the support of other institutions, including the Vice-Presidency.

623. In order to deal with the issue comprehensively, the national Government designed the National Disability Plan, which is part of the National Development Plan "Towards a Communitarian State" 2002-2006.

624. Based on the foregoing, a national public policy on disability has been designed through the document CONPES 80, of 26 July 2004[149], which is framed in the context of social protection and risk management. It includes strategies for individuals, families, NGOs, the State, society and its institutions, to prevent risk, mitigate and overcome its realization, as well as reduce the vulnerability to disability, protecting the welfare of the population and human capital. Within a framework of shared responsibility the endeavour seeks to identify risks and design and implement interventions to prevent discrimination and social exclusion.

625. The policy identifies as strategies: a) promoting constructive behaviour in society that generates positive attitudes towards disability, equal opportunities, inclusion and social integration (access to goods and services, the labour market, social security, protection of human rights, among others), b) fostering community participation in prevention, mitigation and improvement (comprehensive habilitation and rehabilitation) of situations of disability.

626. The principles of equality, solidarity, shared responsibility, decentralization, social participation and equity that guide the policy on disability are part of fundamental, economic, social, cultural, collective and environmental rights established under the Constitution of 1991 and are consistent with the principles of the Social Protection System, which constitute the tools with which the State seeks to guarantee them. The purpose is to create conditions enabling individuals, families and communities at risk and in conditions of disability to achieve better enjoyment or exercise of rights, duties and freedoms to which they are entitled.

627. Based on the Public Policy on Disability, an Action Plan 2005-2007 was designed which serves as an instrument of strategic management for Government agencies at the national level.

628. The plan aims to facilitate coordination and implementation of sectoral commitments on the subject, by identifying and coordinating sectoral, intersectoral and inter-agency tasks. This structure seeks to consolidate social and institutional support networks for disabled persons at the local level, promoting the development of a culture of coexistence and respect for their fundamental rights.

629. According to the plan to consolidate disability public policy, the process of collective construction with active involvement of public and private sector and civil society organizations at the national and local levels needs to be strengthened through the formulation of local action plans designed through local technical committees.

630. The plan focuses on preventing the incidence of disability and improving quality of life for people experiencing disabilities and their families, and effective access to social goods and services through coordination and linking of governmental actions conducted from each sector and the national entities involved with the issue.

[148] Developed by the international monitoring programme on the rights of disabled persons.

[149] National Council for Economic and Social Policy (CONPES) 80. National Public Policy on Disability, 26 July 2004.

631. The National Disability Plan and the mission of the Vice-Presidency to promote and ensure respect for human rights of people with disabilities have given rise to the Human Rights and Disability Programme of the Vice-Presidency.

632. It seeks to promote respect and protection of civil and political, social, economic and cultural rights of people with disabilities by fostering the elimination of barriers that impede the full exercise of their rights and by supporting processes of effective and non-discriminatory social inclusion.

633. To this end, through mechanisms such as the website (www.discapacidad.gov.co) the programme aims primarily to disseminate the rights of all Colombians with any type of disability. It also collects and presents guidelines and case law, public policy information, statistics, directories of service institutions and associations for persons with disabilities both nationally and internationally, and other relevant information for teaching about rights and duties in regard to disability.

634. Since 2004 the national Government has developed a process to promote the strengthening of social networks in favour of the disabled population as part of the coordination of national disability policy, headed by the Ministry of Social Protection. This project has been implemented in 65 municipalities and nine districts of the departments of Guaviare, Guainía, Risaralda, Quindío, Antioquía, Putumayo and Magdalena.

635. The objectives of this process have been: a) supporting and strengthening joint endeavours between the departmental and local governments and organized communities in building the Public Policy on Disability; b) promoting social integration of the disabled population of these departments and providing tools that enable the use of human, physical, technical and financial resources of the institutions and existing social support networks in the community.

636. As a result of experience gained in the aforementioned departments, a methodology was consolidated for the construction of a public policy on disability in the local domain, to provide conceptual and methodological tools for managers to motivate community participation in the promotion of networking, and this methodology was delivered to municipalities taking part in the project.

637. Additionally, a communication initiative has been launched called "*Pa To 'el mundo, una muestra de capacidad*" (“A sample of ability for everyone”), so designed that it can be used by all bodies, institutions and social networks in all regions of the country to promote a change of social vision in addressing disability.

638. The proposal includes the design of a visual and audio image which seeks to convey the ideas of pluralism, tolerance and acceptance of diversity within a framework of rights. It is proposed to feature the image as a hallmark of all programmes and projects in Colombia aimed at social integration of persons with disabilities.

639. Additionally, the strategy brings together audio and video presentations which have been prepared to serve as support tools in the implementation of a national information, education and communication strategy on disability that is currently under construction by all entities participating in the national disability plan.

640. The primary objective of this initiative has been supporting the creation of an equitable social environment in which all people have the conditions for exercising citizenship as holders of rights and duties.

641. One of the most significant advances from the administrative point of view is the implementation of the General Census of 2005. Based on that census, Colombia for the first time has data relating to the subject of disability. According to the results, about 2,640,000 Colombians have some permanent disability, amounting to 6.4 per cent of the total Colombian population.

642. To supplement the census data, a Unified Registration Form for Location of People with Disabilities was designed. It constitutes a valuable tool which, for the first time in our country, enables the needs of this population to be understood in terms of technical criteria.

643. With regard to sexual diversity, the national government and local governments, such as the government of the capital of the Republic, have been working towards ensuring the rights of the LGBT community.[150]

644. The 2002-2006 National Development Plan "Towards a Communitarian State", like the 2007-2010 National Development Plan "Communitarian State, Development for All", embodies the Government's commitment to advance the National Action Plan for Human Rights and International Humanitarian Law, which the Government has been developing in conjunction with State agencies and civil society with a view to fulfilling its international commitments on human rights and the recommendations made by international bodies.

645. One of the areas targeted for development is precisely that of combating discrimination and promoting respect for different identities. It is related to the effective right to equality in all its manifestations: formal equality before the law, equal treatment, equal opportunity, right to difference, material equality, non-discrimination based on race, sex, belief or condition, and special treatment for vulnerable populations.

646. Similarly, stress is placed at the local level on development of policies for LGBT people, particularly in the capital, where in early 2007 a project was launched for a Bogotá without discrimination by the Ombudsman and the District Human Rights Advocate, with the support of the Mayor of Bogotá. This initiative aims at "zero exclusion, 100 per cent of rights, and respect for all individual differences of the people of Bogotá".

647. The main objective of this programme is to prompt public thinking about the importance of participating in a cultural transformation of individuals and the community in order to ensure respect for differences and the free development of personality, factors that will help to reduce levels of inequality and discrimination.

648. Entities involved in this project formed a partnership to work jointly to raise public awareness about the reality of discrimination, the need to promote the forms of inclusion and to support the presentation and passage of the bill against exclusionary conduct.

649. This project declared Bogotá as a place of diversity where all citizens are able to live together with their differences, to work for social inclusion of those people who feel discriminated against by society, and to work with monitoring institutions, Government and the community to eliminate all of these discriminatory behaviours.

650. Noteworthy positions were expressed by the Attorney General's Office, 4317[151] and 4417[152], extending support for recognition of economic rights and social security for same-sex couples.

651. Human rights defenders have played an important role in promoting the culture of human rights, the claims of victims, and the vigour of internal standards, requiring the State to fulfil its role as guarantor, reporting violations and involving the international community in resolving them (General Comment No. 18 of the Human Rights Committee on non-discrimination).

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[150] Lesbian, gay, bisexual and trans-gender population.

[151] In the framework of the claim of partial unconstitutionality lodged against article 163 of Law Nº 100 of 1993, May 2007.

[152] Complaint of partial unconstitutionality against articles 1 and 2 of Law Nº 54 of 1990 and articles 47, 74 and 163 of Law Nº 100 of 1993, November 2007.

652. The State, with the continued support of the United Nations High Commissioner for Human Rights, has fostered several fora for discussion and consultation with these groups[153] in order to build policies based on joint efforts.

653. Work has been under way for years on the development of standards and a culture for public officials and society consistent with the role of human rights defenders in a democracy. The Government’s policy has been to ensure the exercise of all freedoms and to maintain dialogue with all sectors of society, through the various fora and strategies of the Programme of Protection.

654. However, the issue of guarantees for the exercise of the role of human rights defenders has been one of the most contentious issues faced by the Government. Human rights defenders claim that they are still subject to breaches of their rights: killings, threats, information stolen from the head offices of their organizations. They also say they are subject to detentions and illegal searches, and that statements by some State officials put them in danger.

655. Clearly there are differences between the State and some NGOs in their perceptions of the Government’s efforts, its achievements, the policy of protection of rights, the Government's commitment to human rights, and the nature of the new criminal groups, among other matters.

656. The Government understands these discussions as taking place within a society with diverse opinions, calls for objectivity in reporting on human rights, and is committed to providing full safeguards for the work of defenders. It also regards as inappropriate the strategy of avoiding discussion in national forums, claiming that safeguards are inadequate, while seeking to bring pressure to bear on the Government from the international community.

AA. Article 27. Rights of Ethnic, Religious and Linguistic Minorities

657. In Colombia 3.28 per cent of the population is recognized as indigenous and 10.3 per cent as Afro-Colombian. They live in 710 indigenous reservations and 159 Afro-Colombian collective territories. Since the 1991 Constitution a process has been under way to recognize, promote and enhance the visibility of their rights and culture. To that end, a rich and distinct body of statutory and case law and State policies have developed. However, these groups face threats to their personal and territorial integrity by organized illegal armed groups and their living conditions are in some cases below the national average.

1. Legislative developments

658. With regard to racial minorities, a noteworthy development during the reporting period was the adoption of Law No. 1152 of 2007, the Rural Development Statute. This law, among other things, defines the organizational

[153] Some significant fora are the High Level Advisory Committee (for Afro-Colombian communities), the National Working Group on Human Rights of Indigenous Peoples, the social dialogue working groups (human rights of workers), the National Council for Comprehensive Care of Displaced Persons, the National Working Group to Strengthen Displaced Persons Organizations, the Committee on Risk Regulation and Evaluation (persons from the Protection Programme of the Ministry of the Interior) and the follow-up working group to implement annual recommendations of the Office of the United Nations High Commissioner for Human Rights (participation by social organizations, State entities concerned and the international community).

structure of indigenous reservations and rural institutions for indigenous and Afro-Colombian communities in Colombia.

2. Judicial developments

659. Through Ruling T-606, 2001, the Court noted that, in regard to property, the 1991 Constitution understood and accepted collective ownership of the reservations and indigenous communal lands and that these are therefore inalienable and not subject to sale or transaction. According to the Court's case law, the right to collective ownership of indigenous lands is of vital importance for the cultures and spiritual values of aboriginal peoples, not only because they are their main means of subsistence, but also because they constitute an integral element of their worldview, culture and religiosity. The most important thing about a reservation is the form of collective ownership.

660. Reflecting the importance that has been given to the subject of prior consultation with the indigenous and Afro-descendant peoples on decisions that affect them, the Constitutional Court in Ruling C-030 declared unconstitutional the Forest Act of 2008 for having omitted the process of consultation with those communities, based on Law No. 21 of 1991, ILO Convention No. 169.

661. The Court has also addressed the issue of constitutional rights of black communities, and the legitimacy and protection of ethnic and cultural identity, in Ruling T-955/2003.

3. Administrative developments

662. The Colombian State, following the guidelines of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries of 1989, engages in processes of prior consultation as an essential prerequisite for the implementation of projects, legislative initiatives or administrative acts that have an impact in areas with indigenous or Afro-Colombian communities. The overall objective of prior consultation is to provide a space for consultation in which ethnic groups located in the area of impact of a project or activity and the company that owns it can engage in a direct dialogue on the effects and impacts that such activities may generate, and plan or agree upon ways to mitigate or compensate for such effects. Colombia has conducted fruitful prior consultation exercises in recent years.

663. In the area of education, the Ministry of Education has implemented and promoted an ethnic education policy, especially with a view to improving the educational system in indigenous and Afro-Colombian communities. This emphasis on some communities does not work to the detriment of the right to a bilingual and bicultural education in each of the institutions supported by the State.

664. The aim of this policy is to position intercultural education in all schools and academies of the Government and private sector in the country, so that all children and families understand that the Afro-Colombian, indigenous and Gypsy cultures are part of the roots of our nationhood.

665. The policy also pursues an education that is responsive to the characteristics, needs and aspirations of ethnic groups, developing their cultural identity, multiculturalism and multilingualism.

666. The Ministry of Culture has been implementing a policy of recognition of cultural diversity and preserving cultural heritage of indigenous communities, through which the Ministry seeks to protect, promote and guarantee access to cultural content of all ethnic minorities, through a variety of strategies. Thus, in addition to leading a National Cultural Council, a National Heritage Council and a National Arts Council where ethnic communities have mandatory representation, the Ministry manages the programming of cultural contents of the public television channel "*Señal Colombia*" (which has specific content for indigenous and Afro-Colombian people

and reaches the entire country), and conducts several plans and programmes aimed at ensuring equal access to cultural activities of all ethnic communities in the country.

667. With regard to the media, the National Television Commission[154], by Resolution No. 1014 of 2003, adopted its Strategic Plan, which provided for the implementation of the project "Access to television for minorities and special populations." Thus, through Circular No. 027 of 2006, the National Television Commission called on operators and service providers, following the principle of social responsibility of the media, to refrain from engaging in acts of intimidation, segregation, discrimination or racism. Additionally, the Commission issued Ruling No. 01 of 20 May 2005, which guarantees ethnic groups access to public broadcasting services. Through this instrument, the Commission spelled out the mechanisms by which ethnic groups can obtain access to the service at the national, regional and local levels, specifying that 5 per cent of the programming of the National Public Channel will be dedicated to these population groups.

668. Finally, it should be noted that the Attorney General's Office through Resolution No. 372 of 2007, adopted a "preventive policy on human rights of ethnic groups" in order to contribute to realizing the principle of ethnic and cultural diversity of the Colombian nation and as a tool for use by the staff of the Office in preventive monitoring for the benefit of members of different ethnic groups settled in the country (General Comment No. 20 of the Human Rights Committee, on prohibition of torture and other cruel, inhuman or degrading treatment or punishment [article 7 of the Covenant]).

III. Challenges

669. This report shows significant progress in ensuring and protecting rights under the International Covenant on Civil and Political Rights.

670. Colombia has exerted major efforts to fulfil its obligations regarding human rights and to enhance the accountability of institutions and officials in securing and protecting those rights. This effort is comprehensive in terms of scope and areas of work.

671. The experience of recent years has shown that security is a necessary condition for the full enjoyment of human rights.

672. Despite the great difficulties engendered by violence and terrorism, drug trafficking and organized crime, coupled with total disregard for human rights and international humanitarian law by all organized armed groups outside the law, in the last five years the country has significantly reduced levels of violence by strengthening institutions and the presence of the State throughout the country.

673. Today citizens feel safer and can exercise their rights more effectively. In particular, the national Government reiterates its resolve to press ahead with efforts to extend all necessary safeguards for the pursuit of the activities of civil society organizations and to continue democratic debate and dialogue.

[154] It is an entity under public law with legal personality, administrative and technical autonomy and its own assets, subject to a specific legal regime, to develop and execute State plans and programmes on public service television, and to direct the policy on television set forth by law, without detriment to the freedoms enshrined in the national Constitution (articles 76 and 77).

674. Further, the process of demobilization of the United Self-Defence Forces of Colombia (AUC) and the implementation of transitional justice, through the so-called Justice and Peace Law, in search of truth, justice and reparations has represented for the country a milestone on the path towards peace and reconciliation among Colombians.

675. In the coming years the State as a whole must face enormous challenges to consolidate achievements and to solve the complex problems facing the country in various domains.

676. In the framework of peace and justice the State must continue working on the issue of reintegration of the demobilized, on effectively achieving the goals of truth and justice, on care for victims of violence, on striving for complete redress both individual and collective, and ensuring non-recurrence.

677. In that regard, the major challenges regarding peace and justice centre on the following aspects:

a) Accelerating the process of uncovering the truth;

b) Accelerating the process of identifying the remains found, for delivery to families;

c) Questioning and investigating crimes committed by demobilized persons against women and children (especially sexual violence and recruitment of children);

d) Advancing the National Reparations Programme;

e) Strengthening the protection programme for victims and witnesses;

f) Strengthening the dissemination of the rights of victims and adopting measures giving impetus to the activities being undertaken by the National Commission for Reparation and Reconciliation (CNRR);

g) Implementing the regional commissions of restitution of property;

h) Completing the historical memory document entrusted by law to CNRR.

678. Faced with the scourge of abductions, which for years has affected the country and has claimed thousands of victims, the State must continue to make every effort within its power to secure the release of all abductees.

679. Another important challenge is the care of forcibly displaced persons, a matter on which work must continue in order to provide solutions with a gender perspective to safeguard rights that have been violated.

680. With regard to the security forces, the State has a responsibility to achieve full and strict compliance with the protocols and standards relating to human rights and international humanitarian law by their members through the implementation of the Comprehensive Policy on Human Rights of the Defence Ministry, and, in cases of violation, to effectively respond to reports and apply the criminal and disciplinary sanctions provided by law.

681. The Colombian State wishes to reiterate its unwavering commitment to achieving full observance of human rights and hopes that this report will permit a better understanding of the efforts being pursued by the Colombian State to overcome the complex problems that still persist and to consolidate policies to ensure compliance with its obligations under international human rights law.