

RECOMMENDATIONS FOR COLOMBIA 2003

Contained in the report of the United Nations High Commissioner
for Human Rights regarding the situation of Human Rights and
International Humanitarian Law in Colombia
2002



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OFFICE IN COLOMBIA

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Introduction

In accordance with the Agreement established in November 1996 between the Colombian Government and the United Nations High Commissioner for Human Rights, the High Commissioner has the obligation to submit a public report every year – that includes recommendations- regarding the human rights and international humanitarian law situation in the country. The Report is presented before the United Nations Commission for Human Rights in Geneva, Switzerland.

This document contains the recommendations regarding human rights and international humanitarian law of the report of the United Nations High Commissioner for Human Rights (2002). The recommendations are directed to the State, civil society and the illegal armed groups and should be applied throughout the year 2003.

The recommendations are grouped into six themes:

- Prevention and protection.
- Internal armed conflict
- The rule of law and impunity
- Economic and social policies
- The promotion of a culture of human rights
- Advisory services and technical assistance of the Office in Colombia.

The High Commissioner has the firm conviction that the human rights and international humanitarian law situation would undergo a substantive improvement if the recommendations are put into practice by the national authorities of the Executive, Legislative, Judicial and Supervisory branches of government, endowed with the responsibility of the protection and promotion of human rights; as well as by all parties in the internal armed conflict.

It is hoped as well that the recommendations will be assimilated by the Church, the trade unions, the commercial sector, the media, academics, civil society organizations, the victims and, of course, by the largest possible number of Colombians.

Besides the recommendations this document also contains the executive summary of the Report of the High Commissioner regarding Colombia (2002).

The Office in Colombia of the United Nations High Commissioner for Human Rights has been in the country since 1997. It was established on the basis of an agreement signed between the Colombian government and the High Commissioner.

In August 2002, President Álvaro Uribe Vélez asked the High Commissioner for Human Rights to extend the period of the Office for four more years, until October 2006, a request that was granted.

According to the agreement, the Mandate of the Office in Colombia comprises four main tasks. The first of these is to observe, systematically and analytically, the human rights and international humanitarian law situation in the whole country. The second is to offer advice in these themes both to the Government and to the state authorities and civil society. The third is to offer technical cooperation to the Government, state authorities, the institutions that manage the themes and those interested in civil society. The fourth is to inform, disseminate and promote human rights and international humanitarian law amongst Colombians.

The United Nations High Commissioner for Human Rights is based in Geneva, Switzerland. The late High Commissioner Mr. Sergio Vieira de Mello, who assumed the position in September 2002, died in a terrorist attack in Bagdad the 19 of August 2003 while serving as the Special Representative of the Secretary-General for Iraq.

The Director of the Office in Colombia of the United Nations High Commissioner for Human Rights is based in Bogotá and is since October 2002 Mr. Michael Frühling. Since December 2001, the Office in Colombia has established two sub-offices, one in Medellín and one in Cali.

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Recommendations

On the basis of his detailed analysis, the High Commissioner puts forward a series of concrete priority recommendations for 2003. These recommendations, which are by no means exhaustive, are grouped under six headings: prevention and protection; internal armed conflict; the rule of law and impunity; economic and social policies; promotion of a human rights culture; and the Office's technical cooperation and advisory services.

The recommendations are addressed to the national authorities in the three branches of government and the supervisory bodies responsible for protecting and promoting human rights, to all parties to the internal armed conflict, and to civil society.

Without prejudice to other concerns considered in this report, or to the follow-up that should be given to outstanding recommendations formulated by his Office and other international bodies, the High Commissioner is firmly convinced that the situation as regards human rights and international humanitarian law would improve significantly if the following recommendations were to be applied during the year 2003 by those to whom they are addressed.

(a) Prevention and protection

The High Commissioner exhorts the Government, with the active participation, cooperation and response of the Office of the Vice-President of the Republic, the Ministry of the Interior and the Ministry of Defence, to make effective the Early Warning System established in the Office of the Ombudsman.

The High Commissioner urges the Government to ensure that the programme for the protection of human rights defenders, for which the Human Rights Department in the Ministry of the Interior is responsible, operates effectively, providing it with sufficient funds and with clear and uniform parameters for assessing risks. The Government should always opt for mechanisms that act preventively against risk factors.

The High Commissioner urges the Attorney-General of the Nation to introduce into the programme for the protection of witnesses and victims under his responsibility changes that allow the rapid identification of risks and swift action to respond to them.

The High Commissioner exhorts the Government to identify, in conjunction with the Office of the Ombudsman and the United Nations system, communities placed at risk by the internal armed conflict and, in consultation with those communities, to develop and put into practice, as soon as possible, preventive and protective actions and programmes. With respect to displaced populations, the Guiding Principles on Internal Displacement should be strictly applied.

The High Commissioner urges the Government and Congress to provide the Procurator-General's Office and the Office of the Ombudsman with the necessary means to establish

themselves in localities where they are not yet represented, especially in rehabilitation and consolidation zones and in areas with a high proportion of indigenous, Afro-Colombian and displaced inhabitants.

The High Commissioner calls on the Procurator-General and senior public service officials to take disciplinary action against any State employees who through their actions or omissions in any way jeopardize the work of human rights defenders.

The High Commissioner exhorts the Procurator-General to verify, quarterly, the accuracy and objectiveness of the data contained in military intelligence records concerning human rights defenders, and to publish the results of his enquiries.

The High Commissioner encourages the Minister of Defence to include, as of the next training courses for members of the security forces, the systematic study of international law on human rights and international humanitarian law. For this purpose, it recommends that the Ministry should establish a continuous training arrangement with the Office of the Ombudsman.

(b) The internal armed conflict

The High Commissioner urges FARC-EP, ELN, AUC and other guerrilla and paramilitary groups to respect the right to life of all civilians. He urges them in particular to refrain at all times from attacks on the civilian population, indiscriminate attacks, the recruitment of minors, and acts of terrorism.

The High Commissioner urges FARC-EP, ELN, AUC and all other illegal armed groups immediately and unconditionally to release everyone they have taken hostage and to refrain from the unacceptable practice of kidnapping.

The High Commissioner urges illegal armed groups, in particular FARC-EP, ELN and AUC, to refrain from any action that may affect the civilian population's enjoyment of human rights and diminish the ability of the Colombian State to fulfil its obligation to protect and safeguard those rights.

The High Commissioner urges the security forces fully to observe the obligations imposed upon them by international humanitarian law, especially those related to the observance of the principles of limitation, distinction, proportionality and the general protection of the civilian population.

The High Commissioner calls on all parties to the armed conflict to fulfil the obligations imposed on them by international rules that prohibit the employment, storage, production and transfer of anti-personnel mines.

The High Commissioner recommends the Government, the illegal armed groups and representative sectors of civil society to spare no efforts in establishing, as soon as possible, contacts for dialogue and negotiation so as to overcome the internal armed conflict and achieve lasting peace. Such dialogue and negotiations should from the outset take into account human rights and international humanitarian law, and should include in their agenda the issue of the right to truth, justice and reparation.

(c) The rule of law and impunity

The High Commissioner calls upon the Government and Congress of the Republic, when adopting policies or drafting legislation, to pay due attention to the obligations assumed by Colombia as a State party to international human rights and international humanitarian law instruments. He urges them to take into account the international principles of legality, necessity, proportionality, timelimitation and non-discrimination when adopting or applying policies and measures related to security and public order. He calls on them in particular not to introduce any rules in the Colombian legal system that would enable members of the military forces to exercise judicial police or other functions incompatible with the independence of the justice system.

The High Commissioner urges the Attorney-General to submit a bill to Congress establishing a career structure for officials and employees of his Office, with a view to strengthening the independence and impartiality of that institution.

The High Commissioner calls upon the Attorney-General to ensure and to strengthen the independence of the Human Rights and International Humanitarian Law Unit in his Office, to guarantee the protection of its staff and to provide it with the means necessary to carry out its investigations.

The High Commissioner urges the Attorney-General, within his Office's Human Rights and International Humanitarian Law Unit, to establish a group specializing in the investigation of possible links between members of the military and the police and paramilitary groups. He also calls on international cooperation agencies to back this initiative.

The High Commissioner calls on the Minister of Defence to suspend from duty with immediate effect any members of the military and the police involved in serious human rights violations or war crimes, and to inform the judicial and investigative authorities accordingly.

The High Commissioner calls on the Special Committee on the conduct of investigations into human rights violations and breaches of international humanitarian law, chaired by the Vice-President of the Republic, to work actively on a selection of representative cases of such violations, and to submit a quarterly report to the President of the Republic, the Attorney-General, the Procurator-General and the Ombudsman on the progress of its investigations.

The High Commissioner calls on the President of the Republic, in his capacity as Head of State and Commander-in-Chief of the security forces, to take all necessary steps to ensure that, independently of any dialogue conducted between the Government and paramilitary groups, any links between public officials and members of such groups are severed. It also calls on him to inform the Procurator-General of the Nation and the Ombudsman about the implementation and results of such measures in half-yearly reports.

(d) Economic and social policy

The High Commissioner exhorts the Government to develop a consistent policy to reduce the inequality gap that prevails in the country and to ensure that all necessary steps are taken to lower illiteracy and unemployment rates and to improve access to health, education and housing.

(e) Promotion of a human rights culture

The High Commissioner recommends the Government, through the Standing Intersectorial Commission on Human Rights and International Humanitarian Law, to prepare a plan of action on human rights that ensures the mainstreaming of an integral gender policy, and to submit, during the first half of 2003, a timetable for its implementation.

The High Commissioner recommends the Minister of Education, beginning with the next academic year, to incorporate the teaching of human rights in primary and secondary school curricula. For this purpose it recommends that the Ministry establish a continuous training arrangement with the Office of the Ombudsman.

The High Commissioner calls on the Supreme Council of the Judicature, the Attorney-General's Office and the Procurator-General's Office to make similar arrangements with the Office of the Ombudsman for the continuous training of their officials and employees in human rights and international humanitarian law.

(f) Advisory services and technical assistance by the Office

The High Commissioner urges the Government to act on the international recommendations, including those made in this report, and calls on the Vice-President of the Republic, with the Office's assistance and advice, to coordinate the preparation of a timetable for implementing the distinct recommendations of the appropriate international bodies.

The High Commissioner invites the Government, Congress, the Attorney-General's Office, the Procurator-General's Office, and the Office of the Ombudsman to enhance their dialogue with the Office and to take full advantage of its mandate of advisory services and technical cooperation.

Executive Summary

The Report of the United Nations, High Commission for Human Rights regarding the Human Rights and an International Humanitarian Law situation in Colombia in 2002.

This report on Colombia by the United Nations High Commissioner for Human Rights covers the period from 1 January to 31 December 2002, in response to the request made by the Commission on Human Rights at its fifty-eighth session.

National context

The report analyses the national context and reviews political, military, economic, institutional and social factors which in the course of 2002 presented Colombia with many problems, difficulties and challenges in maintaining the principles of the rule of law, respect for human rights and compliance with international humanitarian law. These factors include the breakdown of the peace process between the Government of President Pastrana and the Revolutionary Armed Forces of Colombia - People's Army (FARC-EP) on the one hand and the National Liberation Army (ELN) on the other, the impact on the deterioration of the armed conflict of acts of violence, many inspired by terrorism, perpetrated by both guerrilla and paramilitary groups, the persistence of complaints and reports of connections between public officials and paramilitary organizations, and the obstacles to the due exercise of political rights arising from the pressures brought to bear on candidates and voters by outlawed groups.

The March elections for Congress and the presidential elections in May were two important vantage points on the political scene in 2002, shedding light on the human rights situation in the closing months of President Andrés Pastrana's Government and the first 100 days of President Álvaro Uribe's.

Other factors analysed are the adoption and development of a security policy by the new Government, which took office on 7 August, the measures adopted as a result of the declaration of a state of internal commotion, the preparations made for a constitutional referendum in 2003, moves undertaken to initiate a dialogue with paramilitary groups, and the difficulties the country is facing in terms of indebtedness, the fiscal deficit and the progressive development of economic, social and cultural rights.

As the year drew to a close, a series of challenges were discernible in the national context. To mention only a couple, there were the persistent deterioration of the armed conflict, and the difficulties facing any effort to seek a gradual political solution to the conflict through properly structured peace negotiations. In this respect it is clear that the good offices of the Secretary-General, through his Special Adviser, should be considered, from

the point of view both of restarting the process of rapprochement between the Government and FARC-EP and of continuing the dialogue between the Government and ELN.

Another challenge is the one regarding contacts, dialogue and possible negotiations between the Government and paramilitary groups. It is worth clarifying which of the conditions put forward by the leaders of the United Self-Defence Groups of Colombia (AUC) may be accepted without jeopardizing the rule of law and without detracting from the fundamental rights of truth, justice and reparation.

Another challenge for the Government and the country's economic sectors arises from the need for both of these, taking full account of the requirements of economic, social and cultural rights, to reduce the existent inequality.

Of equal importance for the Government, for Congress and for the democratic sectors of the country is the challenge of seeking and achieving higher levels of agreement and mutual support in the task of promoting and protecting human rights. In particular, the executive and legislative branches are faced with the challenge of ensuring that all proposed legislation concerning the defence of public order, the administration of justice and the operation of supervisory bodies should comply with the instruments adopted by the international community in order to guarantee the democratic exercise of power and the effective implementation of human rights and fundamental freedoms.

Internal armed conflict

The report highlights the serious impact of the armed conflict on the situation of human rights in the country and the challenges that the conflict poses for an effective State response to the humanitarian crisis. It also points out the significant deterioration of the armed conflict and the increasing cruelty of the methods of combat used by the illegal armed groups, which aggravate the vulnerability of the civil population. In that respect, it analyses the behaviour of the guerrilla groups, of the paramilitary groups and of the security forces. The report highlights the importance of a structured peace negotiation process with appropriate parameters and criteria, offering clear prospects of success and including at an early stage commitments on human rights and international humanitarian law issues.

Human rights situation

The report recognizes that factors such as the degradation of the armed conflict, drug-trafficking and the economic crisis have had a damaging impact on the human rights situation and the capacity of the State to protect and guarantee these rights. The criminal behaviour of the illegal armed groups has made clear their lack of respect for the fundamental rights to life, personal integrity and individual freedom. Their repeated attacks on public infrastructure increase the challenges facing the State in trying to provide an effective response to the critical situation. It also reports that the new Government has announced its intention to comply with international and constitutional obligations concerning human rights. Amongst the State's achievements in this field, the report underlines such things as the ratification of various international instruments, advances in institutional coordination and the uniform system of registering the displaced population, the jurisprudence of the Constitutional Court upholding fundamental safeguards and the interest of various public institutions, for example, the Vice-Presidency, the Ombudsman, the Procurator-General's Office and the Senate, in

strengthening their cooperation with the Office of the United Nations High Commissioner for Human Rights in Colombia.

The report describes the situation regarding civil and political rights as critical. It notes that in 2002 there were grave, massive and systematic violations of those rights, several of them constituting crimes against humanity. Extrajudicial executions (massacres as well as individual or selective killings), acts of torture, cruel, inhuman or degrading treatment, operations involving a disproportionate use of force, enforced disappearances, illegal or arbitrary arrests, unlawful impediments to free internal movement, enforced displacements, arbitrary or illegal interference in privacy and the home, and breaches of due process and judicial guarantees were recorded.

The report points out that those responsible for these violations were public officials implicated in serious abuses of power, failure to act or open collusion with paramilitaries.

The report relates a significant increase in reports of violations attributed directly to members of the Security Forces, as compared to the year 2001. Several of these acts were committed pursuant to the new Government's security policy and in particular to enforce the norms adopted under the state of internal commotion declared in August. Some were carried out with the participation or authorization of members of the Office of the Attorney-General.

In its analysis of the situation regarding economic, social and cultural rights in Colombia, the report comments on problems such as profound economic and social exclusion, idespread poverty and deep inequality, that manifest themselves in high levels of unemployment, insufficient educational coverage, serious shortcomings in the provision of health services and social security, and a significant reduction in State-subsidized housing.

The report also identifies the specific difficulties affecting the recognition and protection of the rights of women and children. Despite some legislative advances, it highlights in particular the absence of an integral policy regarding gender issues, the persistence of sexual discrimination and marginalization and the persistence of sexual and family violence.

Situation of international humanitarian law

The report notes the substantial increase in war crimes and the frequent victimization of civilians, as compared to the year 2001. Many of these acts could constitute crimes against humanity. Among the most noteworthy breaches of international humanitarian law, many of which are recurrent and massive, the report mentions killings, death threats, attacks on the civilian population, indiscriminate attacks, acts of terrorism, assaults on personal dignity, hostage-taking, enforced displacement, attacks on medical personnel and units, attacks on civilian property and the use of anti-personnel mines. That section also considers the situation of children and women who are victims of the armed conflict. The report points out that responsibility for most of the unlawful behaviour should be attributed to members of the guerrilla and paramilitary groups. It notes, however, that during the period covered there were an increased number of complaints of breaches of humanitarian rules by members of the security forces.

The report underlines that the use of some methods or means of war prohibited under international humanitarian law and a change in strategy by the illegal armed groups, have done much to aggravate the armed conflict. Among them it highlights the attacks on

civilians and the increasing use of terror by illegal armed groups, particularly FARC-EP.

Situations of special concern and importance

The report analyses various areas of special concern or importance to the Office of the High Commissioner. These include the maintenance of the rule of law and the adoption and implementation of a new security policy, measures related to the state of internal commotion, the actions of the security forces in the rehabilitation and consolidation zones, the situation in the former demilitarized zone, the rise and strengthening of paramilitary groups, the shortcomings of the judicial system and its failings in the battle against impunity, the unsatisfactory conditions in prisons, enforced displacement, the victimization of ethnic groups, the critical situation of human rights defenders and other members of vulnerable groups, and the existing problems related to the exercise of fundamental freedoms (freedom of association, freedom of opinion and expression, freedom of conscience and religion, and political rights).

The report points out that the State still does not have an effective and coherent policy on human rights and international humanitarian law. This deficiency is visible in the weakness of its preventative policies, which contributes to the worsening situation in both areas. This has significantly increased the number of displaced persons, and added to the vulnerability of human rights defenders, who suffer intimidation, threats, attacks and stigmatization, even from public servants.

Among areas of special concern, the report highlights factors and conditions that tend to weaken the rule of law, as manifested in repeated problems or crises of governability, and recurrent errors in applying the principle of the rule of law. This tendency is reflected in the interference in the exercise of public functions by members of paramilitary groups and in the persistence of links between public servants and members of these groups. The preferential adoption of certain repressive and military policies to the detriment of civil institutions is also pernicious. The report makes reference to the adoption and implementation of provisions incompatible with international norms and the National Constitution, such as several of those contained in Decree 2002, which was adopted in the context of the state of emergency. The main causes of concern in this field include the attribution to the military of functions of the judicial police and the arbitrary restriction of fundamental rights and freedoms.

Another issue of concern is the conduct of institutions that compromise judicial independence and impartiality. As an example of this, one can point to decisions by the Office of the Attorney-General to remove or transfer investigators, the position taken by the Attorney-General on the exercise by members of the armed forces of judicial functions normally belonging to the police, and his support for measures to control public order that were subsequently declared unconstitutional by the Constitutional Court.

Follow-up on international recommendations

The report follows up international recommendations on the protection of human rights, armed conflict, the rule of law and impunity, the ratification of international instruments, the conformity of domestic legislation with international principles and rules, the adoption of measures in favour of economic, social and cultural rights, the promotion of a human rights culture, and technical advice and cooperation. It finds that in many cases no significant progress has been made towards implementing these recommendations. However, it highlights positive elements such as the ratification of

the Rome Statute of the International Criminal Court (despite the Government's reservation on the competence of the Court on war crimes), the passage of legislation making it a crime to traffic in human beings, the evaluation of the protection programmes of the Interior Ministry, the adoption of legislation to comply with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction and the creation of the Anti-personnel Landmines Observatory, and the adoption of measures to widen the territorial coverage of early warning systems and to strengthen governmental participation in these systems.

Activities of the Office in Colombia

A section of the report summarizes the work carried out in 2002 by the Office of the United Nations High Commissioner for Human Rights in Colombia in the performance of the duties of observation, legal advice, promotion and dissemination, and technical cooperation referred to in its mandate. The mandate has benefited several State institutions, among them the Office of the Procurator-General, the Office of the Ombudsman and the High Council of the Judicature, which have welcomed the Office's advice and cooperation in their efforts to improve the human-rights-related activities of their institutions. Office activities have also been directed towards civil society organizations. The Office in Colombia has been able to initiate fluid and frequent communication with the new Government, in particular with the Vice-Presidency and the Ministry of Foreign Affairs. The new Director of the Office assumed his functions in October.

Recommendations

The report concludes with a series of concrete and high-priority recommendations by the Office of the High Commissioner as regards human rights and international humanitarian law for the year 2003, in the belief that their implementation could contribute sensibly to improve the situation in Colombia. The recommendations cover important matters such as prevention and protection, the internal armed conflict, the rule of law and impunity, economic and social policies, the promotion of a culture of human rights and the advisory and technical cooperation activities of the Office. The recommendations are addressed to the national authorities, all parties to the internal armed conflict and representative sectors of civil society.