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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

## Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia\* \*\*

### *Summary*

The present report analyses the most important developments related to the situation of human rights and international humanitarian law in Colombia in 2010. The 2010 electoral process concluded with the election of a new Congress and of President Juan Manuel Santos Calderón, who took office in August.

The report recognizes the commitment to human rights expressed by the Santos administration during its first months in office and welcomes the consolidation of the drastic reduction in the practice known as “false positives”, which resulted in extrajudicial killings. Other positive steps are the announcement of an ambitious land restitution policy and a more favourable stance towards human rights organizations.

The persistence of the internal armed conflict continues to affect the full enjoyment of human rights. All parties to the armed conflict, in particular guerrilla groups, continue to breach international humanitarian law. This situation is exacerbated by the violence caused by illegal armed groups emerged after the demobilization of paramilitary organizations, and disputes among illegal armed actors to control drug trafficking.

The report further analyses several particular situations of concern and summarizes the main activities carried out by OHCHR-Colombia. It contains 11 recommendations to improve the human rights situation in the country.

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\* Late submission.

\*\* The present report is circulated in all official languages. The annex, reproduced as received, is available in English and Spanish only.

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## I. Introduction

1. In October 2010, the United Nations High Commissioner for Human Rights and the Government renewed for three years the 1996 agreement that established the office in Colombia (OHCHR-Colombia), emphasizing all aspects of the original mandate. It was also agreed to assist the Government in establishing a national human rights centre to support human rights and international humanitarian law policies.
2. The High Commissioner wishes to express her appreciation to the Colombian authorities and civil society for receiving and collaborating with her office and expresses her gratitude to the countries and organizations that supported the office during the past 13 years.
3. OHCHR-Colombia continued to observe the human rights situation, to provide legal advice and technical cooperation, and to promote human rights and international humanitarian law in the context of the internal armed conflict.
4. Upon invitation of the Government, the independent expert on minority issues and the United Nations Permanent Forum on Indigenous Issues visited Colombia. The Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Human Rights Committee reviewed the human rights situation in Colombia and formulated important recommendations.
5. On 12 October, Colombia was elected as a non-permanent member to the Security Council for 2011-2012. This, together with the openness to international scrutiny and the political will of the new Government, should translate into actions aimed at improving the country's human rights situation.

## II. Context

6. The first half of 2010 was influenced by the electoral process. On 26 February, the Constitutional Court rejected the possibility of a new re-election of then-President Álvaro Uribe. Elections for Congress were held on 14 March in a generally calm atmosphere, despite some reports about irregularities. A second round of the presidential elections on 20 June resulted in the election of Juan Manuel Santos Calderón, who took office on 7 August as President.
7. President Santos expressed his commitment towards human rights, highlighted the importance of economic and social rights and announced an ambitious land restitution policy. He also promised to engage in social dialogue and political consensus-building as a matter of principle for his presidency. Some of the first positive measures taken by the new administration are an act to pay homage to victims of enforced disappearance<sup>1</sup> and a new Military Criminal Code that excludes human rights violations from military jurisdiction; a victims' draft act that includes the restitution of stolen lands; and improvement in the relationship between the executive branch and civil society and the judicial branch, as well as with Ecuador and the Bolivarian Republic of Venezuela.
8. Other developments impacting human rights and international humanitarian law in the context of the armed conflict include public reflections about possibilities for peace-related initiatives of the Government of President Santos<sup>2</sup> and guerrilla groups;<sup>3</sup> the death in

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<sup>1</sup> Act 1408 of 9 August 2010.

<sup>2</sup> As conditions for considering an eventual peace process, the Government demanded that guerrilla

combat of some of the most important military commanders of the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP); the rescue and release of kidnapped persons; and increased hostilities in the second half of the year.

9. In the last quarter of the year, intense rains and widespread flooding created an emergency situation that affected over 2.2 million Colombians.

### **III. Human rights and international humanitarian law**

#### **A. Human rights defenders, trade unionists and journalists**

10. OHCHR-Colombia is concerned about the continuing homicides, threats, attacks, information theft, illegal surveillance and intimidation targeting human rights defenders and their organizations in different parts of the country. Victims include community defenders and leaders, members of Juntas de Acción Comunal, Afro-Colombians and indigenous peoples, municipal ombudspersons, trade union members, staff of the National Ombudsperson’s Early Warning System (EWS) and journalists. These acts have been attributed to State agents, members of post-demobilization groups, and members of FARC-EP and the National Liberation Army (ELN).

11. Of particular concern are the homicides, threats and harassment against those advocating for the rights of displaced persons, in particular leaders of women’s groups, and for the restitution of lands, especially in Cauca, Sucre and Urabá. The murders of Rogelio Martínez, Alexander Quintero and Oscar Maussa, who had received threats and had protection measures while working on land restitution cases, are illustrative of this situation.

12. The killing of trade unionists continues to be of concern. In 2010, 26 persons were killed, compared to 25 in 2009. The deaths of non-affiliated teachers increased from 4 to 11.<sup>4</sup> A total of 1,433 members of the union movement are covered by the Protection Programme of the Ministry of Interior and Justice. In 2010, one journalist was killed and 45 threats against journalists were registered.<sup>5</sup>

13. Most criminal investigations initiated by the Attorney General in cases where the victims were human rights defenders, have had limited results. Furthermore, the Procurator General’s Office has not obtained visible results in its disciplinary investigations, despite public commitments to make progress. Serious and urgent efforts are needed to clarify these cases and establish responsibilities.

14. The prosecution and arbitrary detentions of human rights defenders on the basis of uncorroborated information provided mainly by informants, demobilized persons and military intelligence reports, continue to be of concern. In Arauca human rights defenders who had been detained up to over two years were acquitted for lack of evidence or after being declared innocent of the charges. Following their release, they continued to be stigmatized and threatened.

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groups release all kidnapped persons and minors in their ranks, and end the use of anti-personnel mines and terrorist acts.

<sup>3</sup> Declarations by FARC-EP in July and September, and by the National Liberation Army in October.

<sup>4</sup> Presidential Programme for Human Rights. The Unitary Workers Union (CUT) reported 38 killings, including non-affiliated teachers.

<sup>5</sup> Information provided by Freedom of the Press Foundation.

15. OHCHR-Colombia appreciates the Protection Programme of the Ministry of Interior and Justice. However, delays in assessing risks, slow implementation of measures, absence of a differential approach, and transfer of protection schemes to private companies continue to be of concern. Moreover, reforms introduced in May hindered the implementation of protection measures. Overall, protection programmes must be reformed to allow greater flexibility and effectiveness, and to include public officials, such as EWS staff, and persons involved in land restitution processes.

16. Implementation of agreements reached by the previous Government in the National Round Table on Guarantees for human rights defenders remains insufficient. As part of an effort to create an environment of respect for human rights, significant steps to implement the National Plan for Education on Human Rights (PLANEDH) should be taken by the Ministry of Education. The High Commissioner welcomes the inclusion of PLANEDH in the new National Development Plan 2010-2014 and encourages all parties to agree on a national action plan as soon as possible.

17. Since August, OHCHR-Colombia has noted a positive change in attitude and discourse by government authorities towards human rights organizations, which the Government has called “the disarmament of words”. One visible expression of this new atmosphere is the signing, under the leadership of the Vice-President, of the Joint Declaration by the Government, Procurator General, National Ombudsperson, other State Entities, Civil Society and the International Community: Towards a Comprehensive Human Rights and International Humanitarian Law Policy.<sup>6</sup>

## **B. Intelligence services**

18. In 2010, a former director of the Department of National Security (DAS) was brought to trial on charges of, inter alia, homicide and threats. Investigations continued on other former directors for illegal surveillance between 2005 and 2008. Statements by DAS senior personnel implicated former senior officials of the President’s office as beneficiaries of the illegally obtained information.

19. The information received by OHCHR-Colombia confirms the existence of a pattern of wiretapping, surveillance and systematic harassment by DAS officials, under orders from their superiors, to whom they reported their findings. These investigations appear to suggest that both the so-called G-3 group and the National and International Observation Group (GONI), whose members allegedly committed these illegal acts, indeed constituted formal structures within the institution. Furthermore, illegal activities were allegedly funded with DAS resources, the use of which required approval by the directors of the institution.

20. In October, the Procurator General sanctioned seven former DAS officials, an official from the Information and Financial Analysis Unit and one from the President’s office for serious breaches of discipline for wiretapping and illegal surveillance.

21. In November, a former DAS director was granted political asylum in Panama, as she invoked a lack of due judicial and security guarantees. The High Commissioner believes that this should not hinder investigations or contribute to impunity of alleged crimes.

22. The reforms of the intelligence services continued in 2010 with limited results. The National Police took steps to implement a data protection system to prevent the collection and storage of information that could violate human rights. The Armed Forces are in an

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<sup>6</sup> See [www.vicepresidencia.gov.co/Noticias/2010/Documents/101122\\_DecConferenciaNaIDDHH.pdf](http://www.vicepresidencia.gov.co/Noticias/2010/Documents/101122_DecConferenciaNaIDDHH.pdf).

initial stage of designing similar procedures. No significant progress has been made by the Procurator General or the intelligence services in purging files.

23. Impunity and lack of democratic controls allow intelligence services to continue carrying out illegal and clandestine operations. OHCHR-Colombia continued to receive information on interception of e-mails, illegal surveillance, harassment and threats, information theft, modification of Web pages and break-ins into offices and homes of different civil society organizations, in some cases allegedly by members of military intelligence agencies. These acts, as well as those reported in 2009, remain unpunished.

24. Efficient mechanisms for independent oversight and control of intelligence services should be established and must be fully funded and legally empowered. In November 2010, the Constitutional Court ruled that the so-called “Intelligence Act” of 2009 was unconstitutional, due to formal flaws in its Parliamentary approval procedure.<sup>7</sup> This, however, should not prevent the Government from expediting the intelligence reforms proposed in 2009.

### **C. Extrajudicial executions**

25. In 2010, the drastic reduction in the number of persons presented as killed in combat while under the custody of the Army, known as “false positives”, was consolidated. The High Commissioner considers it essential to advance in the judicial proceedings on past violations and to conduct an in-depth analysis of their causes, as a guarantee of non-repetition.

26. The judicial rulings handed down to date<sup>8</sup> confirm that these accusations were not false, as claimed by some politicians and members of the military. The National Human Rights Unit of the Attorney General’s Office is investigating 1,488 cases with 2,547 victims. More than 400 additional cases are being investigated through its sectional units. More than 448 active cases still remain in the military justice system. Moreover, an unknown number of cases in the military justice may have been closed without taking appropriate judicial action. Based on the available data on cases and victims, OHCHR-Colombia estimates that more than 3,000 persons<sup>9</sup> may have been victims of extrajudicial executions, primarily attributed to the Army. The majority of these killings were carried out between 2004 and 2008.

27. The “judicial truth” behind extrajudicial executions, repeatedly demanded and supported by the Ministry of Defence, is essential, but not sufficient. Presidential sanctioning of the new Military Criminal Code in August was a positive step, since its article 3 confirms that human rights and international humanitarian law violations are not service-related acts and should, therefore, be prosecuted in the ordinary justice system. It is imperative that the military justice immediately transfer all cases of possible human rights violations to the ordinary justice system, and that cases that were closed by the military justice without proper investigation be revisited.

28. In this context, the significant decrease in the transfer of cases of persons “killed in combat” with signs of human rights violations from the military justice to the ordinary

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<sup>7</sup> Decision C-913-2010.

<sup>8</sup> To 15 October, of 125 rulings in cases assigned to the National Human Rights Unit of the Attorney General, 22 were acquittals.

<sup>9</sup> Estimate based on the number of cases under investigation by the Attorney General, plus the active cases and the uncertain number of cases in the military justice system, taking into account that there is more than one victim in most of the cases.

justice system during 2010 is of great concern. Moreover, information received indicates that the transfer and dismissal of some military judges may be related to their collaboration with the ordinary justice system.

29. Members of security forces accused of serious human rights violations, as any other person, are entitled to due process. There are, however, doubts whether this right is upheld when soldiers accused of participating in extrajudicial executions are represented by the so-called Military Defence (DEMIL). There are indications that DEMIL tries to prioritize certain interests of the military institution over defendants' rights. For example, the accused are prevented from confessing their involvement in the crimes and are thus unable to plea bargain for reduced sentences, and from making statements regarding the involvement of other members of the Army.

30. In the light of the above, the continued denial of extrajudicial executions by some members of the security forces and the attacks against those within the institution who collaborate with the justice system are of great concern. Therefore, it is essential that civilian and military authorities at the highest level unequivocally support these members of the security forces who collaborate with judicial processes, and design a protocol to protect them. It is further necessary to apply exemplary sanctions against those who disregard the Ministry of Defence's human rights policy, and to guarantee that there are no setbacks to the measures adopted.<sup>10</sup>

31. Deaths due to excessive use of force by members of security forces, especially the National Police, or as a consequence of collusion with criminal groups continued to occur in 2010. In this regard, OHCHR-Colombia appreciates the willingness of the National Police to adequately address such cases.

#### **D. Illegal armed groups that emerged after demobilization of paramilitary organizations**

32. OHCHR-Colombia noted with concern the increase in the violence caused by illegal armed groups in 2010. The Ministry of Defence authorized its Armed Forces to support the National Police to combat six of these groups.<sup>11</sup> Members of these groups committed homicides, threats, extortion, and acts of sexual violence and caused individual and collective forced displacement. Of particular concern is the drastic increase in massacres (40 per cent), in the context of violent disputes among and within these groups.<sup>12</sup> In Córdoba, 10 massacres were registered in eight months, 5 of which occurred in October and November.

33. These groups are motivated primarily by economic gain from illicit activities. They enforce "social control" and operate in similar ways to organized crime. Although they do not seem to have a clear or coherent ideology or political motivation, they sometimes use the language and paraphernalia of paramilitary groups and their modus operandi.

34. Victims include social leaders, human rights defenders and public officials who confront these groups, as well as indigenous and Afro-Colombian persons. Other victims are those who refuse to collaborate, who denounce groups to the authorities or who possess property or request restitution of lands of interest to the groups. Attacks have also targeted

<sup>10</sup> For example, the decrease in the number of operational legal advisers.

<sup>11</sup> Los Paisas, Los Urabeños, Popular Revolutionary Anti-terrorist Army of Colombia (ERPAC), Renacer, Los Rastrojos and Los Machos.

<sup>12</sup> By November, the Presidential Programme for Human Rights had recorded 38 massacres with 179 victims. In 2009, it recorded 27 massacres with 139 victims.

those who were perceived as collaborating with or belonging to rival groups or to security forces, or who happened to be in an area of dispute.

35. Of particular concern is the widespread use of children and adolescents by these groups in all type of activities, including *sicariato* killings, and the sexual violence committed against women and girls.

36. OHCHR-Colombia has identified cases in Antioquia, Córdoba and Meta in which, as a result of corruption or threats, these groups have benefited from the acquiescence, tolerance and even collusion of members of security forces, including the National Police. At the same time, the Police have carried out some successful operations against leaders of these groups.

37. The High Commissioner recommends the adoption of policies and measures that not only increase the number of security forces officials, but also combat corruption within their ranks, strengthen the judiciary, improve protection for the population, and adopt social, educational and employment generation policies for those at risk of recruitment.

## **E. Transitional justice**

38. While some progress was made during 2010, the realization of victims' rights continues to be insufficient. The Historical Memory Group of the National Commission for Reparation and Reconciliation presented four new reports that contributed to upholding the right to truth. Despite such important academic work, progress under Act 975 of 2005 continues to be slim: less than 54 per cent of the defendants, approximately 4.5 per cent of the demobilized persons,<sup>13</sup> contributed to the right to truth through voluntary depositions. While their confessions revealed a significant number of homicides, they did not give a complete picture of the diversity, context and systematic nature of violations committed by paramilitary organizations.

39. In June, a first ruling under Act 975 yielded the maximum alternative sentence (eight years) for two paramilitaries with partial indictments for several crimes. Also for the first time, this ruling provided for reparations to the victims. The sentence was appealed by the victims. In December, a second ruling sentenced to eight years another paramilitary, with partial indictment. Also on that occasion, the victims appealed the decision. During the proceedings, there was evidence of serious flaws with regard to the role of the victims, lack of clarity in the establishment of reparations and creation of false expectations among the victims due, in large part, to the lack of coordination of relevant State entities.

40. The High Commissioner, thus, reiterates her recommendation to consider a profound reform of Act 975. Such reform should include, inter alia, a time limit for the voluntary depositions, efficient mechanisms of exclusion from the benefits of the Act, and extending the requirement for voluntary depositions to demobilized persons not admitted in the proceedings. It could also include consolidating several of its proceedings; the possibility of collective indictments; the need to investigate and punish only serious crimes and to clarify that compliance with reduced sentences would start from the date of sentencing. It is also advisable to identify appropriate criteria for reparations, to establish the obligation to provide reparations from the beginning of voluntary depositions, to reinforce State mechanisms for accessing assets of perpetrators, to integrate differential approaches and to ensure adequate coordination with other transitional mechanisms.

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<sup>13</sup> The Attorney General's Office reported that, as of November, of approximately 53,000 demobilized persons, 4,484 were being processed under Act 975. A total of 2,431 voluntary depositions had been initiated, which include several sessions per accused.

41. In November, the Constitutional Court decided that the principle of opportunity should not apply to demobilized paramilitaries who are not included under Act 975 and who have committed no crime other than their membership to a criminal (paramilitary) organization. Congress passed a draft law allowing the suspension of imprisonment of these demobilized paramilitaries, in exchange for a statement of truth.

42. In September, President Santos personally presented a new victims' act to Congress, based on a draft shelved in June 2009. This draft act was combined with another on land restitution. OHCHR-Colombia welcomes this initiative and considers it a key pillar which, if approved, would complement and improve the existing transitional justice framework.

43. OHCHR-Colombia reiterates its alert about the increase in violence against people participating in land restitution processes and urges the Government to make greater efforts to prevent such violence and avoid impunity. Although the obligation to prevent acts of violence is not unlimited, it must be upheld in cases when an individual or a specific group of individuals face real and immediate risks and the State has reasonable possibilities of preventing or minimizing the risk. OHCHR-Colombia offers its support and assistance for this purpose.

44. The High Commissioner considers that any new or reformed instrument of transitional justice requires the broadest possible consensus, the active participation of victims and their organizations, and compliance with international norms. It is particularly important to uphold the principle of non-discrimination of victims, who are such by virtue of having suffered gross violations of human rights or serious breaches of international humanitarian law, regardless of the perpetrator (members of illegal armed groups or State agents) and the possible criminal responsibility of the victim for other crimes.

## F. “*Parapolítica*”

45. On 14 March, Colombians elected 102 senators at the national level and 166 departmental representatives for the 2010-2014 legislative term. OHCHR-Colombia notes with concern that the influence of the so-called “*parapolítica*” persists in the new Congress. Of the 268 elected congresspersons, 13 who had been re-elected are under criminal investigation by the Supreme Court. Moreover, information has been received of possible cases of “political proxies” between newly elected parliamentarians and persons involved in *parapolítica* processes.

46. In 2010 the Supreme Court sentenced 10 parliamentarians and acquitted 1. Particularly significant is the conviction of Álvaro García Romero to 40 years for his links with paramilitary groups and indirect participation in seven cases of aggravated homicide, and other crimes. Another important ruling was the “acquittal on the basis of doubt” in the case of Carlos García Orjuela, after he had spent over two years in prison. The Court has filed 120 cases against parliamentarians and ex-parliamentarians.<sup>14</sup>

47. These rulings demonstrate the Court’s determination to fight impunity. OHCHR-Colombia reiterates the need to continue with these proceedings, ensuring due process by, inter alia, restricting the use of pretrial detention, upholding the right to appeal and the applicability of the principle of favourability, in accordance with international standards.

<sup>14</sup> Of these, 84 are under preliminary investigation, 13 under investigation, and 13 on trial. The remaining 10 cases are being reviewed by the Court to establish jurisdiction.

## G. Judicial branch

48. The newly-elected Government put an end to the tensions and public confrontations between the executive and judicial branches that characterized 2009 and much of 2010. This facilitated the election of a new Attorney General in December, after an impasse of 16 months. The improved political climate has also created conditions for open discussions about judicial reforms.

49. In this reform process, OHCHR-Colombia emphasizes the need to ensure not only adequate funding and an independent governance structure for the judiciary, but also that the root causes of impunity be addressed. These issues include the needs: to improve access to justice, especially in rural areas and for specific groups, such as women, displaced persons, indigenous and Afro-Colombians; to resolve the backlog and expedite existing processes; to ensure the presence, and security, of well-trained judges and prosecutors throughout the country; to adopt appropriate sanctions for corrupt lawyers and judges; and to design strategies and provide sufficient resources in the Attorney General's Office to systematically investigate human rights violations. It is also important to ensure that the justice system upholds human rights, without giving up any of the ground gained, such as the recourse to "*tutela*", a constitutional mechanism for the protection of rights.

50. In March, the Supreme Court publicly warned of threats to the integrity and security of judges, magistrates and their families. Five magistrates of the Court (two of them ended their tenure in September 2010) have been granted precautionary measures by the Inter-American Commission on Human Rights.<sup>15</sup>

## H. Enforced disappearance

51. OHCHR-Colombia welcomes the approval by Congress of the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, and urges the Government to promptly complete the process, recognizing the additional competence of its Committee, as set out in article 31.

52. As the National Registry of Disappeared Persons is updated, the magnitude of the phenomenon of enforced disappearance becomes evident. By November, a total of 51,310 people had been reported as disappeared, of which 12,632 are alleged enforced disappearances. Of these 3,073 are women and 3,042 are people under 20 years of age.<sup>16</sup> The number of registered cases of disappearance increased almost 40 per cent compared to 2009.

53. Moreover, thanks to the efforts of the Attorney General's Justice and Peace Unit, by November, under Act 975, 4,312 cases of enforced disappearance had been registered, out of a total of 51,616 crimes for which the confession process had been initiated. As a result, 3,037 graves were exhumed and 3,678 bodies found; only 1,323 have been fully identified, of which 116 have not yet been handed over to their families.

54. Despite these figures, the level of impunity in the case of this serious human rights violation is very high. The Attorney General's Office initiated some investigations, but, as

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<sup>15</sup> César Julio Valencia Copete, María del Rosario González, Iván Velásquez (assistant magistrate), Yesid Ramírez and Sigifredo Espinosa (in the case of the latter two, the measures were granted in 2010).

<sup>16</sup> Disappeared Persons and Corpse Information System (SIRDEC).

recognized by the institution, progress was limited due to the complex nature of the crime.<sup>17</sup> In this context, OHCHR-Colombia recognizes the significance of the historic sentence passed in June on the enforced disappearances during the tragic events of 1985 at the Palace of Justice.<sup>18</sup> The remaining cases relating to the tragedy must continue in an atmosphere of security and judicial independence.

55. In consultation with civil society organizations, the Attorney General adopted a protocol for the search for disappeared persons and the exhumation and identification of bodies. However, a protocol for the dignified handing over of remains to families is still pending, as these ceremonies are still conducted, for the most part, as judicial proceedings. It is important to establish mechanisms that will permit “declarations of absence”, rather than obliging families to “declare presumed death” of disappeared persons, in order to have access to State protection and assistance.

## I. Sexual violence

56. As mentioned in previous reports, the official information systems on cases of sexual violence committed in the context of the armed conflict reflect a significant under-reporting of cases. For example, as indicated by the Attorney General, under Act 975 only 42 acts of sexual violence were reported of a total of 51,616 crimes for which the confession process has been initiated.<sup>19</sup>

57. This confirms the urgent need to improve conditions to allow women to denounce acts of sexual violence in an environment of security and trust. It is also necessary to consolidate information in this field by bringing together judicial records with information from the health system and other entities.

58. In 2010, OHCHR-Colombia received information on cases of sexual violence against girls and young women, attributed to members of post-demobilization groups in Antioquia, Cauca, Córdoba and Norte de Santander.

59. Cases of sexual violence attributed to members of security forces, in particular the Army, in Arauca, Caldas, Cauca, Chocó, Meta and Vichada were also reported. In most of these cases, the victims were girls. In comparison with the previous year, the reaction of the security forces to cases attributed to their members was more appropriate and investigations were initiated under the ordinary justice system.

60. The most dramatic case of sexual violence occurred in Arauca, in October, when a member of the military allegedly raped two girls in a period of two weeks; one of the girls, together with her two brothers, was subsequently murdered. Neither the Army nor the Attorney General reacted immediately to the reports of the first act of sexual violence, which demonstrates not only negligence in a particular case, but also structural flaws within the two institutions.

61. In July, the Minister of Defence issued Directive No. 11 of 2010, which aims to prevent all forms of violence against women and girls. OHCHR-Colombia appreciates this

<sup>17</sup> Colombia, Attorney General, *2009-2010 Informe Audiencia Pública de Rendición de Cuentas*. See <http://fgn.fiscalia.gov.co:8080/Fiscalia/archivos/RendiciondeCuentas/audienciapublica2010.pdf>.

<sup>18</sup> Retired Colonel Luis Alfonso Plazas Vega was sentenced to 30 years imprisonment for the disappearance of 11 people in November 1985, after security forces stormed the Supreme Court building where the M-19 guerrilla group was holding hundreds of hostages. The sentence has been appealed.

<sup>19</sup> The Human Rights Unit of the Attorney General’s Office has 82 cases assigned (3 resulted in convictions and 2 in acquittals).

effort, but considers it insufficient, and insists on the need to develop specific measures with respect to military discipline, including: command responsibility; repudiation of myths that encourage sexual violence; preventive background checks on military personnel; immediate response protocols; protection measures for victims; and the enabling of judicial and disciplinary investigations.

62. The Attorney General did not make progress in investigations of sexual violence. According to the Round Table of Non-governmental Organizations that monitors compliance with Constitutional Court Order 092 of 2008, out of a sample of 40 cases, only five led to a conviction, two continue on trial and one is awaiting sentence.<sup>20</sup>

63. In addition, the supervision of the Procurator General in these proceedings is weak. However, the decision adopted in July to remove from office seven junior police officers from the National Police for sexual abuse committed in June 2009 against a displaced 13-year-old girl in the Parque Tercer Milenio in Bogotá, is noteworthy.

64. 2011 will mark 10 years since the last visit to Colombia of the Special Rapporteur on violence against women, its causes and consequences. OHCHR-Colombia suggests that the Government extend an invitation to this Special Rapporteur, as well as to the Special Representative of the Secretary-General on sexual violence in conflict, to assess compliance with the recommendations formulated in 2001 and to receive new recommendations that contribute to the full realization of the human rights of women.

## **J. Discrimination**

65. Organizations advocating for the rights of persons with disabilities are not receiving sufficient support from the relevant authorities. Colombia is still not a party to the Convention on the Rights of Persons with Disabilities, although Congress completed the legislative process on 31 July 2009 and the Constitutional Court issued a positive opinion on 21 April 2010. Ratification of the Optional Protocol is also pending.

66. In November, the Constitutional Court did not decide on the substance of a lawsuit related to the right to same-sex marriages. OHCHR-Colombia believes that granting this recognition would reflect the highest standards of human rights, whereby all types of marriages and families deserve protection from the State, by virtue of the principles of equality and non-discrimination.

67. Colombian NGOs reported the threats and the killing of 50 lesbian, gay, bisexual and transgender persons. Impunity of such cases remains very high. For example, of 99 cases reported in 2006-2007, 29 are currently under investigation and only one sentence has been handed down.<sup>21</sup>

68. OHCHR-Colombia welcomes the fact that a draft act to sanction acts of racial discrimination is under discussion in Congress.

## **K. Indigenous peoples and Afro-Colombian communities**

69. The rights of indigenous peoples and Afro-Colombian communities are still disproportionately violated in the context of armed conflict. In particular, their rights to life, territory and culture are being threatened by the presence of armed actors on their lands.

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<sup>20</sup> “Third monitoring report on Court Order No. 092 of 2008” (June 2010). See [www.dejusticia.org/interna.php?id\\_tipo\\_publicacion=2&id\\_publicacion=816](http://www.dejusticia.org/interna.php?id_tipo_publicacion=2&id_publicacion=816).

<sup>21</sup> Information provided by Colombia Diversa, December 2010.

70. This has led to selective murders, disappearances, confinement, forced displacement, and indiscriminate attacks through the use of anti-personnel mines. The victims include women and girls, who are also subjected to acts of sexual violence.

71. These crimes were attributed to FARC-EP, ELN and to post-demobilization groups. For example, FARC-EP was accused of the killing of two young Awá men in Barbacoas, Nariño in June. In April, unidentified assassins killed seven Afro-Colombian miners in Suárez, Cauca.

72. Violations, including sexual violence, have also been attributed to members of the security forces. Insufficient and inadequate measures to protect the civilian population during military operations may have led to cases of forced displacement, such as the displacement of 300 Eperara Siapiadara indigenous peoples in January in Olaya Herrera, Nariño.

73. OHCHR-Colombia recognizes the judicial efforts to address violations against indigenous peoples, such as the conviction of the killers of Edwin Legarda and the massacre of 12 indigenous Awá people in August 2009. However, the State must reinforce the protection measures to avoid further such killings.<sup>22</sup>

74. It is imperative to advance in the formulation of protection plans for indigenous and Afro-Colombian communities and in strict compliance with Constitutional Court orders 004 and 005 (2009). Despite repeated recommendations by OHCHR-Colombia, no protection plan has been implemented to date.

75. The Ministry of Interior and Justice faces huge challenges to uphold the right of communities to free, prior and informed consultation and consent. Current domestic legislation does not protect this right in the case of mining exploration, even though mining has been considered one of the driving forces for the economic development of the country. The persistent weakness of the State to protect collective rights is thus a matter of concern. For example, in Buenaventura, Valle del Cauca, it took over a year to implement the court ruling to immediately stop illegal mining activities that were destroying the lands of the Zaragoza community council. The presence of Afro-Colombian communities or indigenous peoples in areas of economic interest is often ignored, or their ancestral lands are not titled as collective lands or reservations to avoid the obligation to consult. In other cases, consultations are conducted with people who are not legitimate representatives of the affected community, or the internal decision-making processes of the ethnic groups and communities are not respected.

76. In this context, it is necessary to adopt adequate legislation and a proper implementation mechanism, formulated in a participatory manner with indigenous peoples and Afro-Colombian communities. OHCHR-Colombia offers its support and advice in this process.

## **L. International humanitarian law**

### **1. Guerrilla groups**

77. OHCHR-Colombia received reports of systematic attacks attributed to FARC-EP and ELN against civilian populations and property, such as massacres, selective homicides,

<sup>22</sup> The Presidential Programme on Human Rights reported the killing of 51 indigenous persons between January and October, representing a 48 per cent decrease with respect to the same period in 2009. The National Indigenous Organization of Colombia (ONIC) reported that 122 indigenous people were killed in 2010 (including unreported cases and indigenous buried as unidentified).

recruitment and use of children, and threats. In several cases, these groups, in particular FARC-EP, took direct action against the civilian population, using prohibited weapons and anti-personnel mines, and attacking civilian premises and property. Most breaches were recorded in remote areas of the departments of Antioquia, Arauca, Caquetá, Cauca, Córdoba, Meta, Nariño, Norte de Santander and Putumayo.

78. In October, a public statement specifically declaring that the group would observe international humanitarian law was attributed to ELN commander Nicolás Rodríguez Bautista, alias “Gabino”. This is the first declaration of this sort by ELN that has come to the attention of OHCHR-Colombia. The office is not aware of any similar declaration from FARC-EP.

79. OHCHR-Colombia notes with particular concern breaches of the principle of distinction in the hostilities perpetrated by guerrilla groups, in particular FARC-EP, which has resulted in the death and injury of numerous civilians. For example, in Toribío, Cauca, FARC-EP carried out numerous attacks throughout the year, resulting in 3 dead and 20 injured civilians.

80. Teachers were also the victims of attacks and violent actions in 2010 by guerrilla groups.<sup>23</sup> For example, persons identified as members of ELN killed the director of a school in Caldas.

81. The indiscriminate effects of anti-personnel mines continue to cause great harm to the civilian population. Despite this, the Presidential Programme on Human Rights and International Humanitarian Law recorded a decrease of 51 per cent in the number of anti-personnel mine-related incidents and accidents, in comparison with 2009.<sup>24</sup>

82. Guerrilla groups also carried out attacks that caused unnecessary suffering to combatants. For example, existing evidence indicates that FARC-EP used explosives packed with nails and shrapnel and allegedly executed an injured policeman during an attack on a National Police truck in El Doncello, Caquetá.

83. Both FARC-EP and ELN continued to take hostages. For example, FARC-EP held the Government Secretary of Arauquita, Arauca captive from February to May, and ELN was responsible for kidnapping four female human rights defenders in Teorama, Norte de Santander for two weeks in July.

84. Children and youth continued to suffer from “extensive, systematic and habitual” abuses by guerrilla groups.<sup>25</sup> For example, in February, FARC-EP forced a meeting with the inhabitants of a municipality in Antioquia to conduct a census of the children, in order to recruit those over 8 years old. On numerous occasions, children used by guerrilla groups were killed during armed confrontations and other actions, such as the case of a 12-year-old boy who died in March when allegedly being used by FARC-EP to place an explosive artifact in El Charco, Nariño.

85. OHCHR-Colombia recalls that the line between forced and voluntary recruitment of children is legally irrelevant and that the concept of “use” should be interpreted as broadly as possible. Illegal armed groups are required, under any circumstances, to avoid incorporating, or to refuse the incorporation of persons under 18 in their ranks, and must avoid using them in hostilities, or in support functions, such as cooks or messengers. The

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<sup>23</sup> The Presidential Programme on Human Rights recorded the killing of 24 teachers between January and October, up 50 per cent from 2009.

<sup>24</sup> A total of 758 between January and November, 1,556 in 2009.

<sup>25</sup> Report of the Secretary-General on children and armed conflict (A/64/742 – S/2010/181).

State must consider children who have been recruited or used by illegal armed actors as victims.

## 2. Security forces

86. OHCHR-Colombia continued to note the presence of military units in or around civilian premises, including homes and schools, in several departments, such as Meta and Valle del Cauca. In some cases, civilians were killed or injured during hostilities against security forces that were located in or near civilian premises. In other cases, guerrilla groups mined the premises after the military forces had left.

87. Also of concern are the numerous reports received from communities that alleged abuses by the Army in particular. For example, conducting “censuses” and taking photographs of civilians participating in community meetings place the civilian population at risk. Cases of stigmatization and pressure on civilians to act as informants, and some cases of illegal detention, have been reported. In some of these cases, victims suffered cruel or degrading treatment, even torture, and were released only after they were forced to sign a declaration that they had been well treated.

88. Despite national laws and international recommendations, OHCHR-Colombia continued to receive information on the use of children by members of security forces for intelligence work and on their participation in civic-military actions.

89. OHCHR-Colombia noted allegations of the existence of a mass grave containing 2,000 bodies in La Macarena, Meta. Even though no evidence of a mass grave was found, at least 446 unidentified people were buried in the municipal cemetery after having been reported as killed in combat by the Armed Forces between 2002 and 2010. The weak judicial controls may have facilitated the concealment of extrajudicial executions and other serious violations. Initial information suggests that similar situations may exist in other cemeteries. OHCHR-Colombia has urged the Ministry of Defense to develop a national registry of persons killed in combat and the Attorney General to expand its investigations to other cemeteries.<sup>26</sup>

90. During 2010, OHCHR-Colombia observed irregular, and in some cases clearly illegal practices in the military recruitment process; these practices should be discontinued as soon as possible. Rapid development of mechanisms to regulate military service, including conscientious objection, with full respect for human rights, is urged.

## M. Torture

91. OHCHR-Colombia continued to receive information on cases of torture by security forces, noting with great concern its repeated occurrence in departments such as Antioquia, Arauca, Caquetá, Meta, Valle del Cauca and Vichada. Of particular concern is the situation in Medellín, where several people, including suspected criminals, have repeatedly been victims of torture and mistreatment. Several people suffered physical and psychological punishment while under police custody, in some cases accompanied by racial slurs. The mistreatment consisted, inter alia, of punches or kicks to different parts of the body or blows with weapons, as well as electrical shocks, burns, spraying with pepper gas, or suffocation with plastic bags.

92. Existing disciplinary mechanisms in security forces do not seem to be sufficiently effective in the investigation and punishment of these violations. When the Procurator

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<sup>26</sup> OHCHR-Colombia report on La Macarena cemetery, Meta department, 2010.

General's Office assumes the investigation of this type of cases, only rarely are proceedings completed or those responsible punished.<sup>27</sup> Similar flaws are observed in the investigations of the Attorney General's Office. The Attorney General initiated 32 investigations of torture between August 2009 and May 2010.<sup>28</sup> In November, it was reported that the confession process had been initiated with respect to 543 crimes of torture, out of a total of 51,616 crimes under Act 975. There have been no convictions in these cases yet.

93. In order to ensure greater citizen protection, and prevent vulnerability and helplessness of victims, OHCHR-Colombia encourages the State to classify, investigate, and punish acts of torture with appropriate sentences. Moreover, it insists on the need to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

## **N. Forced displacement**

94. In 2010, OHCHR-Colombia continued to receive information on collective and individual displacement caused by all armed actors. Although displacement increased at a lower rate than in past years, the high level of underreporting is a matter of concern, in some cases as a consequence of resistance by public officials to record displacement, such as in Arauca.

95. OHCHR-Colombia expresses serious concern about the high rate of murders of displaced persons. According to the National System for Integral Assistance to the Displaced Population (SNAIPD), 1,499 homicides of displaced persons were committed between 2007 and March 2010.<sup>29</sup> The Government is urged to design and implement preventive mechanisms to protect the life and personal integrity of displaced people.

96. Although forced displacement occurs primarily in rural areas with the presence of illegal armed groups, during 2010 OHCHR-Colombia observed an increase in intra-urban displacement. Of particular concern is the situation in Medellín and Córdoba, where various mass displacements have been caused by disputes among post-demobilization groups.

## **O. Poverty and economic, social and cultural rights**

97. Colombia has made progress in terms of human development despite the prolonged internal armed conflict and high levels of inequality.<sup>30</sup> The *Human Development Report 2010* ranks Colombia as one of the Latin American countries with high human development.<sup>31</sup> This ranking is lower when adjusted for inequality, which reaches extremely high levels in the country. The Gini coefficient for 2010 was 0.585, and places Colombia as one of the seven most unequal countries in the world.

98. Extreme poverty is 16 per cent, the highest among the group of high human development countries, but it is even higher in some departments.<sup>32</sup> Despite progress in

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<sup>27</sup> The Procurator General's Office issued 15 rulings related to acts of torture; in six cases, the public officers were dismissed.

<sup>28</sup> *2009-2010 Informe* (note 17).

<sup>29</sup> "Informe del Gobierno a la Corte Constitucional en seguimiento a la Sentencia T-025 (2004)", July 2010.

<sup>30</sup> Colombia has a high human development index (0.689) and is ranked 79 of 169 countries. United Nations Development Programme, *Human Development Report 2010* (New York, 2010).

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

health-service coverage, full enjoyment of the right to health continues to be restricted. Approximately 17.5 per cent of the population suffers from at least one serious health problem<sup>33</sup> and inequality and insufficient access, availability and quality of health services persist for people living in poverty, including remote rural populations, internally displaced persons, indigenous peoples and Afro-Colombian communities.

99. High levels of informal employment persist,<sup>34</sup> contributing to greater income instability and lack of access to protection granted by social security services.<sup>35</sup> Moreover, the International Labour Organization has expressed concern regarding certain violations of labour rights, such as legislation allowing salary gaps between men and women, in violation of the principle of equal remuneration for work of equal value, and discrimination in access to employment based on race, colour and social background.<sup>36</sup>

#### IV. Summary of activities of OHCHR-Colombia

100. OHCHR-Colombia continued to fulfil its mandate to observe, to provide advice and technical cooperation and to promote human rights. Out of 800 complaints received, OHCHR-Colombia followed up on 771. A total of 196 observation missions were undertaken, which represented 666 days in the field. It participated in 2,983 meetings: 1,499 with public institutions, 878 with civil society representatives, 357 with United Nations agencies, and 249 with the international community.

101. Special attention was paid to judicial proceedings, such as those for the massacre of the Awá people in August 2009, the cases against a former DAS director, the enforced disappearances that occurred during the 1985 Palace of Justice events, and some cases of extrajudicial executions.

102. OHCHR-Colombia offered advice during the legislative debates on the draft act on victims and land restitution, the act to pay homage to victims of enforced disappearance, and the ratification process of the International Convention for the Protection of All Persons from Enforced Disappearance. It also participated in the National Round Table on Guarantees for human rights defenders, collaborated in the strategy to implement the PLANEDH and conducted a joint evaluation of the needs and priorities of the National Ombudsperson's Office. In addition, it facilitated an international-level exchange of experiences on purging intelligence files, and on mechanisms for the democratic control of intelligence services.

103. A project was initiated, together with indigenous peoples and Afro-Colombian communities, on a participatory formulation of an instrument on the right to consultation and another was initiated with the Ministry of Defence to monitor the measures adopted to overcome extrajudicial executions.

104. OHCHR-Colombia participated in the commemoration of the twenty-fifth anniversary of the tragic 1985 Palace of Justice events, where, for the first time, all victims

<sup>33</sup> Ibid.

<sup>34</sup> The rate of informality surpassed 57.7 per cent in 2009. Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo and Escuela Nacional Sindical, *Informe nacional de trabajo decente 2009* (Medellín, 2010).

<sup>35</sup> Concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/COL/CO/5).

<sup>36</sup> Committee of Experts on the Application of Conventions and Recommendations, report submitted to the ninety-ninth session of the International Conference on Labour, 2010.

were represented, and organized other important events to commemorate Human Rights Day.

105. In 2010, two satellite offices were opened in Pasto and Villavicencio.

106. OHCHR-Colombia distributed 92,000 copies of publications; issued 37 press releases and started a campaign on the right to life and restitution of lands, including a radio commercial that was broadcast more than 1,000 times, among other activities for the promotion and dissemination of human rights.

## V. Recommendations

107. **In order to reach the full realization of human rights and international humanitarian law in Colombia, it is imperative that the State, illegal armed groups and civil society at large prioritize the rights of victims and increase efforts to find ways to achieve lasting and sustainable peace through dialogue and negotiation.**

108. **The United Nations High Commissioner for Human Rights reiterates all her previous recommendations that have not been implemented or that have been only partially implemented and urges the Government to strengthen the implementation of international recommendations from universal protection mechanisms, such as the universal periodic review, special procedures and treaty bodies. She encourages the Government to establish an effective follow-up mechanism for all of them.**

109. **In addition, the High Commissioner:**

(a) **Reiterates once again the call on all armed actors to fully accept and abide by international humanitarian law; and firmly insists that illegal armed groups release all kidnapped persons immediately and unconditionally, stop child recruitment and use, release all children in their ranks, and desist from using anti-personnel mines;**

(b) **Urges all relevant authorities to ensure fast progress, and due process, on alleged cases of extrajudicial executions attributed to members of security forces:**

(i) **The Attorney General should adopt the necessary measures and ensure availability of staff to promptly investigate all allegations;**

(ii) **The military justice authorities should immediately transfer relevant cases under their jurisdiction to the ordinary justice system, and establish a mechanism for an independent review and transfer of cases that have been closed by military criminal judges in the past without proper investigation;**

(iii) **The Armed Forces and the Ministry of Defence should adopt effective protection programmes for the military personnel who collaborate with the justice system and should issue messages of unambiguous support to these persons;**

(c) **Reiterates to the Ministry of Defence and the Armed Forces the need to issue, as soon as possible, detailed instructions to their personnel in order to ensure proper attitudes and actions towards sexual violence as indicated herein; and calls on the Attorney General to adopt a policy for the systematic investigation of cases of sexual violence and to quickly move forward in the investigation of alleged cases;**

(d) **Urges the Government, the Procurator General and Congress to establish strong mechanisms of democratic control of intelligence services, to move forward in establishing data protection centres with the highest standards of internal control and to establish mechanisms to purge intelligence files, and emphasizes the**

need to make progress in the judicial investigations to establish and punish the material and intellectual authors of alleged crimes committed by members of the civil intelligence agency (Department of National Security, DAS);

(e) Urges the State to take bold steps in the fight against impunity and to establish and implement judicial reforms through participatory and transparent discussions towards a prompt, competent, independent and impartial justice;

(f) Encourages a comprehensive review of the protection policies and programmes of the Government and other State entities, and calls for the adoption of a comprehensive protection programme linked to land restitution process that includes: public security measures; political, technical and financial support to community, peasants and victims' organizations; joint risk assessments at the local level, with relevant State and non-State entities; and the exploration of ways to obtain broad social support to defend this right;

(g) Urges the Government to make greater efforts in fighting corruption and acquiescence with the groups that emerged after the demobilization of paramilitary organizations at all levels, especially within security forces, and among local authorities, judges and prosecutors, and encourages the design and implementation of an all-inclusive strategy to protect the population from the violence caused by these groups, including an effective response to alerts issued by the National Ombudsperson's Early Warning System;

(h) Calls upon the National Police and judicial authorities, especially the Attorney General, to allocate the human, material, and financial resources necessary to move forward on the investigations of killings and threats against human rights defenders;

(i) Reiterates the importance of promptly expediting a concerted preparation and implementation of plans for the protection of indigenous peoples and Afro-Colombian communities, and of adopting legislation and a process to guarantee the right to free, prior and informed consultation and consent on all matters that directly and differentially affect their lives, culture and territories;

(j) Reiterates to the Government the need to undertake a concerted, transparent and participatory reform of Act 975 of 2005; and encourages Congress to adopt legislation in favour of victims, in accordance with the relevant international norms;

(k) Urges the Government to adopt the measures necessary to narrow the gaps and inequalities between regions and social groups revealed by the *Human Development Report 2010*, and to advance towards achieving the full realization of economic, social and cultural rights.

## Annex

### **Illustrative cases of violations of human rights and breaches of international humanitarian law**

1. As a complement to the High Commissioner's report on the situation of human rights in Colombia, and by way of illustration, a number of cases of human rights violations and breaches of international humanitarian law that have come to the attention of the office in Colombia of the High Commissioner for Human Rights ("OHCHR-Colombia") during the reporting period are described below.

#### **A. Human rights defenders**

2. The following are illustrative cases of killings, kidnappings, threats, arbitrary detentions, NGO's offices break-ins, and information theft against human rights defenders, which have been attributed to members of illegal armed groups that emerged after the demobilization of paramilitary organisations, members of the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) and the National Liberation Army (ELN), as well as state agents. OHCHR-Colombia is especially concerned about the murder of leaders, peasant farmers and internally displaced persons involved in land restitution cases, particularly in the departments of Antioquia, Cauca and Sucre.

(a) In San Onofre (Sucre), on 18 May, Rogelio Martínez was murdered. Mr. Martínez, a member of the National Movement of Victims of State Crimes (MOVICE), Sucre section, was a leader of a group of families that returned to the "La Alemania" farm in 2007, and since 2009 entered the Ministry of Interior and Justice Protection Programme due to what the Police classified as "extraordinary risk".

(b) On 23 May, Alexander Quintero, who worked defending victims' rights of the Alto Naya massacre in 2001 and promoting processes of peaceful coexistence and articulation between Afro-descendent, indigenous and peasant farmer communities in Alto Naya, was killed in Santander de Quilichao (Cauca).

(c) On 10 August, Jair Murillo, leader of the Afro-Colombian organisation of internally displaced persons in Buenaventura, *Fundacion Integral del Pacifico Nariñense* (Integrated Foundation of the Pacific coast in Nariño), was murdered in Buenaventura (Valle del Cauca).

(d) On 19 September, Hernando Pérez, a peasant farmer who along with other leaders acted as liaison between peasant farmers and the Association of Victims for Restitution of Land and Assets (ASOVIRESTIBI) in Uraba (Antioquia) to promote claims for land stolen by paramilitary groups, was killed in Necoclí (Antioquia).

(e) In January, fictional pages appeared on Facebook accusing several human rights defenders and members of NGOs, as well as academics of the Antioquia University, of being sympathizers of FARC-EP.

(f) In September, a human rights defender was forced to leave Itagüí (Antioquia) after receiving threats from criminal groups when the NGO he worked with denounced the wave of violence being caused by confrontations between these groups in the city.

(g) On 8 July, four human rights defenders were kidnapped by members of the ELN in Teorama (Norte de Santander) and were released a few days later.

(h) On 17 June, in Arauca, several persons who had been detained on 15 June 2008 on charges of rebellion, terrorism and criminal association were released due to lack of evidence.

(i) In Sucre, a human rights defender detained in November 2008, remains in detention. He was accused of criminal association with paramilitary groups, although he himself had denounced these groups.

## **B. Intelligence services**

3. Cases were reported of illegal wiretapping of emails, surveillance, information theft and harassment affecting members of different social and political organisations, allegedly conducted in some cases by members of state intelligence services. This conclusion was reached after a comprehensive analysis of different elements, which taken alone may seem irrelevant, such as the type of victim, the correlation between persons being investigated by the intelligence services and the Attorney General's Office, the connections between the victims and specific social organisations and with previously documented cases, the modus operandi or the correlation between the time and place of certain events.

(a) Pamphlets appeared in April and May containing threats against human rights organisations and other social organisations in several departments in Colombia. The information collected on the victims and the modus operandi suggest state intelligence personnel's participation in these acts.

(b) On 4 April, information was stolen from computers belonging to the Women's Pacific Route and the Corporation for Community Eco-Development (COMUNITAR) in Popayan (Cauca) during a break-in by unknown persons into their offices.

(c) On 19 July, several persons entered the home of a human rights defender in Medellín (Antioquia) and stole a computer hard disk containing reports and photographs of her activities. The victim is a member of an NGO that does social work and carries out educational activities in Commune 13 of Medellín.

(d) On 10 August, unidentified persons entered the office of the Meta Civic Committee for Human Rights in Villavicencio (Meta), and stole information on its activities.

## **C. Extrajudicial executions**

4. In 2010 the drastic reduction in cases of so-called "false positives", where people previously being held by the Army are presented as killed in combat, was confirmed. OHCHR-Colombia however continued to receive information on some cases, which confirms the need to continue efforts to fully eradicate this practice as well as any other forms of extrajudicial execution.

(a) On 2 February, a soldier allegedly killed a presumed member of the FARC-EP that had been injured during a bomb strike in Chaparral (Tolima). The victim was reported as killed in combat.

(b) In Aipe (Huila), on 25 March, members of the Army Unified Action Groups for Personal Freedom (GAULA) assigned to the Army Ninth Brigade, allegedly killed a presumed member of the FARC-EP, a minor, who had apparently been wounded earlier during a confrontation with the GAULA.

(c) On 7 July, two young men disappeared in Medellín (Antioquia) and were found dead the following day. According to information collected by OHCHR-Colombia, the victims had apparently been detained by National Police officers the night before and handed over to a criminal group.

(d) In Barbacoas (Nariño), on 12 September, National Police officers shot at a group of persons who ignored or did not hear their order to stop, killing one person and wounding seven others. The police agents apparently mistook them for members of a criminal group.

5. OHRHR-Colombia is monitoring the prosecution of several cases of extrajudicial executions in which the safety of the families of victims and the witnesses is a matter of concern.

(a) Reports conducted by the National Police found that at least eight of the mothers whose sons disappeared in Soacha (Cundinamarca) in 2008 and were subsequently reported by the Army as killed in combat in other municipalities around the country, were in situations they describe as “of extraordinary risk”.

(b) In Antioquia, Bogotá and Valle del Cauca, among others, complaints were registered of intimidation and threats against witnesses for the Attorney General’s Office or their families, in cases of alleged extrajudicial executions attributed to members of the Army.

#### **D. Illegal armed groups that have emerged after the demobilization of paramilitary organisations.**

6. It is a matter of concern the expansion and intensity of the acts of violence perpetrated against the population by illegal armed groups that emerged after demobilization of paramilitary organisations, as illustrated below:

(a) On 21 March, seven persons, including two children, were victims of a massacre committed in Puerto Libertador (Córdoba) as a consequence of a dispute between Los Urabeños, Los Rastrojos and Los Paisas. On the same day, members of the Águilas Negras allegedly committed a massacre in the same place, killing three boatmen.

(b) In El Charco (Nariño), on 1 October, alleged members of Los Rastrojos murdered five members of a family.

(c) On 21 March, a 17-year-old girl was killed in Puerto Libertador (Córdoba), presumably by members of Los Urabeños, after she refused to have sexual relations with the leader of the group in that area.

(d) In Medellín (Antioquia), on 2 April, a *sicario* murdered Diego Fernando Escobar Múnera, a judge of the Eighth Criminal Circuit of Medellín. The authorities attributed his death to members of an illegal armed group that emerged after the demobilization of paramilitary organisations.

(e) On 11 April, Yolanda Isabel Álvarez Ibáñez, governor of the La Esperanza indigenous *cabildo*, and her husband were murdered in Montelibano (Córdoba). Authorities have attributed this crime to members of Los Paisas. On 23 November, a 14-year-old boy was murdered in this same municipality, presumably by members of Los Urabeños.

(f) In Puerto Rico (Meta), on 12 August, members of the Popular Revolutionary Anti-Subversive Army of Colombia (ERPAC) allegedly murdered a 15-year-old girl, who received over 40 stab wounds.

(g) In April, Los Rastrojos allegedly recruited around 30 children for the ranks of the ELN in Puerto Berrío (Antioquia). In Caucasia (Antioquia), at least 13 children were allegedly recruited in February by Los Rastrojos, Los Paisas and Los Urabeños. In Granada (Meta), at least six children were recruited by the ERPAC.

7. Members of public security forces acted in collusion with some of these groups.

(a) Tarazá (Antioquia), a National Police sergeant was arrested in April while transporting weapons for Los Urabeños. He had served 23 years with the Police and was about to retire.

(b) In November, during operation “Nerón” in Montería (Córdoba), two National Police officers and three sub-officers were arrested on charges of collaborating with Los Paisas.

## **E. Sexual violence**

8. The following cases illustrate how women and girls, and occasionally men, are victims of the sexual violence generated by all parties to the conflict, as well as by illegal armed groups that emerged after the demobilization of paramilitary organisations.

(a) On 16 March, a soldier from the Manosalva Battalion attempted to rape an Embera indigenous woman in Quibdó (Chocó).

(b) In May, in Medio Baudó (Chocó), a sub-officer of the Marine Infantry sexually abused a 13-year-old girl.

(c) In Cumaribo (Vichada), army soldiers allegedly tortured and repeatedly raped a man and a woman throughout the night on 29 July.

(d) In April, in Bello (Antioquia), several cases of sexual violence against girls attributed to members of a criminal group related to illegal armed groups that emerged after demobilization of paramilitary organizations operating in the municipality were reported.

(e) On 15 July, a man was raped by a group of FARC-EP guerrillas in El Bagre (Antioquia), when they found out that he was homosexual.

## **F. Discrimination**

9. Acts of violence have been registered against lesbian, gay, bisexual and transgender persons (LGBT), such as the case of the transvestite who was beaten until he became unconscious by eight police agents in the Immediate Attention Centre (CAI) in Parque Bolívar, Medellín (Antioquia) on 8 May.

## **G. Indigenous peoples and Afro-Colombian communities**

10. The rights of indigenous peoples and Afro-Colombian communities continue to be disproportionately affected by the internal armed conflict. In particular, their right to life and territorial and cultural rights are threatened by the presence of armed actors on their lands.

(a) On 21 January, two leaders of Los Manglares Community Council were murdered in López de Micay (Cauca), allegedly by members of the FARC-EP.

(b) In Puerto Libertador (Córdoba), on 4 January, a woman from the Zenú indigenous people was murdered, allegedly by members of Los Urabeños.

(c) On 27 June, an indigenous Awa was killed in Barbacoas (Nariño), allegedly by members of the FARC-EP.

(d) An indigenous person in the rural community of Los Chorros, Caloto (Cauca) died on 2 May, when a device launched by the FARC-EP exploded in an indiscriminate attack; moreover, several homes were damaged during the attack. A group of soldiers had allegedly taken refuge under the civilian homes when the attack began.

(e) In January, several Embera indigenous communities from Bajo Baudó (Chocó) were under confinement due to confrontations between the Army and the ELN. The Afro-Colombian communities of Juana Marcela and Carmelita in Medio San Juan (Chocó) were displaced in April after receiving threats from Los Rastrojos and Águilas Negras. In October, Afro-Colombian communities from the Berreberre River basin in Medio Baudó (Chocó) were under confinement due to armed action from the ELN and Los Rastrojos.

(f) In March, several indigenous children were recruited by the FARC-EP in Florida (Valle) and, on 9 April in El Carmen de Atrato (Chocó), the ELN attempted to recruit a group of indigenous children from the Abejero community.

11. OHCHR-Colombia has also received information regarding inadequate compliance with the right of communities to prior, free and informed consultation and consent in relation with the implementation of several projects in the departments of Cauca, Guajira, Norte de Santander and Tolima, among others.

(a) For the past three years, the community council of La Toma, municipality of Suárez (Cauca) has been requesting titles to the ancestral lands on which they have lived and worked since the XVII century. The state has ignored the presence of these Afro-Colombian communities and, without prior consultation, granted property deeds and mining permits to private persons outside the community.

(b) The land management plans are occasionally used as instruments to negate the presence of indigenous peoples. In other situations, however, the need for a prior consultation has been recognized to draft land management plans, as did the Territorial Planning Council of the municipality of Tibú (Norte de Santander) with the Bari indigenous people.

(c) In the case of the Mandé Norte mining project for exploration and exploitation of gold, copper and other minerals in Antioquia and Chocó, the Constitutional Court ruled that: i) the native groups affected by the project had not been consulted; ii) the community authorities and institutions representing the communities had not been taken into account; and iii) the community was not informed about the content of the Mandé Norte project.

## **H. International humanitarian law**

### **1. Guerrilla groups**

12. OHCHR-Colombia documented several massacres and selective killings attributed by authorities to members of guerrilla groups.

(a) Authorities attributed the murder of four persons who had been kidnapped on 30 March in Andes (Antioquia) to the FARC-EP.

(b) In Tarazá (Antioquia), on 3 May, members of the FARC-EP allegedly killed three persons, including a boy.

(c) In Argelia (Cauca), on 10 January, members of the FARC-EP stopped and detained an ambulance, killing a boy who had been injured by this same guerrilla group.

(d) On 25 March, members of the FARC-EP were attributed responsibility for the death of a 12-year-old boy on 25 March who was used as a “child-bomb” during an attack on a police station. Other nine civilians and three policemen were injured.

(e) In Pradera (Valle del Cauca), members of the FARC-EP were presumably responsible for the death on 1 May of a peasant farmer they accused of collaborating with the public security forces.

13. The FARC-EP continued to hold civilians and members of public security forces in cruel and inhuman conditions, in some cases for over 13 years, such as the Army sergeant Jose Libio Martínez, deprived of his freedom for reasons relating to the conflict from 21 December 1997. In 2010, guerrilla groups continued to take hostages.

(a) On 6 February, the Government Secretary of Araquita (Arauca) was taken hostage by members of the FARC-EP.

(b) In Tadó (Chocó) on 8 June, ELN guerrillas took three road workers hostages.

(c) In Puerto Rico (Meta), the FARC-EP allegedly took hostage a fisherman on 1 August, who remains missing.

14. OHCHR-Colombia also documented cases of threats by guerrilla groups.

(a) On 11 May the FARC-EP had allegedly threatened an indigenous leader in Buenaventura (Valle del Cauca).

(b) On 2 July, several public officials from Ituango (Antioquia) received threats allegedly from the FARC-EP.

15. Guerrilla groups continue to use antipersonnel mines and Antioquia is one of the departments that has been the most affected.

(a) In May the FARC-EP allegedly mined schools in Anorí (Antioquia).

(b) On 4 June, a woman and two girls were wounded by an antipersonnel mine in Sabanalarga (Antioquia), possibly planted by the FARC-EP.

(c) On 6 July, two indigenous children were injured by an antipersonnel mine in Tame (Arauca), allegedly placed by a guerrilla group.

(d) Authorities reported that on 10 September the FARC-EP had allegedly placed explosives in the body of one of the policemen killed during an attack on police stations in San Miguel (Putumayo).

16. OHCHR-Colombia also received complaints of recruitment of children by guerrilla groups in several departments, in particular Antioquia, Cauca and Chocó.

(a) In January, in Alto Baudó (Chocó), the ELN recruited three children, including two girls.

(b) In Jambaló (Cauca), eight children were recruited in February, allegedly by the FARC-EP.

(c) In February, the FARC-EP presumably attempted to recruit at least 19 boys and girls in Ituango (Antioquia).

17. OHCHR-Colombia registered several cases of terrorism attributed by authorities to the FARC-EP.

(a) The attacks in Pasto (Nariño) against the headquarters of the “U” political party on 25 May and in front of the office of the Administrative Department of Security (DAS) office on 8 September.

(b) The explosion of a car bomb in Bogota on 12 August, which injured nine persons.

(c) The explosion of a car bomb on 30 November in front of a police station in Vegalarga, municipality of Neiva (Huila), which caused the death of one civilian and damaged several homes.

(d) Other cases were attributed to the ELN, such as the gas cylinder filled with explosives that were detonated near the “Alejandro Humboldt” school in Fortul (Arauca), on 7 January.

18. Indiscriminate attacks were also registered, such as an attack with a cylinder bomb launched by the FARC-EP on 30 May in Sabanalarga (Antioquia), which damaged a school, and another attack by the FARC-EP on a passenger bus in Chigorodó (Antioquia) on 15 July.

## **2. Security forces**

19. OHCHR-Colombia continued to observe the practice of placing military units in populated areas, very near to houses and other protected properties, such as schools.

(a) In January, soldiers of the “Cacique Nutibara” Infantry Battalion occupied a school in the rural community of Guaduas in Carmen de Atrato (Chocó).

(b) In May, OHCHR-Colombia received information about the month-long occupation of a community centre in the rural community of Silva, Buenaventura (Valle del Cauca), by the Marine Infantry.

(c) On 24 August a group of soldiers from the “Vencedores” Battalion occupied a school in Tuluá, Valle del Cauca.

(d) In Puerto Alvira, Mapiripán (Meta), a group of soldiers from the Army’s Joaquín París Battalion camped close to the rectory and other civilian homes.

20. OHCHR-Colombia received information on cases of stigmatization and illegal detention by members of the Army against the civilian population.

(a) In Naín, Tierralta (Córdoba), soldiers from the XI Brigade allegedly intimidated the population on 13 January, accusing them of collaboration with guerrilla groups.

(b) In Puerto Rico (Meta), on 4 August, members of the Army allegedly detained a 12-year-old boy for two hours, accusing him of being a guerrilla and interrogating him on the whereabouts of the group in the area.

21. OHCHR-Colombia registered cases of armed confrontations between the Army and the FARC-EP, which caused harm to the civilian population in rural areas of the department of Cauca. Two such cases occurred in April and May, in Caloto and Toribío, where one woman died of a gunshot allegedly fired by a guerrilla and other woman was wounded by shrapnel from an explosive device allegedly launched by members of the Army.

## **I. Torture**

22. Although the existing data does not appear to reflect either the magnitude or the true impact of this human rights violation, the following are illustrative cases:

(a) On 13 January, two police agents from the Belén station in Medellín (Antioquia) had allegedly beaten two young men and some of their friends and family members repeatedly while they were being searched by police on the street and subsequently at the Police station.

(b) On 21 February, during an operation in Mapiripán (Meta) to capture members of an illegal armed group that emerged after demobilization of paramilitary groups, members of the National Police allegedly detained illegally a person and tortured him physically and psychologically while insisting him to provide them with information on members of the group.

(c) In Araquita (Arauca), on 24 May, two young men were allegedly beaten while detained by police agents.

(d) The perception of impunity in cases of complaints of torture is evident in the words of a police agent from Medellín, who responded to a victim who intended to accuse him of torture by saying that he had already been accused of “48 counts of torture and did not care about one more”.

(e) On 28 November 2003, a peasant farmer was tortured in Ituango (Antioquia). Seven years later, the Procurator General dismissed five professional soldiers for a period of 15 years.

## **J. Forced displacement**

23. During 2010, there were reports of cases of forced displacement, both individual and collective. It was a matter of concern the high rate of murders of displaced persons.

(a) In Valencia (Córdoba), on 17 February, “Los Urabeños” allegedly killed Teófilo Vidal Vidal. The victim had been working for the restitution of land taken by the Héroes de Tolová Bloc of the United Self-Defence Forces of Colombia (AUC) from internally displaced persons.

(b) On 24 November, Oscar Maussa was killed in San Juan Nepomuceno (Bolívar). He was forcibly displaced in 1997 by a paramilitary group in the village of Blanquicet, municipality of Turbo (Antioquia), along with 11 families belonging to the Agricultural Workers Cooperative of Blanquicet (COTRAGROBLAN). Mr. Maussa, had been granted precautionary protection measures by the Inter-American Commission on Human Rights in September 2006.

(c) On 15 August, members of Los Rastrojos allegedly killed a community leader in Medio Baudó (Chocó) and forcibly displaced 50 families.

(d) In Santa Bárbara (Nariño), on 2 October, Los Rastrojos allegedly caused the forced displacement of 40 families.