



经济及社会理事会

Distr.
GENERAL

E/CN.4/2004/13
17 February 2004

CHINESE

Original: ENGLISH AND
SPANISH

人权委员会
第六十届会议
临时议程项目 3

会议工作安排

联合国人权事务高级专员

关于哥伦比亚境内人权情况的报告*

* 仅以提交语文分发。

内容提要

联合国人权事务高级专员关于哥伦比亚情况的这份报告所述及的期间为 2003 年，这份报告是响应人权委员会第五十九届会议的要求编写的。

国家情况和国内武装冲突

哥伦比亚所面临的新挑战包括国内武装冲突的演变以及负债、财政赤字和立法政策等方面的问题。在 2003 年的头几个月中，哥伦比亚的国内局势十分动荡，政府采取了一些治安措施并且限制了基本权利和自由，在“重建和巩固区”内情况尤其如此。该国政府加强了旨在维持或者重建治安的行动，其具体表现为“民主安全”的政策。保安部队同非法武装集团，特别是同游击队之间的战斗加剧了，结果游击队退缩到传统的农村地区并且在保安部队增加压力时采取恐怖主义行动。非法武装集团继续通过绑架和贩运毒品来资助其活动。在过去一年中，虽然民意测验显示，总统的民望仍然很高，但是哥伦比亚社会呈现出高度紧张和严重的两极分化现象。政府推动在 10 月 25 日举行的立宪公民投票，以便在宪法中规定政治和经济性质的变革。投票的初步结果表明，没有一项提案获得最低限额选民(25%的有资格选民)的支持，但是政府尚未作出最后决定。于 10 月 26 日举行的省市选举的结果显示了该国的政治多元化。尽管非法武装集团发出了威胁并且进行了袭击，但是由于政府采取了措施，公民投票和选举还是得以如期进行。在选举之后，总统撤换了一些最重要的部长，并且在保安部队的上层进行了人事调动。政府加强了同相当一部分准军事集团于 2002 年开始的接触和对话，并且在声明停火之后，于 2003 年 7 月签署了一项协定，规定逐步复员直至 2005 年底全部结束。至于游击队，在对话方面没有取得任何进展。在 7 月份的伦敦宣言中，24 国表示坚决支持哥伦比亚政府，但是有某些保留。他们特别敦促迅速执行联合国人权事务高级专员的建议，并且采取措施防止姑息和纵容准军事集团。

国家政策和对国际建议采取的后续行动

高级专员驻哥伦比亚办事处加强了同该国政府，特别是同该国副总统以及其他国家机构的对话，以便促进国际建议的执行。已经取得了某些进展，但是在本报告

编写之时，大多数建议还有待于落实。一般来说，国际建议并没有一贯地纳入政府的政策。在“民主安全”方面采取的行动特别影响到立法议程以及保安部队、司法机构和其他执法机构的行动。高级专员驻哥伦比亚办事处注意到所谓的《反恐怖法令》于2003年12月10日获得批准，认为批准这项法令是违反高级专员以及其他有关国际机构的明确建议的。根据这项法令，哥伦比亚政府可以将保安部队派往该国几乎所有的城镇。然而，在驻有大量保安部队的某些地区，仍然存在严重的治理和治安问题。在增派军事人员的同时，并没有加强民事机构。存在一种将所有暴力行动都看成是恐怖主义行为的倾向，因而否认存在国内武装冲突，否认有必要执行国际人道主义法。针对准军事集团及其同官员勾结而采取的行动并没有取得明显的成效。在针对有罪不罚的措施方面仍然收效甚微。

在有关解散非法武装组织的政策方面，政府制订了一些准则给予有关人员以司法赦免，并且提出了一些建议，其中涉及有关有罪不罚以及关于了解真相、伸张正义和获得赔偿的权利等问题。一般来说，政府的立法建议的特点是：加重刑罚、制订新的罪名以及减少司法和法律保护。办事处还注意到，在实行独立和公正的控制方面难度越来越大。关于防止和保护措施方面，已经采取了一些积极行动。然而，在风险评估及已经采取措施的有效性方面仍然存在困难。办事处注意到，在销毁杀伤人员地雷方面采取了一些积极行动。在教育和公共卫生方面的开支增加了，但是不平等差距并没有缩小，另外处于最不利地位的社会阶层并没有能够按比例获益。非法武装集团根本没有遵守高级专员有关武装冲突、服从国际人道主义法和尊重人权的建议。

国际人道主义法：武装人员的违法行为

根据官方数字，杀人、谋杀、袭击平民、滥杀无辜、绑架人质、恐怖主义行为以及新的强迫流离失所的次数有所减少。然而，这些违法行为的性质仍然非常严重。在非法武装集团所控制的区域内平民仍然是受害最深的群体。违法行为仍然涉及使用杀伤人员地雷(特别是革命武装部队和民族解放军)，以及所有非法武装集团都招募未成年人参军。游击队(特别是革命武装部队)继续使用恫吓平民的策略，犯下了恐怖主义和绑架的罪行。他们不仅不同意无条件释放人质，在某些情况下，还杀害人质。

在哥伦比亚的多数地区，主要的准军事集团并没有遵守向政府作出的保证，并未停止敌对行动。杀人、屠杀、强迫流离失所以及招募未成年人参军等违法行为继续存在。在武装部队加强行动的地区，有人谴责军事人员不分敌我，在有些情况下甚至用机关枪滥杀无辜。为了切断对于游击队的供应而采取的行动在一些情况下影响到平民。

人权状况

哥伦比亚的人权状况仍然十分严峻。在过去一年中，哥伦比亚办事处收到的申诉涉及侵犯生命权，侵犯了在以下方面的权利：人身安全、个人自由和安全、适当的法律程序和司法保护、司法制度的独立和公正以及尊重隐私权，同时也侵犯了有关迁徙、居住和言论等方面的基本自由以及政治权利。驻哥伦比亚办事处收到了越来越多的申诉，涉及官员特别是保安部队的直接责任，在某些情况下申诉是同时发给该办事处以及哥伦比亚总检察长办公室的。应该引起关注的是越来越多的申诉涉及任意拘留或者非法拘留、强迫失踪以及法外处决，所有这些都侵犯了享受适当法律程序的权利以及隐私权。

越来越多的申诉涉及酷刑和虐待。同时，有些案件谴责国家官员渎职或者同准军事集团勾结。武装冲突，特别是非法武装人员的行为对于人权状况产生了负面影响，使得国家必须拨出更多的资源以便有效地解决现有问题。由于贫富悬殊、社会排斥以及社会不公，人们在经济、社会和文化方面的权利继续受到影响。

特别脆弱群体的处境

虽然工会领导人遭到杀害的案件有所减少，但是人权捍卫者和工会领导人的处境仍然是严峻的。少数民族仍然遭到歧视，其经济、社会和文化权利仍然遭到侵犯。国内武装冲突使得土著人和非裔哥伦比亚人的处境更为艰难，人们注意到非法武装集团越来越使用有选择性的暴力。尽管作出了一些立法努力，也签署了《国家男女平等协议》、但是妇女仍然遭到性别歧视、排斥和暴力，在国内武装冲突的情况下更是如此。许多儿童的人权仍然遭到以下因素的影响：经济和社会不公、极端贫困、家庭和性别暴力、劳动剥削以及国内武装冲突。

记者的处境仍然危险，在享受言论自由和信息自由等方面受到限制，其中一个重要原因在于非法武装集团采取的行动。强迫流离失所的势头在 2003 年得到抑制，但是仍然十分严重。在防止歧视的措施方面，政府的政策遭到挫折。地方官员(市长、市议会议员以及地方调查专员)、爱国协会的成员、司法工作人员以及宗教机构工作人员也都受到国内武装冲突的影响。

建 议

高级专员为 2004 年提出了一系列的具体的优先建议，深信执行这些建议将大大地有助于改善哥伦比亚的人权状况。这些建议涉及一些重要的事务，例如：预防和保护、国内武装冲突、法制和有罪不罚问题、经济和社会政策、推动人权文化以及高级专员哥伦比亚办事处的咨询服务和技术合作。这些建议的对象是：国家机构、非法武装集团、民间社会的代表以及国际社会。

目 录

	<u>段 次</u>	<u>页 次</u>
导 言.....	1 - 4	8
一、国家背景和国内武装冲突.....	5 - 15	9
二、国家政策和国际建议的后续行动.....	16 - 40	11
三、国际人道主义法：武装人员的违法行为.....	41 - 65	17
四、人权状况.....	66 - 84	21
五、特别脆弱群体的状况.....	85 - 102	24
六、建 议.....	103 - 131	28

附 件

一、高级专员在其 2003 年有关哥伦比亚人权状况报告中所提出建议 的执行情况.....	35
二、侵犯人权和违反国际人道主义法的具体事例	43
三、立法政策.....	52
四、联合国人权事务高级专员驻哥伦比亚办事处的活动	59

缩 写

AUC—哥伦比亚联合自卫军

ELN—哥伦比亚民族解放军

FARC-EP—哥伦比亚革命武装部队

UP—爱国协会

导 言

1. 在过去一些年中，人权委员会一直关切地注意着哥伦比亚的人权状况。这种关切反映在委员会主席的连续几次声明之中。1996年，人权委员会要求人权事务高级专员办事处根据哥伦比亚政府的邀请在哥伦比亚设立办事处。

2. 根据哥伦比亚政府同联合国人权事务高级专员签署的协议，联合国人权事务高级专员驻哥伦比亚办事处于1996年11月26日成立。根据协议的规定，高级专员驻哥伦比亚办事处的任务是观察哥伦比亚的人权和国际人道主义法的状况，以便在该国发生暴力和武装冲突的情况下，就如何促进和保护人权制订和执行政策、计划和措施等问题向哥伦比亚政府提出建议。因此，高级专员应该能够向人权委员会提出分析报告。2002年9月，经乌里维总统的提议，该协议的有效期延长4年，直至2006年10月。

3. 人权委员会主席在2003年4月的第五十八届会议上就哥伦比亚的人权状况发表了声明，在声明中该主席重申，哥伦比亚办事处“在处理侵犯人权和违反国际人道主义法方面发挥了重大作用”，并且要求高级专员提出“一份附有该办事处有关哥伦比亚人权状况分析的详细报告”。

4. 高级专员驻哥伦比亚办事处执行了其有关观察、建议、技术合作以及宣传和推动等方面的任务。总共派出了160多个外地工作团，并且接收了900多份申诉。驻哥伦比亚办事处参加了无数次涉及向哥伦比亚政府、其他国家机构以及公民社会提出建议的活动。技术合作的重点是高级专员的建议，其目的是要推动国家机构的积极参与，以便加强对于人权的尊重、保护和保障。哥伦比亚办事处参加了几次面向一般公众和传媒的促进活动。该办事处继续推出一系列有关人权问题的出版物，在哥伦比亚全国范围内的出版物数额已经超过10万。¹ 驻哥伦比亚办事处还继续开展同有关国家外交代表的对话。本报告所涉时间为2003年1月至12月，报告所依据的资料由联合国人权事务高级专员驻哥伦比亚办事处直接收集或者通过其联系人(国家和政府机构是特别重要的联系人)收集。通过联系人收集的资料都经过哥伦比亚办事处分析。本报告有四份附件：第一份涉及国际建议的后续行动；第二份涉及侵犯人权和违反国际人道主义法；第三份有关立法政策；第四份涉及哥伦比亚办事处所开展的观察、建议、促进和技术合作活动。

一、国家背景和国内武装冲突

5. 在 2003 年，国内武装冲突的演变以及负债、财政赤字和立法政策等严重问题构成了该国的严重挑战。虽然民意测验显示，该国总统继续享有很高的民望，但是民间社会在各个领域中都表现出严重的两极分化。在这一年中，国家和政府高级官员同民间社会组织的关系曾经几度变得十分紧张。

6. 政府的目标是要恢复对于国家领土的控制，并且清除游击队经常设置的非法路障和防止游击队用炸弹袭击。因此，军事人员和警察的数目大大增加。其中包括所谓的“民团”或者“村自卫团”。作为“民主安全政策”的一部分，旨在维持或者恢复治安的行动得到了加强。到 2003 年年底，在全国几乎所有城镇都部署了国家警察。在该国的一些重要地区还建立了新的部队和基地。

7. 在 2003 年，保安部队同非法武装集团之间的战斗，特别是同游击队之间的战斗，加剧了。敌对行动主要是在以下各地发生：Antioquia、Cundinamarca、Santander 和 Norte de Santander、the southern part of Bolivar、Guaviare 和 Caquetá。根据国防部的官方数字，所有的非法武装集团，特别是哥伦比亚革命武装部队(FARC-EP)，伤亡惨重，多人被捕。这些敌对行动对于平民产生了重大影响。由于受到保安部队日益增加的压力，游击队退入边远地区。革命武装部队和民族解放军(ELN)在全国几个地区加强了战略和军事合作。非法武装集团继续通过以下活动筹款：绑架、向毒品贩子“收税”、管理毒品加工厂、守卫和管理秘密的简易机场以便装运精神药物或者制造这些药物的原料、在某些情况下，直接贩运毒品。

8. 哥伦比亚政府继续制订政策，其目的是要改革国家机构，实现“民主安全”和复苏经济。为了达到这一目的，向国会提交了许多提案，其中一些提案旨在修改宪法，其他一些提案旨在改革目前的立法。其中许多法案都对加强法制、人民监督保安部队以及有效尊重人权和国际人道主义法都构成了新的挑战。一些政府提议使得哥伦比亚社会在同恐怖主义分子进行斗争和制止国内武装冲突的措施等问题上更加两极分化。

9. 在 2003 年的头几个月，哥伦比亚仍然生活在根据 2002 年 8 月 11 日第 1837 号法令实施的“内乱状态(紧急状态)”之下。政府以这项法令为依据，采取了一些措施以便控制治安和在 Arauca、Sucre 和 Bolivar 等地设立了一些特别区域，称之为“恢复和重建区”。这些措施的实施导致基本权利和自由遭到限制，警察入屋搜查

和多人被捕。4月29日，宪法法院宣布内乱状态结束，其理由是内乱状态的第二次延期不符合宪法。

10. 2003年的大多数政治活动都围绕着于10月25日举行的公民投票，其中涉及向选民提出15项有关修改宪法的提案。这些提案涉及广泛的问题：由于侵害国家财产而被定罪的人丧失政治权利、限制国家支付的养老金和薪金、取消市审计处的某些职位以及采取措施使得公共开支更为合理。由于点票工作十分复杂，因此到12月最后结果还未能宣布。然而，初步数据显示，没有一项提案获得法律规定的最低票数(有资格选民总数的25%)。

11. 10月26日，进行了省长、市长、以及国会和省市议员的选举。由于国家作出了特别努力，大多数选民都比较顺利地行使了其政治权利。尽管如此，还是有人就选举中的舞弊行为提出了申诉。选举结果反映出该国的政治多元化，因为一些独立的或者中间偏左的候选人击败了支持政府的候选人而顺利当选。一个很能说明问题的例子是：中间偏左的候选人当选为波哥大市市长和山谷省的省长。在为期两天选举后的几个星期内，作为其改善政府同国会的关系以及民众同武装部队之间关系策略的一部分，共和国总统撤换了内务部、司法部、国防部以及环境部的部长。鉴于国内问题和一些腐败丑闻，总统还在保安部队的高层进行了广泛的人事调动。

12. 国际社会继续在各个领域向哥伦比亚提供支持和合作。在这一方面的一件大事是：24个国家以及包括联合国在内的一些多边组织参加了2003年7月在伦敦举行的国际会议。参加会议的国家赞赏地注意到哥伦比亚政府为实施联合国人权事务高级专员提出的建议而作出的承诺，并且敦促该国政府立即实施这些建议，同时针对有罪不罚以及政府官员同非法武装集团勾结，特别是同准军事集团勾结的问题采取有效行动。在本报告完成之时，在哥伦比亚政府于伦敦会议所做承诺的后续行动方面尚未取得明显进展。

13. 在2003年，政府同相当数量的准军事集团开展了更多的会谈。2002年12月宣布了停火，同时政府试图同哥伦比亚联合自卫团(AUC)进行会谈，在此以后于2003年7月15日签署了《Santa Fe de Ralito协定》。根据这项协定，有关各方同意准军事武装力量将于2005年前全部复员。必须指出，尽管作出了停火承诺，准军事武装人员仍然继续在2003年对平民采取暴力行动。11月底，复员工作开始进行，在麦德林有870名准军事武装人员交出了武器，并且在La Ceja(Antioquia)的一

个旅游胜地集中培训了 3 周，为重返社会做好准备。在培训过程中提出了一些问题。有些问题涉及已经复员的准军事武装人员的法律待遇，另外一些问题涉及如何确保受害者在了解真相、伸张正义和获得赔偿等方面的权利。

14. 关于游击队，政府宣布愿意最终同游击队开展对话，但是他们必须宣布停火并且释放所有人质。政府还警告说，它在任何情况下都不会为叛军设立“非军事区”。为了促进谈判解决冲突，政府重申相信联合国秘书长驻哥伦比亚特使能够顺利斡旋。

15. 哥伦比亚革命武装部队和民族解放军在 2003 年 8 月发表了一项联合公报，拒绝同政府开展任何“政治和解和民族对话的进程”。然而，革命武装部队继续试图同政府签署一项协定，其中规定用他们扣压的人质交换被囚禁的游击队员。去年 5 月，保安部队营救人质行动失败，结果革命武装部队杀害了 10 名人质，其中包括 Antioquia 省的省长及其顾问(一名前国防部部长)。在过去一年中，哥伦比亚的一些社会阶层曾经试图促成签订几项特别协定，但是由于人质被杀，这一方面的进展受到挫折。

二、国家政策和有关国际建议的后续行动

16. 为了使得国家政策能够妥善和全面地纳入高级专员的建议，高级专员驻哥伦比亚办事处鼓励副总统领导下的政府后续行动，并且同有关部门合作分析和评估了在执行这些建议方面所取得的进展。一般来说，可以说哥伦比亚政府已经审议了这些建议，并且已经开辟了渠道以便有关政府机构同办事处就这些建议进行讨论和规划。然而，似乎上述建议并没有获得优先地位，仍然没有纳入哥伦比亚政府的公共政策，而这可能就是建议所采取行动同政府某些措施发生冲突的原因。同时这也说明，政府并没有完全理解建议的目的是要促进和支持哥伦比亚在改进人道主义和人权状况方面取得进展。²

17. 2003 年，人权和国际人道主义法政策受到政府“民主安全”政策的严重影响。这项政策特别影响到立法议程以及保安部队和司法部门和监督部门的行动。同样，武装冲突的演变及非法武装集团的行为也对基本权利和自由以及法制的有效性产生了负面影响。

18. “民主安全”政策的目的是据说是“通过加强民主权利增强和确保全国的法制”，并且确保所有公民的安全。这项政策还希望恢复国家对国土的全面控制并且

击败恐怖主义。这项政策的目的在于动员人民维持治安，特别是要支持政府武装部队并且与其合作。³ 通过制定这项政策，哥伦比亚政府将保安部队派往了全国几乎所有城镇。为了要使国家能够履行在维持治安、防止犯罪和保护人民方面的职责，派驻军队是十分重要的。也许正是这个原因，暴力行为的发生次数全面下降了，非法武装集团违反国际人道主义法的情况也有所改善。除此以外，这项政策也可能有助于促进治理能力和改进地方民主，而这些正是政府政策的目标。

19. 然而，这项政策并未取得预期的目标。在驻有较多保安部队的地区，例如 Arauca 省以及被称之为恢复和重建区的那些城镇，治理能力和维持治安方面的严重问题继续存在，有些地方的犯罪率还有所上升。同时，除了所报告的保安部队行为失当和司法控制有所削弱之外，准军事集团继续存在，社会服务方面的投资没有能够落实。除了保安部队之外，国家机构的存在是有限的。有时，调查专员办公室是唯一存在的民事机构。调查专员办公室和总检察长办公室的有关报告也指出了这一点。⁴

20. 绝大多数所采取措施的目的在于加强在全国各地的保安部队，同时在维持治安和保护民众等方面为国家提供更多的资源。在加强国家非军事机构方面并没有表现出同样的决心。在某些情况下，由于加强了保安部队和实施了有关政策，结果使得非军事机构、公民的宪法保障以及司法和监督机构的职权受到损害。根据政府的资料，民众参加军方和警方的联合治安活动在执行“民主安全”政策方面发挥了关键的作用，因为这种作法加强了同保安部队合作的情报网，同时也促进了农民自卫团的招募，但是这是违反区别原则的。

21. 毫无疑问，如果国家的控制机构可以采取必要的行动和获得必要的资源，那么政府在维持治安和保护人民的基本权利和自由方面所面临的巨大挑战可以更为有效和合法地予以克服。在过去一年中，司法部和总检察长办公室的官员在开展独立和公正调查方面的行动范围有所缩小，这是一个问题。那些在履行其审计和监督职责方面表现出较大独立性和热情的机构已经受到政府多次威胁，说是要通过立法提案来限制这些机构的职权。这种情况主要影响到宪法法院和总检察长办公室。⁵

22. 同样，应当指出，高级专员驻哥伦比亚办事处并没有发现政府和国会根据高级专员的建议采取了旨在加强调查专员办公室的具体行动。然而，必须提出，在面临危险的民众集中居住的一些地区在国际社会的支助下设立了社区调查专员这一职务。这种作法部分符合高级专员的建议：在有大量土著人、非裔哥伦比亚人以

及流离失所民众居住的地区要确保设立调查专员办事处。上述事实说明，实施政府的政策并没有能够加强法制。

23. 旨在打击准军事集团以及这些集团同官员勾结现象的政策并没有取得明显效果，同政府的说法有相当差距。在 2003 年年底，重新设立了打击非法自卫团和其他非法武装集团的指挥中心，同时国防部于 9 月和 10 月就“放手打击非法自卫团”的问题发出了指示和通知。这些做法说明，问题继续存在，同时也解释了为何政府要指出它的一项主要活动是：“开展内部监督和调查，以免军事机构的成员同非法武装集团勾结”。⁶

24. 驻哥伦比亚办事处继续收到有关官员同准军事集团勾结现象继续存在或者甚至加剧的申诉。所收到的报告涉及：准军事集团在行动之前对于保安部队的动向非常了解；政府官员同准军事集团指挥员开展不适当的接触；保安部队成员了解准军事集团的到达时间；尽管在军事设施附近存在固定的准军事集团基地，保安部队也不采取行动；甚至有人声称，警方人员就可能的目标向准军事集团提供情报。7 驻哥伦比亚办事处观察到并且继续收到有关准军事集团在保安部队曾经采取行动的区域内部署和休整的申诉，这些区域包括麦德林的 Comuna 13 地区以及 Medellin 省东部的一些城镇。

25. 根据实地观察的结果，可以说，根据“民主安全”政策所采取的措施的目的更加强调打击叛乱集团而不是准军事集团。虽然所采取的行动和抓获的准军事集团成员都有所增加，但是不足以构成对于准军事集团组织的打击，不足以制止这些集团的发展或者防止针对民众的罪行。

26. 准军事集团继续活动而且没有得到应有的惩罚，这一事实说明，政府在处理这类暴力行为时需要采取适当和连贯的行动。根据高级专员的建议，政府和国防部必须采取更为有效的措施，以便制裁那些支持或者容忍准军事集团的政府官员。政府同联合自卫军之间的谈判并没有充分考虑到可能的法律后果，同时也引起人们对于有罪不罚的现象的严重关注，因为有些人的行为已经构成战争罪和反人类罪，有些政府官员同这些罪行可能有牵连。同时人们还关注到在了解事实真相，伸张正义和获得赔偿等方面有关高级专员建议的后续行动。⁸

27. 此外，从总检察长办公室的机构政策来说，到目前为止，还没有发现在调查准军事集团和政府官员严重侵犯人权的行为方面就打击有罪不罚现象作出足够

有效的承诺。特别严重的是：还没有就有关类似情况的一些申诉作出调查。⁹ 2003年11月，总检察长向高级专员驻哥伦比亚办事处发出一份谅解备忘录，保证将在人权和国际人道主义法股中设立一个专家小组，根据高级专员的建议调查这种可能的联系。在明年的报告中将就这一保证的执行情况作出评估。¹⁰

28. 国家有关打击有罪不罚现象的政策仍然没有取得具体成效。政府根据有关人权和国际人道主义法的总计划计划在共和国副总统办公室内设立了打击有罪不罚现象股。根据同荷兰签订的协议，政府保证通过一个专门委员会的工作以及制订和执行有关打击有罪不罚现象的公共政策，推动调查严重侵犯人权和违反国际人道主义法的案件，并且采取后续行动。尽管高级专员已经就这个问题提出建议，但是高级专员驻哥伦比亚办事处注意到该特别委员会(一个由副总统协调，专门负责推动侵犯人权案件调查的机构间机制)并没有取得预期的成效。该委员会选定了一些需要优先注意的案件，并且就此制订了工作计划，但是到目前为止，还没有在打击有罪不罚现象和调查的有效进展方面取得明显效果。

29. 在实施其军事战略和制止暴力行为和恐怖主义的战略的同时，政府鼓励非法武装集团的成员放下武器。在这一方面，于2003年1月22日通过了《第128号法令》，规定了一系列的法律优惠，其中包括规定：如果曾经犯下政治罪或者其他罪行的武装集团成员决定自愿放下武器，就可获得赦免以及行政和福利津贴。根据政府统计，从2003年1月1日至11月19日，共有2,136名非法武装集团的成员放下武器，其中1,139名属于革命武装部队，350名属于民族解放军，647名属于准军事集团；其中包括329名未成年人和300名妇女。驻哥伦比亚办事处获悉，在执行重新融入社会计划的过程中曾经遇到一些困难，使得一些人决定重新拿起武器，参加以前的敌对集团，特别是一些革命武装部队的成员决定参加准军事集团。

30. 除了上述法令以外，政府还于2003年8月提出了一项法案，目的是要让某些非法武装集团的成员享受法律优惠，这些成员因为曾经犯下严重罪行，其中包括战争罪和反人类罪，因此被排除在《第128号法令》的优惠范围以外。这项法案规定中止拘留制裁，并且提出了一系列该法案称为“替代制裁”的措施。人们对这些规定可能会造成有罪不罚现象表示关注。除此以外，人们还对这项提案的合理性和方式提出怀疑，因为法案的对象不仅仅是已经签署和平协议的武装集团的成员，同时还包括那些“个别地和自愿地放下武器的”成员。这项法案不符合国际准则和

原则，也不符合高级专员的建议，因为在同非法武装集团进行会谈和谈判时并没有考虑到受害者有关了解真相，伸张正义和获得赔偿的权利。

31. 国家有关国际人道主义法的政策是同上述因素、谈判以及打击暴力行为和恐怖主义活动的斗争联系在一起。尽管政府在有关民主安全和国防政策文件中作出了明确的承诺(政府宣布：“将严格尊重人权和国际人道主义法”)¹¹但是政府的言词和实际做法经常是不一致的。政府往往不承认国内武装冲突的存在，也不承认同这种武装冲突有联系的包括反恐怖主义斗争所有内容的一些具体法律问题。高级专员驻哥伦比亚办事处重申，正如高级专员在其建议中所指出，必须确认同武装冲突有关的人道主义义务和规定，特别是有关区别、限制以及程度的原则。

32. 高级专员曾经就履行有关杀伤人员地雷的国际义务提出了建议，政府在这一方面已经采取了积极行动，特别是在杀伤人员地雷观察站的框架内采取的行动，具体来说就是拟订了一项详细的有关禁止杀伤人员地雷的综合国家行动计划。另外一项积极行动是加强了有关禁止杀伤人员地雷行动的信息系统。高级专员驻哥伦比亚办事处感兴趣地注意到，2003年6月26日，哥伦比亚根据《关于禁止使用、储存、生产和转让杀伤人员地雷及销毁此种地雷的渥太华公约》开始销毁储存的地雷。尽管在观察站问题上取得了进展，但是在以下方面仍然存在困难：在雷区以及危险区域树立标志牌；防止民众、特别是流离失所人员和返回家园的人们遭到地雷伤害以及加强地雷受害者的援助机制。

33. 立法政策是政府政策的一个关键内容，因为政府希望通过修改法律取得更大的影响和成效。¹² 第一批获得批准的法律包括《国家发展计划》，其中载有关于经济、社会和环境问题的条款。值得强调指出的是：通过了几项法律，使得一些国际条约获得国内批准。必须强调指出的是，除了有关买卖儿童、儿童卖淫和从事色情活动的《儿童权利公约任择议定书》之外，在现政府任期内，到目前为止哥伦比亚还没有批准任何需要承担国际义务的书。

34. 提出了一些法案来修正宪法。其中三项法案涉及立法，一项是《反恐怖主义法案》；另外一项法案修改了总检察长办公室在审查武装部队成员违法行为方面的职权；第三项法案涉及对国家机构进行结构调整。同时还提出了一些法案来修订《刑法》、《刑事诉讼法》、《感化和监狱法》、《总检察长办公室组织细则》、《司法执行工作成文法》以及有关义务兵役制的一些规定。同时提出的还有关于应

付恐怖主义活动的国家法案和有关国家安全和防务的法案。一般来说，立法提案都强调要加重刑法和规定新类型的罪行，同时也削弱了宪法和法律的保障。与此同时，矛盾的是，有些法案要求更加宽大处理那些犯下战争罪和反人类罪的人员，例如一项法案涉及让非法武装集团人员重返社会。

35. 应该指出，于 2003 年 4 月提出并于 12 月批准的《反恐怖主义法案》包含了一些修改宪法的规定。这些规定赋予武装部队以司法和警察的职权，从而直接违反了高级专员以及 2003 年第五十九届人权委员会主席所提出的建议。这项法令还规定，可在没有事先签发逮捕令的情况下进行行政拘留和入屋搜查，以及截取私人通讯，同时还可以在将疑犯移交司法机关之前对其进行长期的行政拘留，从而严重影响人身保护令的有效实施。

36. 除了违反国际义务之外，这种立法政策还使得人们怀疑修改法律的关联性和有效性。似乎政府认为，其政策目标的实现不是取决于采取具体行动及其成效，而是更多地取决于法律。考虑到哥伦比亚司法制度和传统的稳固性，人们不仅要问，对于实现安全政策的目标而言，全面实施现有法律和加强政府机构难道不是一种更为适当的方法吗？

37. 防止犯罪的政策主要强调加强预警系统，特别是建立了机构间预警委员会，其目的是要改进国家的协调和反映。根据高级专员的建议而采取的这种积极行动在风险评估和反映的有效性方面还是存在缺陷。由于在本报告附件中所阐述的各种因素，政府机构的几次反应都没有能够防止暴力行为或者侵犯行为的发生。

38. 关于保护某些脆弱群体的政策，这些群体包括：人权捍卫者、工会代表、新闻记者、爱国联盟和共产党的成员以及地方官员，政府已经开始实施内务部的一项外部评估所载的建议，这项评估是政府于去年在国际劳工组织以及驻哥伦比亚办事处的资助下开展。然而，在实际操作方面仍然存在问题，特别是风险评估问题。由于缺乏更为有效的程序，无法避免风险因素，同时也由于国家以及政府官员没有一项一贯的政策，因此到目前为止都无法有效地执行高级专员在这个问题上的建议。

39. 经济和社会政策的一个主要特点是增加了有关基本权利的公共开支，但是这种做法会损害某些脆弱群体的利益，而且受益程度也不公平。经济政策优先考虑减少财政赤字和增加用于安全方面的资源。这种优先考虑会损害社会政策。不公平

差距没有缩小，人口中处于最不利地位的阶层并没有获益，因此高级专员有关这一问题的建议并没有得到落实。

40. 必须强调指出，非法武装集团根本没有执行高级专员就武装冲突和尊重国际人道主义法的问题向他们提出的建议。

三、国际人道主义法：武装人员的违反行为

41. 在哥伦比亚武装冲突中，违反国际人道主义法是指违反 1949 年 8 月 12 日《日内瓦公约》及其《第二附加议定书》所共有的第三条、国际刑法、以及惯例法的行为或不行为。卷入敌对行动的所有各方，无论国家、游击队或准军事集团，必须履行国际人道主义法规定的义务。本报告指出的许多违反行为，如果做为一个计划或一项政策的一部分予以执行或者是大规模事件中的一部分时，就构成战争罪。其中一些违反行为也可能构成危害人类罪。如果发生在 2002 年 11 月 1 日对哥伦比亚生效日之后，这两种类型的犯罪可以提交到国际刑事法院审判。

42. 根据副总统办公室提供的数字，与 2002 年相比，2003 年头 8 个月中大屠杀、攻击平民、不分青红皂白地攻击、劫持人质、强迫流离失所以及恐怖主义行为的数量有所减少。尽管如此，但值得强调的是这种违反以令人十分担忧的数量继续发生，正如政府记录的 54 次大屠杀中有 312 名受害者所显示。¹³ 关于恐怖主义行为，值得指出它们造成违反国际人道主义法的比例上升，主要因为游击队小组采用这种攻击形式，而不是其他攻击形式。

43. 在大量存在非法武装集团的地区，甚至有更多的平民受害。由于恐怖主义行为、杀人、酷刑、行动自由和基本必需品的运输受到限制、对个人财务的毁坏和掠夺，居民遭受越来越大的压力和镇压。

44. 根据截至 2003 年 10 月的数字，国家中的杀人率与上年相比在全国出现下降。然而，在 Sincelejo (Sucre)、Santa Marta (Magdalena)、Bucaramanga (Santander) 和 Cúcuta (Norte de Santander)等地，比率上升或保持在 2002 年的高水平。大屠杀继续主要发生在 Antioquia、Chocó、Norte de Santander 和 Valle 省。令人印象深刻的是，政府的数字中 55%的大屠杀是由不知名的肇事者犯下的。这些行为是否如政府去年指出大部分归咎于准军事集团，人们对此产生疑问。¹⁴ 国际人道主义法所要求的对平民提供的保护同样受到忽视，原因在于恐怖主义行为，特别是哥伦比亚革

命武装部队的恐怖主义行为，以及准军事团体采取对受害者施以酷刑后将其杀害、碎尸、并埋葬在万人坑的灭尸战略。

45. 有时平民的死亡被归咎于安全部队的成员，因为他们违反了区别、限制和适度的原则。同样，有些平民受伤和个人财产遭受毁坏的情况，是安全部队的活动造成的。¹⁵

46. 由于不分青红皂白的攻击、死亡威胁、劫持人质和强迫流离失所，发生了许多违反国际人道主义法的案件。游击队和准军事集团应对这些破坏行为承担责任。有时，安全部队因为不分青红皂白的攻击、威胁和强迫流离失所而必须承担责任。¹⁶

47. 游击队违反国际人道主义法使用杀伤人员地雷和其他爆炸装置增多，(至 2003 年 10 月)造成 90 多名平民和近 200 名安全部队成员死亡。针对电力和通讯技术设施的攻击减少，而针对管道的进攻增加，主要是由游击队进行的。此外，非法武装团体继续招募未成年人。儿童、少数民族和妇女继续是违反国际人道主义法的主要受害者，包括性虐待和奴役妇女的案例。¹⁷

48. 非法武装集团，特别是哥伦比亚革命武装部队，继续针对政府官员进行猛烈攻击或威胁，例如针对市长、镇长、市议员以及 2003 年 10 月 26 日的市级和省级选举中的候选人。

游击队

49. 游击队继续攻击平民和无视他们的豁免权。虽然观察到对城市地区的袭击数量减少，但 Cauca 和 Nariño 省尤其受到这些攻击的影响。游击队，特别是哥伦比亚革命武装部队，继续多次采取通过恐怖主义行动恐吓平民的战略。发生在 Neiva (Huila)、Cúcuta (Norte de Santander)、Puerto Rico (Meta)、Florencia (Caquetá) 和 Chita (Boyacá) 的恐怖主义攻击，造成许多平民伤亡，总检察长办公室将之归咎于哥伦比亚革命武装部队，只有第二次攻击归咎于民族解放军(虽然民族解放军拒绝对此承担责任)。还认为哥伦比亚革命武装部队也应对 2003 年 2 月 7 日波哥大市 El Nogal Club 大楼汽车炸弹爆炸造成 36 人死亡和 100 多人受伤的事件负责。¹⁸

50. 同样，哥伦比亚革命武装部队，有时还有民族解放军，应对完全无视平民生命和个人安全经常采用爆炸装置不分青红皂白地进行攻击负责。这种做法使包括儿童、青年和妇女在内的数百名平民成为受害者，在 Caquetá、Meta、Antioquia 和

Arauca 省越来越严重。有几次，哥伦比亚革命武装部队利用平民运输爆炸装置，致使平民由于爆炸装置爆炸而丧生，例如 4 月 17 日在 Fortul (Arauca) 一名 8 岁男童因骑的自行车在一个军事检查站附近爆炸丧生。

51. 此外，有大量游击队存在的农村地区的居民，受到叛乱分子的越来越大的压力，通常表现为行动自由和基本必需品的运输受到限制。同样在这些地区，哥伦比亚革命武装部队和民族解放军选择性地杀害当地官员、社会领袖、教师和候选人、以及他们指控属于国家情报者网或与准军事集团合作的人。

52. 哥伦比亚革命武装部队和民族解放军继续使用杀伤人员地雷。游击队也继续招募未成年人，有时采取强制招募。估计游击队的部队中有数千名未成年人。

53. 两个游击队都出于勒索金钱或施加政治压力的原因劫持人质，并且不同意无条件地释放人质。相反，在一些情况下，哥伦比亚革命武装部队将他们控制的人质杀害。Antioquia 省长、他的和平顾问和被逮捕的 8 名军人、哥伦比亚的 Bickenbach 夫妇，以及日本公民 Chikao Muramatsu 的情况即是如此。民族解放军最终释放了在 Sierra Nevada de Santa Marta 遭劫持的 8 名外国人质。¹⁹

准军事集团

54. 承诺进行停火是政府与最大的准军事集团哥伦比亚联合自卫队(或者称作 AUC)之间的任何对话进程的基本假设。必须强调指出，在多数地区未遵守此项承诺。2003 年存在大量可归咎于准军事集团的违反国际人道主义法的情况，尽管比上一年记录的数量减少，但违反了上述承诺以及他们于 2002 年底宣布的单方面停火。

55. 这些集团是发生在 Antioquia、Santander、Sucre 和 Tolima 的集体大屠杀的肇事者，尽管与 2002 年相比数量下降。也存在这些大屠杀的数量被低估的可能。有选择的杀人的做法继续存在，准军事集团屡次选择对受害人进行拘留和施以酷刑之后将他们杀害并且毁尸灭迹，作为针对平民的一个恐怖战略。同时，这个战略使得难以确定承担责任者，在他们已作出解除武装和停火的政治承诺时，令人关注。仅在 Barrancabermeja 市一地，2003 年 1 月至 8 月间，调查专员办公室收到关于人员失踪的 45 件申诉。2003 年，高级专员驻哥伦比亚办事处收到了更多的申诉，关于主要在 Tolima 和 Antioquia 发现万人坑并且尸体明显存在酷刑和肢解迹象。²⁰

56. 准军事集团的受害者通常是被他们指控与叛乱部队有联系的人；反对准军事集团扩张其社会、经济和政治影响的社会领袖和政府官员；控制非法生意的竞争对手(毒品走私、偷盗燃料等)；以及社会清洗的受害者。

57. 2003 年期间还引人注目地观察到准军事集团的内部纠纷造成了大量的死亡。驻哥伦比亚办事处注意到准军事集团之间，特别是 Cacique Nutibara Block 和 Metro Block 之间，以及哥伦比亚联合自卫队和 Autodefensas Campesinas of Casanare 之间的对抗显著增加。

58. 准军事集团中存在未成年人的证据，是 Central Bolivar Block 中的 40 名未成年人，Autodefensas Campesinas of Meta 和 Vichada 中的未成年人，以及被解除武装的 Nutibara Block 团体的 40 多名未成年人投降。用准军事威胁或活动迫使人们流离失所，是一项经常采用的战略。

59. 根据驻哥伦比亚办事处收到的情况及其实地观察，在几起违反国际人道主义法的案件中，准军事集团得到官员的支持、勾结或同谋。²¹

保安部队

60. 据报导，在部队恢复进攻的地区，有时保安部队成员应对无视区别原则违反国际人道主义法承担责任。²²

61. 高级专员驻哥伦比亚办事处收到几起申诉，涉及不分青红皂白地进行轰炸或发射机关枪，特别在 Cauca 造成个人财物毁坏、以及在 Culebritas 地区和 El Carmen (Norte de Santander)市造成平民伤亡。此外，军用飞机或直升机的行动也造成农村地区的平民流离失所，2003 年 3 月在东 Antioquia 的 San Francisco 市的“Operación Marcial”，即是一例。在同一次行动中，驻哥伦比亚办事处收到了涉及杀害两个平民的申诉。同样，据报导，2003 年 1 月在东 Antioquia 的 Granada 管辖区的 Santa Ana 进行的 Emperador 行动中，包括一名未成年人在内的 4 个平民被处决。在两个案件中，驻哥伦比亚办事处还收到部队成员虐待平民、破门而入、毁坏个人财物以及进行抢劫的申诉。²³

62. 军队试图切断游击队的供给的战略在一些情况下影响到平民，因为他们受到军队的侮辱、虐待、抢劫和威胁。还据报导，在一次镇压叛乱行动中使用平民作

为人体盾牌，致使平民受到严重威胁并造成一人死亡(2003年7月在 Arauca 的“Independencia”行动)。

63. 值得指出的是，据报导，保安部队成员限制食品、汽油和其他基本必需品的运输，特别是在 Medio Atrato、Santa Marta 的 Sierra Nevada 和 eastern Antioquia 地区。据报导，还存在陆军或海军部队在 Colosó (Sucre)市侵占住房或学校及医疗中心等公共建筑的案件，使平民受到威胁并违反了区别原则。

64. 此外，Nariño 的土著理事会会长和有关机构报告，2003年3月军队不分青红皂白地征募土著青年，违反了少数民族免于强制兵役的现行规定。驻哥伦比亚办事处还收到保安部队成员特别是在情报行动中使用未成年人的申诉。

65. 同样，收到了关于违反国际人道主义法的申诉，其责任在于保安部队成员，因为存在不作为、容忍或与准军事集团共谋的情况。²⁴

四、人权状况

66. 影响国际人权和刑法文书或一般国际法一般准则确立的权利的行动和不作为，如果是由公务员或在当局同意下作出，就构成了对那些权利和准则的侵犯。在没有履行保障义务时，而这种不履行还是故意的，并且政府官员未参与这些行为的准备、行动或掩盖，那么这些侵犯的责任只在于失职。当政府官员牵涉进准备或做出一个行为或掩盖该行为或保护罪犯时，应对有关违反行为承担责任。

67. 哥伦比亚的人权状况仍十分严峻。在这一年间，记录了有关侵犯下列权利的申诉：生命权、身体完整权、人身自由和安全权、正当司法程序和法律保障权、独立和公正司法权、尊重私生活和家庭权、在迁徙、居住、主张和发表意见方面的基本自由权、政治权。驻哥伦比亚办事处继续收到越来越多的侵犯人权的申诉，显示出公务员，特别是保安部队成员并且有几次与总检察长办公室成员共同负有直接责任。根据总检察长办公室提供的资料，可以注意到2003年进行的纪律调查增加，特别关于酷刑、强迫失踪、非法拘留和不当搜查。基于其严重、巨大或一贯的性质，许多这类侵权行为构成危害人类罪，可由国际刑事法院进行审判。

68. 经济、社会和文化权利继续受到贫困、排外、社会不公正、以及财富分配差距扩大的影响。由于武装冲突特别是流离失所，使这种状况更加严重，对弱势群

体的权利产生了更大的影响。同样，令人关注的是，缺乏用以适当评估政策对上述群体产生的影响的最新官方统计数据。

69. 2003 年期间，国家的结构调整政策影响到负责提供社会支助的机构。尽管教育和卫生方面的公共开支增加，最贫困的人口仍被严重忽视。不公平的教育体系继续存在，缺乏免费基础教育方面的保障。注意到失业率出现小幅下降，但比率仍然较高。间接税增长，使处于最不利地位的人受到更大的影响。关于住房权，考虑到贫困人口和高利率，提供的补贴不足。

70. 武装冲突，特别是非法武装集团的行为，对人权状况产生了不利影响，使国家对问题作出有效反应所需的条件和资源恶化。在此方面，在作出适当反应和履行义务方面，政府确定优先次序是特别重要的。

71. 仍有关于即审即决、法外处决或任意处决申诉的报道。关于严重侵犯行为的申诉存在日益增长的趋势，例如强制失踪、任意逮捕、任意干涉私生活和家庭生活、酷刑和虐待、以及无视司法保障。其中一些侵犯行为是保安部队在执行政府的安全政策时犯下的，原因在于总检察长办公室官员的司法控制不力、以及有时国家检察机关(Ministerio Público)官员的控制不力。在其他情况下，由于某些规定给予保安部队包括军队在内授权，可以在限制人权和基本自由方面未经许可采取行动，因此产生侵权。²⁵

72. 据报道，存在几起可直接归咎于保安部队的法外处决。²⁶此外，据报道准军事集团进行集体处决或大屠杀，由于公务员不作为或共谋，其责任可归咎于国家，例如分别发生在 Tolimat 和 Araucar 的情况。还据报道，国家由于不作为或与准军事集团共谋，应对发生在 Antioquia、Arauca、Cauca、Cesar 以及 Cundinamarca 省的即审即决承担责任。²⁷

73. 与 2002 年相比，驻哥伦比亚办事处收到的关于主要由准军事集团造成的并且责任也归咎于保安部队的强迫失踪申诉的数量增加，这种情况令人关注。这些申诉涉及保安部队广泛存在并实施控制的地区，据报道存在公务员容忍准军事活动并进行共谋的报道。此外，旨在找出肇事者并确定其责任的调查未取得结果。还据报道，一些强迫失踪可直接归咎于保安部队。²⁸

74. 驻哥伦比亚办事处同样记录到由于国家机构进行任意逮捕造成的侵犯个人自由权的申诉增加。其中一些违反行为是在执行安全政策时发生的，有些是由于

警察和军队在未办理逮捕证的情况下进行大规模逮捕和拘留；有些是由于逮捕证办理不当，因为一些被剥夺自由者的身份事先未得到确认，或者根据伪装告密者或情报的描述采取行动。²⁹

75. 驻哥伦比亚办事处在上述几个案件中收到关于总检察长办公室官员行为的许多申诉。还据报道，总检察长办公室其后批准保安部队进行所谓“自愿”搜查和袭击，进行逮捕不必满足合理或合法的要求，或者采用不符合国际规则的“永远犯罪”的概念。此外，驻哥伦比亚办事处收到关于重新开始平民生活的前游击队员将被拘留者指认出来之后，才发出逮捕令的案件的申诉。据称这些不规则的作法在总检察长办公室合作下发生在军事设施之内。³⁰

76. 与去年相比，据报道，由于保安部队成员的残忍、不人道和有辱人格的待遇和酷刑，关于侵犯人格完整权的申诉增加。³¹ 由于安全人员对被逮捕的个人或监狱中的囚犯过份使用武力，关于这种侵犯的申诉也增多。后者案件主要发生在根据所谓新监狱文化点造的监狱设施当中。³² 这些监狱主要位于 Acacias(Villavicencio)、Cómbita(Boyacá)、La Dorada(Caldas), Palo Gordo(Bucaramanga)、Valledupar(Cesar)以及特别 San Isidro(Popayán)。³³ 此外，该国监狱严重拥挤的情况也令人关注。³⁴

77. 在获得司法、司法独立和公正、司法保障、无罪推定、以及不治罪方面，司法裁判继续存在问题。注意到在获得司法方面存在问题，不仅由于在国家的一些城市缺乏检察官和法官，而且由于武装冲突造成的影响。

78. 司法独立和公正受到几个因素的影响。在一些情况下，立法规定使得不能尊重这项原则，例如关于国家紧急状态的规定，在国内骚乱(紧急状态)下，包括军队在内的保安部队有权在缺乏主管当局事先发出的许可令的情况下，进行逮捕、搜捕、搜查、以及采取司法警察职能内的其他行动。同样，在军事设施中存在检察院的分支机构，例如在 Arauca，所以检察官的独立性受到怀疑。在其他情况下，由于总检察长作出违反司法独立和检察官自主权原则的决定，检察官作出的决定和进行的调查导致他们被解职或将调查交给其他检察官进行。³⁵

79. 应特别提及检察总署为跟踪和控制某些条款的解释或适用进行的努力，例如在所谓恢复和巩固区对公务员行为报告进行评估，对 Bojayá(Chocó)的局势进行跟踪，或者对政府提出进行公民投票提出正式意见。³⁶ 另一方面，驻哥伦比亚办事处注意到国家检察官机构(Ministerio Público)代表的行动不一致。在一些案例中，国家

检察官机构(Ministerio Público)对履行作为预防和纪律控制机构的职责采取严格和严厉的态度,例如在 Medellín。在其他案例中,检察总署与总检察长办公室一样,赞同和核可安全部队和检察官的行为,同样予以容忍和缺乏严厉的态度,例如在 Arauca。

80. 另一个值得关注的因素是,国家当局多次在新闻媒体中报道被逮捕或抓获的人,把他们说成是游击队的成员,因此无视无罪推定和尊重人格尊严的原则。

81. 另一个影响到司法独立和公正的因素是,由军事司法系统审判或继续在该系统管辖之下的案件,存在侵犯人权或违反国际人道主义法的情况。³⁷

82. 哥伦比亚的普通人、记者、媒体代表、以及国家中的学者和知识分子在充分履行见解和言论自由权方面继续遇到困难。据报道,由于执行安全政策以及某些立法措施的影响,在国家的一些地方,主要是 Arauca 省,存在关于侵犯这些基本自由的一些申诉。驻哥伦比亚办事处注意到并收到保安部队任意非法限制新闻自由、以及违反其保障和保护义务的侵权情况。³⁸

83. 关于迁徙和居住自由,应当强调,与去年相比新的强迫国内流离失所减少,尽管据报道数量仍令人担忧,特别是在 Antioquia、Bolívar、Norte de Santander、Cesar、以及 Cundinamarca。社会团结网络报告,到 2003 年 9 月存在 130,000 名以上新流离失所者。由于缺乏本可以防止成为新流离失所者或保护受害人的措施或措施不足,国家应对其中一些事件承担责任。

84. 尽管政府在 10 月举行市级和省级选举期间采取了保证人民安全的措施,但一些候选人和选举人无法行使他们的投票和被选举的政治权利。在一些情况下,农村地区的居民无法为进行投票登记他们的个人身份文件,同样,大量的候选人只能在不平等和不安全的条件下进行竞选。

五、特别脆弱群体的状况

人权维护者

85. 包括工会会员(特别是教职工和医务人员)在内的人权维护者的状况仍然严峻。虽然针对他们的杀人、攻击、强迫失踪和劫持人质减少,但这些暴力行动继续影响到他们。这些犯罪主要归咎于准军事集团,在一些案例中归咎于哥伦比亚革命武装部队,还有一小部分应由民族解放军负责。

86. 武装冲突的发展显示武装团体特别是准军事组织的惯用伎俩发生了变化，他们采用更隐蔽的战略，由于避免直接危害人权维护者的生命，因而对公众的影响较小。还应该提及对这个群体的威胁因素发生了变化。事实上，针对包括民间社会组织和工会与办公室在内的大量逮捕和大规模搜捕政策以及某些政府机构的行为，造成人权维护者在工作中受到更多的限制，在表达意见时有所保留，并使他们对活动进行限制。

87. 在副总统办公室领导下，政府为与人权和平组织以及工会交换意见作出了安排。值得提及的是 2003 年 7 月国防部发出的第 09 号令获得通过，批准了上一届政府 1999 年 9 月的第 07 号总统令，指示公务员尊重人权维护者及其组织的工作。

88. 然而，这种伙伴关系以及有关法令产生的积极影响，由于政府当局的某些公开声明而被抵消。高级政府官员³⁹ 对人权组织的工作性质提出质疑，指控他们为恐怖主义服务。这削弱了尊重上述法令的合法性和可能性，可能鼓励针对参与维护人权或工会运动的人的自由和隐私采取行动。

89. 根据民主安全政策，非政府组织成员、社会领袖和工会领导人遭到任意逮捕并被指控进行叛乱。他们中有几个人在被逮捕时正受到美洲人权委员会所要求的预防性措施的保护，并且受到司法和内政部保护计划的保护。

族裔群体

90. 族裔群体的人权状况仍然严峻，特别是土著人和非裔哥伦比亚人。此外，包括 Raizales 人(San Andrés、Providencia 和 Santa Catalina 的克里奥尔语和英语居民)和罗姆人在内的这些群体的经济、社会和文化权利继续遭受侵犯，受到种族歧视、贫困、排外的影响，并且他们的特殊权利被否定。上述情况反映在缺乏关于族裔群体的社会和经济数据上，结果导致缺乏解决其特殊需求的差别政策。

91. 武装冲突造成土著和非裔哥伦比亚人社区的状况恶化。据报道，由于杀人、死亡威胁和强迫流离失所、以及非法武装团体对社区的限制加强，针对传统权力机构和领袖的选择性的暴力活动增多。这影响到社区的自主权，因此削弱了其内部组织和权力机构的代表级别。100 多名土著人和权威人士被杀害，其中 50 人是 Kankuamo 人(Sierra Nevada de Santa Marta)的政治和精神领袖，主要应归咎于哥伦比

亚联合自卫队。保安部队在保护这些社区方面缺乏有效行动以及他们的污蔑行为，只偶尔受到质疑。

92. 应该强调国家在保护和预防方面取得的某些进展，特别与土著人相关，以及调查专员办公室通过社区维护者得以在以前存在极少并且土著和非裔哥伦比亚人高度聚居的地区扩大其存在。然而，在满足教育、医疗、就业、住房和基本卫生设施要求方面国家作出的回应仍不足。尽管宪法法院作出了重要决定：确认如果在土著人保留地对非法作物进行熏蒸，事先必须与土著人进行磋商，但国家在开发资源项目中仍继续侵犯这项权利。

妇 女

93. 应当提到，政府所有部门于 2003 年 10 月签署了关于性别平等的全国性协定，并且通过了关于性和生殖健康的国家政策。尽管这样并且在立法方面取得了一些进展，但性歧视、排斥和暴力持续存在，继续影响男女之间的真正平等。需要在这项妇女政策的执行和有效性方面取得更大的进展。政府就此问题作出的承诺由于未加强机构，结果导致缺乏行政、预算和技术自主权而被削弱。

94. 在武装冲突情况下针对妇女的多种形式的暴力，继续影响到她们的权利。驻哥伦比亚办事处收到关于准军事集团和保安部队成员进行强奸的申诉、以及游击队进行性奴役的申诉。非法武装集团继续对妇女施加社会压力，旨在削弱她们的组织进程和参加公众活动。面临这种情况，国家在保护、防止、调查和惩罚这些行为方面缺乏有效的回应。特别令人关注的是，目前由军事刑事司法制度管辖的强奸案件。⁴⁰

95. 参加敌对行动的妇女的权利，特别是性和生殖权，特别受到非法武装集团内部滥用权力的影响。同样，哥伦比亚革命武装部队继续强制使用避孕工具和强制进行流产。

儿 童

96. 大量儿童继续成为侵犯生命权的受害者，并且还受到遗弃、童工、性剥削和性虐待、身体虐待、以及家庭暴力的影响。⁴¹ 在经济、社会和文化权利方面，儿童和青少年是这一领域中的主要受害人。同样，武装冲突对儿童具有很大的消极影响，特别因为劫持人质⁴²、招募、流离失所、以及对他们的社区和家庭违反人道主义法造成的后果。⁴³

记 者

97. 记者的处境仍然危险，自由和独立地进行工作的空间、以及见解、言论和信息自由的空间有限。2003 年期间记录了至少四名记者被杀害和处死。其中两人受到司法和内政部保护计划的保护，他们受到威胁的水平被评估为中下。非法武装集团继续对记者进行威胁和恐吓并劫持人质。在政府与准军事集团进行谈判过程中，准军事集团对报道他们犯罪情况的记者施加了更大的压力，特别是在波哥大。地区存在的威胁也归咎于游击队。为防止对涉及公务员的腐败案件的报道，还发出了其他匿名威胁。

98. 据报道，在一些情况下，在 Arauca 和 César 省的国家权力机构通过拘留记者和没收新闻工具阻碍记者的工作。尽管在 Arauca 省执行了民主安全政策，但在 3 月和 4 月间未能避免 15 名记者被强迫流离失所，因为非法武装集团发出威胁以及受到司法和财政部保护计划保护的一名受到威胁的记者被杀害。那么可以得出结论，在 Arauca 省采取的措施未能创造有利的条件，充分行使新闻自由并且以真实和公正的方式使人民行使了解情况的权利。由于这个原因，许多记者进行更多的自我审查，他们将其界定为“为生存自我约束”。

受到威胁的社区

99. 2003 年强迫流离失所的增长趋势得到扭转，据报道新的强迫流离失所者的数字已经下降。这个变化可以通过以下因素得到解释：例如，安全政策和政府安排的回返的影响；非法武装团体对社区的围困，例如在 Gabarra(Norte de Santander)；过去几年流离失所的严重性，使得几个农村地区实际上已经被放弃，例如在 Eastern Antioquia 或 Putumayo；还有政府与哥伦比亚联合自卫队之间的谈判的影响。保安部队的存在加强，未能在位于恢复和巩固区中的几个城市避免新的被迫流离失所。

100. 根据社会团结网络，1 月 1 日至 9 月 30 日期间约 76% 的强迫流离失所发生在 12 个省，受影响最大的是 Antioquia、César、Bolívar、以及 Putumayo，流离失所者中 4% 是未成年人，妇女占 50% (19% 是户主)，土著人占 4%，非裔哥伦比亚人占 5%。社会团结网络指出，总体不安全、武装对峙、有选择地威胁、大屠杀、以及非法武装集团占领城市，是流离失所的主要原因。根据同一个消息来源，自卫组

织对接近 33% 的流离失所负有责任，游击队 24%，保安部队 0.8%；35% 的流离失所是由一个以上的武装集团造成的。⁴⁴

101. 关注流离失所者的政策受到挫折。在医疗、住房、获得土地、以及生产项目方面给予有差别的关注，由于国家机构调整、政策缺乏界定、预算有限、以及积极的反歧视措施遭到削弱而受到影响。宪法法院在 2003 年 3 月作出的一项裁决中保护城市内流离失所者得到国家规定的津贴和援助的权利。尽管在紧急援助方面取得了成就，特别是在大规模流离失所的情况下，但对流离失所者，特别是妇女、儿童和族裔群体的经济、社会和文化权利十分忽视。此外，对有益于流离失所者返回原籍的政府政策特别感兴趣。然而，在这个网络推动的回返中，流离失所者是否愿意返回仍存在疑问，这是由于缺乏社会和经济选择、缺乏信息、以及缺乏参与和保障安全的进程；同时也由于对援助期限仍然存在时间限制、冲突持续、以及重建和搬迁的选择不多。

其他脆弱群体

102. 市级和省级官员(市长、议员和代表)、爱国工会成员、检察官、宗教团体成员、以及同性恋者可以被列入特别受武装冲突和国家人权状况影响的团体。到 2003 年 10 月，哥伦比亚城市联盟和全国议会联盟记录了 8 名市长和 56 名城镇议员被杀害。直至 2003 年 5 月，107 名市长不得不在他们的城市以外履行职务，多数是在各省的首府。此外，爱国工会成员持续处于脆弱状态。根据 *Reiniciar*，他们有 16 人遭到杀害(其中有 2 名市镇议员、1 名市长候选人、以及 1 名州长候选人)并且有 6 人被迫失踪(包括 1 名市长候选人)。同样，*ASONAL JUDICIAL*(全国司法协会)报告，截至 10 月份有针对司法官员的 17 起杀人事件、5 次攻击和 56 次死亡威胁。杀人、威胁和将其成员劫持为人质也影响到天主教和清教社区。最后，其他群体例如同性恋者，除了成为基于不容忍的暴力行为的受害者，在保护其权利方面未能取得立法进展。

六、建 议

103. 根据本详细分析，高级专员为 2004 年提出了一系列具体的重点和建议。这些建议不能说详尽无遗，现将其按以下六个标题列出：预防和保护；国内武装冲

突；法治和不受惩罚；经济和社会政策；弘扬人权文化；以及办事处的技术合作和咨询意见

104. 这些建议是针对政府中三大部门的国家机关及负责保护和增进人权事务的监督机构，并针对国内武装冲突各方和民间社会提出的。高级专员坚信，在 2004 年期间建议所涉各方面如能执行下列建议，人权和国际人道主义法方面的形势将会大大改观。

(a) 预防和保护

105. 高级专员鼓励政府加强调查专员办公室设立的预警系统与机构间预警委员会之间的协调，就当局在风险报告确认的领域采取的行动作出后续行动。委员会还应该包括调查专员办公室、社会团结网络、以及司法和财政部的人权维护者保护计划。

106. 高级专员促请该国政府确保由内务部人权司负责执行对人权维护者和其他团体提供保护的计划具有必要的覆盖面并有效运作。该部和其他国家机构应共同寻找旨在减少危险因素和相应采取预防行动的新机制。

107. 高级专员鼓励社会团结网络与其他政府和国家机构共同尽快落实与受到威胁的社区达成一致的预防性和保护性行动和方案。对流离失所者，应严格执行《联合国指导原则》。

108. 高级专员鼓励该国政府和议会确保在国家预算中列入所需的资金，向检察总署和调查专员办公室提供必要的手段，在所有地区设立分支机构，特别是在土著人、非裔哥伦比亚人和流离失所者占较大比例的地区。高级专员还建议检察总署和调查专员办公室将城市监察员全面列入其保护和促进人权的活动和方案。

109. 高级专员促请总检察长于 2004 年第一季度对关于人权维护者和组织的军事情报记录进行核查。这种核查每年至少应进行一次。

110. 高级专员建议国家检察官机构(Ministerio Público)和高级公务员对通过声明、行动或任何形式的失职玷污或破坏人权维护者的工作的任何国家雇员履行职责采取纪律行动。

111. 高级专员促请国防部在一项独立研究的结果基础上确定对安全部队所有成员的人权和人道主义法的培训。

(b) 国内武装冲突

112. 高级专员促请哥伦比亚革命武装部队、民族解放军和哥伦比亚联合自卫队及其他游击队和准军事集团尊重所有平民的生命权。高级专员促请他们在任何时候尤其不要攻击平民、滥杀、绑架、征募未成年人入伍、采取恐怖主义行动，以及从事其他令人无法接受的活动。

113. 高级专员促请哥伦比亚革命武装部队、民族解放军和哥伦比亚联合自卫队及所有其他非法武装集团立即无条件地释放所有人质、任何已经放下武器或者已停止参加敌对行动的人。

114. 高级专员促请哥伦比亚革命武装部队、民族解放军和哥伦比亚联合自卫队及所有其他非法武装集团，不要采取任何可能使平民享有的人权受到影响，并使哥伦比亚履行其保护和保障人权义务的能力被减弱的行动。

115. 高级专员促请非法武装集团，尤其是哥伦比亚革命武装部队和民族解放军遵守关于禁止使用、储存、制造和转让杀伤人员地雷的国际原则对其规定的义务。

116. 高级专员促请国内武装冲突中直接参与敌对行动的所有人员不受限制地遵守关于保护平民的有限、区别和适度的人道主义原则和一般义务，并且确保脆弱的群体能获得人道主义帮助。

117. 高级专员建议该国政府、非法武装集团和民间社会的代表不余遗力地建立联系，以开展对话和谈判，解决国内武装冲突，实现持久和平。对话和谈判时，开始即应考虑人权和国际人道主义法。高级专员鼓励该国政府和议会在与非法武装集团进行的所有对话和谈判中充分遵守了解事实真相、伸张正义、以及赔偿受害者的根本原则。

(c) 法制和有罪不罚

118. 高级专员鼓励该国政府和议会对哥伦比亚作为国际人权、国际人道主义法和国际劳工法文书的缔约国承担的义务给予应有的关注。高级专员建议该国政府批准关于这些事项的国际条约，并交存在国内已获得批准的条约的批准书。高级专员促请哥伦比亚立法不应采取或保留不符合这些文书的规则。他进一步建议更多地使用高级专员驻哥伦比亚办事处的咨询服务。

119. 高级专员吁请调查侵犯人权和违反国际人道主义法的特别委员会就挑选出的案件拿出具体的调查结果，并就这些案件的调查进展向共和国总统按季度提交报告。

120. 高级专员鼓励总检察长依照 2003 年 11 月与其驻哥伦比亚办事处签署的谅解备忘录保证在 2004 年上半年遵守 2002 年期间作出的建议。这些建议涉及保护证人和受害人计划、关于他的办公室的官员和雇员职级的法律、加强关于人权和国际人道主义法的机构、以及建立专门调查保安部队和准军事集团成员之间可能存在的联系的小组。

121. 高级专员鼓励总检察长维护和尊重检察官在履行所有职责中的独立性，并保障拘留和搜查程序拥有足够的证据作为根据并遵守适当的程序。

122. 高级专员吁请总检察长和监察员促进和尊重被剥夺自由但法律地位尚未确定者的程序保障。高级专员请总检察长和监察员就此事项提交公开报告。高级专员鼓励国家监狱和感化研究所保障和尊重所有囚犯的权利。

123. 高级专员建议国防部确保对可归咎于保安部队成员的严重侵犯人权或战争罪进行的所有纪律调查的有效性，并作为预防措施解除他们的职务。高级专员还鼓励将军事刑事管辖权限于服役期间的犯罪。

124. 高级专员建议共和国总统以国家元首和保安部队总司令的身份采取一切必要措施确保，无论政府与准军事集团进行的对话情况如何，一律断绝政府官员与此种集团的成员之间的联系。高级专员还建议总统就所采取的措施和执行结果每半年向国家检察官机构(Ministerio Público)提交一份报告。

(d) 经济和社会政策

125. 高级专员鼓励该国政府在最新统计数据基础上制订一贯的政策，缩小该国现有的不平等差距并解决极端贫困问题，确保采取一切必要的步骤降低文盲率和失业率，以及增加获得保健、教育和住房的机会。对人口中处于最不利地位的人应实行免费初等教育并保障获得医疗服务和住房补贴。

(e) 宏扬人权文化

126. 高级专员建议该国政府和人权维护者组织在国家和区域级别建立稳定的沟通渠道并实现机制化，以在全国加强谅解并促进和保护人权。

127. 高级专员建议该国政府通过人权和国际人道主义法常设跨部门委员会，与广泛的社会阶层合作制订一份关于人权和国际人道主义法的具体的并且包括性别政策的行动计划。应该于 2004 年第一季度就一份时间表达成一致，以确保在年底以前完成行动计划。

128. 高级专员建议教育部于 2004 年通过一份工作计划，使得全面人权教育确实成为中小学教育的一部分。

129. 高级专员鼓励国会、高级司法委员会、总检察长、高等公共行政学院、以及省长和市长协会就继续进行人权和人道主义法培训与检察总署和调查专员办公室作出安排。高级专员还建议调查专员办公室和其它机构利用其驻哥伦比亚办事处培训的人权教育者组成的网络。

(f) 办事处的咨询意见和技术援助

130. 高级专员促请该国以协调和有效的方式执行包括本报告的建议在内的国际建议，并鼓励共和国副总统、有关部长、和平事务高级专员、以及所有其他国家机构相互之间进行充分的协调。上述机构应于 2004 年第一季度内为执行这些建议起草一份时间表。在此方面，高级专员请他们利用其驻哥伦比亚办事处的咨询能力。

131. 高级专员请该国政府、国会、总检察长办公室、检察总署、调查专员办公室和民间社会组织加强与驻哥伦比亚办事处的对话，并全面利用办事处按任务规定提供的咨询意见和技术合作。高级专员还请国际社会向各个国家机构、民间社会、以及驻哥伦比亚办事处提供资金和技术支持，以利于建议的有效执行。

注

¹ For more information, see annex IV.

² See annex I.

³ See document “Política de Defensa y Seguridad Democrática” (Defense and Democratic Security Policy) Ministry of Defense, Presidency of the Republic, 2003.

⁴ See note A, annex II.

⁵ The first case was part of the proposed reform of justice, a bill that eventually was not formally presented to the Congress and was left for the next legislature. In the second case, the Congress withdrew the bill, taking into account the short terms left in the current legislature. See annex III of this report.

⁶ According to information provided by the Government in reply to the Office's request.

⁷ See annex II, para. 3.

⁸ See annex III, paras. 9, 10 and 11.

⁹ An example, the responsibilities of the institutions in the indiscriminate attack of Bojayá, in May 2002 (see Follow-up Report of the Office of the High Commissioner in Colombia, of June 2003); and in homicides and disappearances in the Comuna 13 of Medellín, as a consequence of Operation Orion, developed on 16 October 2002.

¹⁰ See annexes I and IV.

¹¹ See previously mentioned document "Política de Defensa y Seguridad Democrática", p. 19, para. 24.

¹² See annex III.

¹³ See statistics from the "Observatorio de Derechos Humanos de la Vicepresidencia".

¹⁴ See the report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2003/13, p. 54, para. 27 and note O.

¹⁵ See annex II, para. 20.

¹⁶ See annex II, paras. 10, 13, 14, 15, 16, 17, 18, 19, 24 and 26.

¹⁷ See annex II, paras. 27-30.

¹⁸ However, one month later, through a public communiqué, FARC-EP denied being responsible for this act.

¹⁹ See annex II, para. 24.

²⁰ See annex II, para. 23.

²¹ See annex II.

²² See annex II, para. 20.

²³ See annex II, para. 34.

²⁴ See annex II. See also paras. 23 and 24 of this report.

²⁵ See annex III.

²⁶ See annex II, paras. 2 and 3.

²⁷ Ibid., para. 3.

²⁸ Ibid., para. 6.

²⁹ Ibid., para. 12.

³⁰ Ibid., para. 8.

³¹ The Committee Against Torture reiterated "its concern for the great number of acts of torture and ill-treatments allegedly perpetrated in a generalized and usual way by the forces or corps of the State ...". See document CAT/C/CR/31/1, para. 8, of 18 November 2003.

³² The conditions and the internal regulations, under which these establishments function, may constitute cruel, inhuman or degrading treatments in giving excessive priority to the criteria of security and discipline.

³³ See annex II, para. 5.

³⁴ The Committee Against Torture has indicated that this situation could be equivalent to cruel, inhuman or degrading treatments (see documents CAT/CR/31/1, page 5, para. 10, point D.e).

³⁵ See annex II, paras. 9 and 10.

³⁶ Ibid., para. 10.

³⁷ Ibid., para. 3.

³⁸ See chap. III of this report.

³⁹ Among them, the President of the Republic, a few ministers and military commanders.

⁴⁰ See annex II, para. 10.

⁴¹ According to UNICEF, 35,000 children are sexually exploited and 653,000 are child workers, aged between 5 and 11 years old. It is estimated that around 2 million children are maltreated in their homes, 850,000 of them in a severe manner.

⁴² According to *Fundación País Libre* (Free Country Foundation), 243 minors have been taken as hostages between January and September 2003.

⁴³ See annex II, paras. 27 and 28.

⁴⁴ According to information provided by the Government in reply to the Office's request.

Annex I

Status of implementation of the recommendations formulated by the United Nations High Commissioner for Human Rights in his 2003 report on the human rights situation in Colombia IN 2002

1. Since 1997, the United Nations High Commissioner for Human Rights has presented an annual analytical report on the human rights situation in Colombia to the Commission on Human Rights. This report, as provided for in the Agreement reached between the Government of Colombia and the United Nations in November of 1996 - and currently renewed until 30 October 2006 - includes the recommendations considered pertinent by the High Commissioner.

2. The 27 recommendations contained in the report for the year 2002 and submitted in April 2003 are addressed to the executive, legislative and judicial authorities of the Colombian State, to the organisms for control charged with protection and promotion of human rights and to the civil society, aimed at supporting the efforts made in the country directed at improving the overall situation of human rights and international humanitarian law. They are also addressed to the armed illegal groups.

3. In his report for the year 2002, the High Commissioner expressed “the firm conviction that the situation regarding human rights and international humanitarian law could be noticeably improved if the (...) recommendations were to be taken into account and applied in 2003” (E/CN.4/2003/13, para. 154).

4. The statement on Colombia formulated by the Chairperson of the Commission on Human Rights in April 2003 expresses the consensus reached between the international community and the Government of Colombia. The latter was urged to fully comply with the recommendations made in the High Commissioner’s report (E/CN.4/2002/200, para. 45).

5. The commitment to implement the recommendations was later reiterated by the Republic of Colombia when, in July 2003, government representatives met in London with senior level representatives of the Governments of Argentina, Brazil, Canada, Chile, Japan, Mexico, Norway, Switzerland and the United States of America, the member States of the European Union, of the United Nations, of the Andean Development Corporation, the Inter-American Development Bank, the International Monetary Fund and the World Bank. In the Declaration of London, the countries “noted with satisfaction the commitment on the part of the Government of Colombia to implement the recommendations of the United Nations High Commissioner for Human Rights and urged the Government of Colombia to implement these recommendations promptly as well as to adopt effective measures against impunity and complicity, especially with the paramilitary groups”.

6. The efforts on the part of the State to initiate actions aimed at achieving effective implementation of the recommendations must be recognized, although they are just beginning.

There are promising initiatives which, if strengthened, could have a positive impact on the fulfilment of Colombian commitments in this field.

7. The office in Colombia of the High Commissioner has achieved a fluid dialogue with the diverse entities of the Colombian State in the course of following up on the recommendations. However, the international commitment made by the Government to put these recommendations into effect was rejected by some of its highest officials, which limited satisfactory implementation of the majority of them on the part of institutions charged with their fulfilment. Other factors having an influence on unsatisfactory compliance with the recommendations, at the moment the report was completed, included the insufficient priority placed on human rights and international humanitarian law by senior government officials, the limited importance given to these topics in some public policies, failings in inter-institutional coordination, the presentation of projects for constitutional change and for new laws that are incompatible with international norms, the limited dialogue and failure to create established forums for discussion between the executive branch and non-governmental organizations and the infrequent use made of the office in Colombia's advisory services on the part of the State.

8. With regard to the recommendations made to the illegal armed groups, which include FARC-EP, ELN and AUC, they were not taken into account by these groups who throughout 2003 continued to contribute to the ongoing degradation of the internal armed conflict through acts of extreme violence and terrorism, characterized by an intense victimization of civilians.

9. In the following section, we will analyse actions by the State aimed at implementing the recommendations made to it. These recommendations are grouped under six headings: prevention and protection; internal armed conflict; democracy and impunity; economic and social policies; promotion of a human rights culture; and advisory services and technical cooperation on the part of the office in Colombia of the High Commissioner.

Prevention and protection

10. The eight recommendations grouped together under this heading were formulated in order to empower and strengthen the work of institutions charged with the prevention of human rights violations and breaches of international humanitarian law, protection for human rights defenders, witnesses and victims, preventive action with respect to risk factors for communities affected by the armed conflict and the application of disciplinary sanctions against agents of the State who, by action or omission, endanger the work of defending human rights.

11. In this respect, the Government's decision at the end of 2002 to establish the Inter-Institutional Early Warning Committee (or CIAT, from its initials in Spanish), inside the Ministry of Justice and Law, must be greeted with satisfaction. This committee is made up of public servants from that ministry as well as from the Ministry of Defense, the Security Forces and the Presidential Programme for Human Rights. This initiative from its very beginnings had to overcome great challenges, such as establishing its way of operating, the criteria for determining risk and the measures to be adopted for preventing an alert. It must be noted,

however, that the establishment of the SAT represents a positive element to counter the difficult human rights and international humanitarian law situation.

12. It should be mentioned that analysis of the reports on risks and, as a result, timely actions identified by the CIAT, have for the most part adhered to a military approach. At the same time, measures that are the responsibility of the civil authorities have been delegated to the departmental level, without effective follow-up mechanisms being drawn up in order to ensure their implementation.

13. In the course of carrying out the committee's activities, certain failures also became evident, including the weak hierarchical representation of the participating officials, the utilization of the Ombudsman's Office reports on risks as the only source, excessive decentralization and the lack of adequate follow-up procedure on the alerts after they have been issued.

14. At the same time, it became evident that the warning system, initially created for the prevention of grave and massive human rights violations and breaches of international humanitarian law, lacked the necessary capacity and flexibility to coordinate with other governmental bodies the task of preventing certain types of conduct that constitute violations and that occurred throughout the year, such as selective homicides, forced disappearances and acts of terrorism.

15. In some cases in which the Ombudsman's Office did not issue reports on risk, the CIAT abstained from producing alerts. In other cases, in spite of the existence of reports on risk from the Ombudsman's Office, the Committee did not act upon them. There were also situations in which, despite reports on risk provided by the Ombudsman's Office and the issuing of alerts on the part of the CIAT, the violation or infraction that the reports aimed to prevent unfortunately occurred nonetheless.

16. On the other hand, the Ministry of the Interior's Programme for Protection was able to initiate, although with delays, application of the recommendations for external evaluation made in 2001. This led to progress in providing pending plans for security. The office in Colombia was informed that a proposal exists on the part of the Office of the Vice-President to resolve the problem of the so-called "trusted bodyguards" but this has not yet been formalized.

17. It must also be noted that there has been no progress in the work of preventing the risk factors generated by public servants whose public declarations have sometimes contributed towards making evident the vulnerabilities of the system for prevention and protection, thus intensifying the danger to its beneficiaries while increasing the budgetary needs of the programmes that cover them.

18. With respect to the recommendation directed at the Attorney-General's Office regarding the programme for the protection of witnesses and victims, that institution has not implemented it. However, it must be noted that in November 2003, the office in Colombia of the High Commissioner and the Attorney-General's Office signed an agreement for cooperation that, if executed according to its timetable, will make it possible during the first half of 2004 to incorporate the recommendations formulated by the office in its 2001 study.

19. With respect to the identification of communities at risk due to the internal armed conflict and the implementation of programmes for preventive attention and protection for these

communities, it must be stated that the hoped-for progress has not been observed. The working group made up of the Social Solidarity Network, representing the Government, the Ombudsman's Office, the NGO Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) and agencies of the United Nations system, has met, although not as frequently as desired, and has made progress in formulating the theoretical framework as well as the instrument for carrying out this work. However, it has only carried out a mission to Catatumbo, in which the difficulties for defining the institutional offer of programmes aimed at communities at risk, and particularly those not included in the target population of the regulations on internal displacement, were evident.

20. At the same time, the Procurator General's Office, the Ombudsman's Office and the Government have not been able to determine the budgetary needs that would make it possible for them to establish a presence in those municipalities in which they do not yet have one. This limits the operations of the institutions for control and defence of human rights precisely in the areas where they are most needed. Although the Ombudsman's Office was able to designate community ombudsmen in some of the country's most remote zones, this was achieved thanks to international contributions.

21. There has not been full compliance with the recommendation formulated and submitted to the State Procurator's offices and the higher members of the hierarchy so that they will apply disciplinary sanctions to public servants responsible by action or omission for endangering human rights defenders. The prohibition on making declarations that could affect the safety of these defenders, which was reinforced by Presidential Directive No. 07 of 1999 and Ministry of Defense Directive No. 09 of 2003, has been disobeyed by a number of public servants without any known disciplinary action being taken.

22. With respect to the recommendation made to the Procurator General that the accuracy and objectivity of information contained in the military intelligence files on human rights defenders be verified, we have yet to see a report on this topic.

23. With respect to the recommendation for incorporating systematic study of international human rights law and international humanitarian law into the training given to members of the Security Forces, and for signing an agreement with the Ministry of Defense and the Ombudsman's Office for continuous training, some working sessions have been held between the Ministry and the office in Colombia of the High Commissioner. However, at the time of finishing the report, there have not been concrete actions or results to report.

Internal armed conflict

24. Of the six recommendations grouped together under this topic, three were aimed at the illegal armed groups, such as FARC-EP, ELN and AUC along with the other guerrilla and paramilitary groups, one at the military and police forces and two at all of the parties involved in the internal armed conflict and at the civil society. They were formulated by the High Commissioner to encourage observance of international humanitarian law, respect for the civilian population and the search for ways to resolve the internal armed conflict by means of dialogue and negotiation, respecting certain important rights.

25. These recommendations were neither adopted nor respected by the outlawed armed groups, who continued to commit grave crimes against the civilian population.

26. Regarding the recommendations made to the Security Forces in terms of observance of the humanitarian principles of limitation, distinction, proportionality and general protection of the civilian population, the office in Colombia has corroborated that they are not always put into practice by the members of the government armed forces. This has given rise to a number of breaches of international humanitarian law. In addition, some of the actions undertaken by the Government in implementing its “democratic security” policy were contrary to the international principle of distinction.

27. In this sense, dispositions contrary to the principle of distinction established in international norms have been detected in the proposed legislation on the organization of national security and defence presented to Congress at the initiative of the Government.

28. With respect to the recommendation, addressed to all of the parties to the conflict, to comply with obligations arising from international norms regarding anti-personnel mines, it must be emphasized that the illegal armed groups, and especially FARC-EP, have continued illegal, massive and indiscriminate use of anti-personnel mines and other explosive devices. On the other hand, the Colombian State has made progress with respect to international norms, has commenced execution of a plan to destroy mines in storage, has strengthened the Anti-personnel Mines Observatory, has prepared a detailed National Plan of Action for Comprehensive Action against Anti-personnel Mines and has concluded agreements for technical assistance with international organisms. However, there is a need to strengthen mechanisms for protecting the civilian population and preventing accidents due to anti-personnel mines through locating and placing signposts and demarcations on the minefields as well as for guaranteeing better attention for the victims.

29. Regarding the recommendation to take human rights and international humanitarian law into account during the dialogues and negotiations for resolving the internal armed conflict, this has not been fully carried out. The Government has initiated dialogue and negotiations with the paramilitary groups aimed at their demobilization. However, to date, the process has given rise to serious questions with respect to guarantees for victims’ rights to truth, justice and reparation in the course of these dialogues. Nor is there clarity with regard to the legal treatment to be given by the State to paramilitaries responsible for grave human rights violations, war crimes and crimes against humanity.

Rule of law and impunity

30. The seven recommendations grouped together under this heading were formulated by the High Commissioner to obtain compatibility between internal policies and norms and the international obligations of the State, strengthen the independence and impartiality of the Attorney-General’s Office, increase the effectiveness of the fight against the paramilitary groups, begin to lower the rate of impunity and to cut every link between agents of the State and the illegal armed groups, particularly the self-defence forces and paramilitaries.

31. With respect to the recommendation against introducing regulations into domestic law that are incompatible with international precepts, it must be noted that the Government submitted legislation to Congress, aimed at constitutional amendment and change of current laws, whose content is not compatible with that stipulated in various international instruments that have been ratified (see annex III).

32. In relation to the three recommendations addressed to the Attorney-General's Office, that institution was unable to fulfil any of them. It should be noted that the Attorney-General's Office, along with the office in Colombia of the High Commissioner, signed a letter of understanding for implementation of the recommendations. Such cooperation could help to reaffirm the independence of the prosecutors, strengthen the Human Rights Unit, intensify the struggle against the paramilitary groups and investigate links between the military and police forces and the paramilitary groups in the first half of 2004. However, follow-up will have to be made on the Attorney-General's Office's fulfilment of the timetable and of the recommendations arising from the study.

33. Regarding the Special Committee to promote investigations of human rights violations and breaches of international humanitarian law, it must be noted that the work of revising these cases could only begin in the second half of the year. However, the results of the Committee's work are not known. It is to be hoped that the quarterly report that the Committee must make to the President will show progress in this area. If the Committee is able to produce concrete results in the investigations it is charged with carrying out, it could become a valuable instrument in the fight against impunity. To this end, greater action on the part of the institutions making up the committee is required, as well as concrete support by the highest levels of the Executive.

34. Regarding preventive disciplinary suspension of members of the Security Forces involved in grave human rights violations and war crimes, the office in Colombia is not aware of a single case in which such a suspension has been applied in disciplinary proceedings carried out by officials of the Ministry of Defense. It may therefore be concluded that this legal power, established in the recommendation formulated with regard to this area, has until this moment not been used.

35. With respect to the measures taken in order to cut ties between public servants and paramilitary groups, the office in Colombia has not received notice of the President informing the Procurator General and the Ombudsman's Office on a quarterly basis regarding his actions in this field. Nor did the office in Colombia observe significant progress in investigating and punishing such ties. However, it appears that the recommendation for the dismissal of certain public servants has been taken into account.

Economic and social policies

36. With regard to the recommendation to reduce the inequality gap, decrease the rates of illiteracy and unemployment as well as regarding the right to health care, education and housing, the results are far from satisfactory.

37. The State doubled public expenditure on education during the period from 1997 to 2002. It has also expanded coverage of secondary education, with the exception of middle

school. However, departments with fewer resources and less educational infrastructure were affected to a greater degree because they could not benefit from a preferential regimen. The application of legislative act 012 and Law 715 have decreased these municipalities' possibilities of receiving greater resources. At the same time, the dual educational system, public and private, that is in effect in Colombia and the lack of adequate resources for the public system have increased the gap between these two sectors, of which the private sector benefits to a greater extent.

38. In health care, the national expenditure by the State in the period between 1994 and 2002 also doubled. However, this has not been matched in public utilities, nor has it benefited the less favoured sectors and regions. In fact, the most progress in terms of coverage has been made in Bogotá and Medellín, and the least progress in the most backward and conflictive regions.

39. Unemployment, according to sources at the National Administrative Department for Statistics (DANE), has continued in the range of 13-14 per cent, which is not far from the average since 2001. In October 2003, the employed population numbered 18.2 million, while those economically active were 49 per cent of the total.

40. According to DANE, the proportion of the population that possesses their own homes is much less than it was 10 years ago. The financial sector crisis and the impoverishment of the population have proven an obstacle for access to housing. It is significant that over the last few years, housing for the poorer segments of the population has fallen by 50 per cent.

Promotion of a human rights culture

41. The three recommendations grouped together under this topic were formulated by the High Commissioner to encourage the drawing up of an action plan for human rights, with an integrated gender approach, to achieve the incorporation of these rights into primary and secondary education and promote constant training of officials and employees of the judiciary branch in human rights and international humanitarian law.

42. With respect to the national action plan on human rights that was agreed to at the 1993 World Conference on Human Rights, the Government of Colombia was unable to draw it up in 2003 or to begin a sustainable process for negotiating with important sectors of civil society. The Government has indicated that it will have drawn this plan up by August 2004.

43. Regarding incorporation of human rights teaching in primary and secondary school programmes, the office in Colombia of the High Commissioner has taken note of the signing of an agreement between the Ombudsman's Office and the Ministry of Defense aimed at training teachers on this subject.

44. The office in Colombia is unaware of the establishment of agreements between the Ombudsman's Office and the judicial authorities to ensure constant training of the employees of this branch in human rights and international humanitarian law.

Technical cooperation and advice on the part of the office in Colombia of the
High Commissioner

45. The two recommendations grouped together under this heading were formulated by the High Commissioner so that the Colombian authorities would follow-up on international recommendations and so that the different institutions of the Government and the State would intensify their dialogue with the office in Colombia and fully benefit from its mandate to provide technical assistance and advice.

46. In this sense, some authorities have not understood the value of the advice and technical cooperation of the office in Colombia in order to strengthen their efforts in areas relating to our mandate. It must be stated that, with some exceptions, the office in Colombia has not been consulted in the drawing up of proposed laws relating to human rights and international humanitarian law.

Annex II

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

A. Introduction

1. The principal violations and breaches recorded by the office in Colombia of the High Commissioner during 2003 are incorporated here, including the modalities identified, those to whom they are attributed or who are considered to be responsible and the groups that were specifically affected. With respect to the investigations begun into a number of these occurrences or the progress made, the office in Colombia has not been able to obtain in a timely fashion the information requested from the Attorney-General's Office.

B. Human rights

Civil and political rights

(a) The right to life

2. This right was affected by extrajudicial executions, both individual and collective, and by death threats. Complaints have been made with respect to various extrajudicial executions directly attributed to the Security Forces. Examples include the executions of seven people, of whom two were minors, between February and September of from the indigenous communities of the Upper Atrato, in Lloró and Bagadó (Cihocó), which were attributed to members of the Army who, in almost all of these cases, presented the bodies as having been killed in combat. Another case refers to the execution of an individual in Arauquita (Arauca), in February, on the same day on which the victim had filed a complaint against members of the Army. The execution of a three-year-old girl in March in the community of San José de Apartadó that was attributed to members of the Army was also denounced.

3. Executions, both individual and collective, were committed by paramilitaries. Reliable information continued to be received that State responsibility was involved. Examples of responsibility due to omission include the massacre of 11 people in January in Tolima. Complaints were made with respect to collusion on the part of members of the National Police due to links between them and paramilitary hired assassins in the massacre of five people in July in Saravena (Arauca), which occurred moments after the police had arrived. Some of the victims had been repeatedly detained by the police and stigmatized as collaborators of the guerrilla groups. Also, responsibility was attributed to the State due to omission or complicity on the part of members of the Security Forces, particularly in executions carried out this year in Viotá (Cundinamarca), in Tame and Saravena (Arauca), in Cajibío and Timbio (Cauca) and in

the executions of Kankuamo indigenous people in Cesar. The homicides perpetrated by paramilitaries in the Comuna 13 of Medellín (Antioquia), involved responsibility on the part of the State due to omission and as a result of disregarding their duty to prevent violations and to protect the civilian population, considering the control and the strong military and police presence in the zone.

(b) Right to personal integrity

4. There was an increase recorded in the complaints of violations of this right due to acts of torture and cruel, inhuman or degrading treatment and the excessive use of force on the part of members of the Security Forces and government employees in the field of security, particularly in Bogotá and in the departments of Antioquia, Arauca and Tolima. The Ombudsman's Office recorded 374 complaints of violations of personal integrity. Complaints of torture on the part of members of the Army against various members of the Comunidad de Paz (Community of Peace) of San José de Apartadó (Antioquia) in March, and against a person in Viotá (Cundinamarca) in May are a source of concern. There were complaints in both cases that the aim had been to gather information and that the victims had to sign a document stating that they had been well treated.

5. Persons who were detained or imprisoned in the penitentiaries were also affected by these violations. It is pertinent here to mention the case of the torture and death of the inmate José Lara Lloreda in Peñas Blancas (Calarca, Quindío) jail and the torture of six prisoners along with the mistreatment of other prisoners and their families in the jail at San Isidro in Popayán, Cauca. Torture continues to be under-recorded, mainly because in various cases it is not denounced. In other cases, because it is associated with the death of the victim, torture is not recorded. In this sense, it must be pointed out that these acts along with rapes are rarely mentioned in forensic reports on deceased victims.

(c) Right to individual freedom and personal safety

6. The office in Colombia recorded an increase in complaints of forced disappearances and illegal or arbitrary detentions. Among the cases of forced disappearances attributed to the Security Forces, is the case of three young people in Granada (Antioquia) in January. There was also a complaint of joint action by members of the Security Forces and paramilitary groups in the events that led to the forced disappearance of two persons, in addition to the execution of others, in Cajamarca (Tolima) in November.

7. The office in Colombia of the High Commissioner recorded various complaints of forced disappearances perpetrated by the paramilitaries in zones controlled by the Security Forces and involving attribution of State responsibility due to omission, complicity or collusion on the part of public servants. These include the disappearance of a member of the Unión Patriótica in March in the Comuna 7 of Medellín (Antioquia) and that of six people in Corocito (Arauca) in February. The increase in forced disappearances carried out by paramilitaries in Barrancabermeja (Santander) and in the Comuna 13 of Medellín must be emphasized.

8. The office in Colombia received information on massive or individual arrests carried out by members of the Security Forces, particularly the Army, without prior court orders and not in situations of flagrante delicto. In other cases, the actions of the Attorney-General's Office were questioned because the arrest orders were drawn up after the arrests had been carried out or had been undertaken in an irregular manner because the persons had not been previously identified or the basis for their detention had been intelligence reports or mere identifications, which in some cases were made by hooded informants.^{a/} During the operation Estrella VI ("Star VI") in the Comuna 3 of Medellín (Antioquia) in January, 68 people were captured, of whom only 6 were the subject of arrest warrants. This operation was based on application of the concept of "flagrancy in the permanent crime of rebellion" a concept that is incompatible with international principles.^{b/} In the case of the 156 people detained during Operation "Ovejas" (Sucre) in August, complaints were made of the use of hooded informants and the drawing up of the warrants a posteriori. A prosecutor from the Attorney-General's Office subsequently ordered the release of these persons after being unable to find any elements to justify their arrest. Complaints were made to the effect that in the capture of more than 70 people in September on the part of the Security Forces and the Attorney-General's Office in Cartagena del Chairá (Caquetá), half of those detained did not have an outstanding arrest warrant and were accused based on information from intelligence and from the network of cooperating persons.

(d) Right to due process

9. There was an increase in denunciations of violations of due process resulting from disregard for independence and impartiality in the administration of justice, for procedural guarantees and for the principle of the presumption of innocence. A number of these actions occurred within the framework of the "democratic security" policy, in the context of arbitrary or illegal detentions, with the participation of the Attorney-General's Office and, on occasion, the Prosecutor General's Office.

10. There were complaints of violations of judicial independence and the autonomy of investigators who, due to their decisions or the course of their investigations, were removed from the case or from their posts. Such was the case of the prosecutor from the Attorney-General's Office charged with investigating the terrorist act in the Club El Nogal who was transferred to another office. In the above-mentioned case of Operation "Ovejas" (Sucre), the Attorney-General initially declared his intention to remove the prosecutor responsible for freeing the 128 people detained during this operation. He subsequently announced that he would be the subject of a disciplinary investigation, as he is one of the few prosecutors whose continuity in his post is protected by career status. In other cases, judicial independence was disregarded as a result of the persistence of investigations into human rights violations in the military justice system, such as the one undertaken by the 154th Military Criminal Investigating Magistrate's Office into the conduct of police agents in the Valle de Aburra (Antioquia) in the rape of a woman.

(e) Right to freedom of movement and residence

11. Forced displacements and illegitimate impediments to internal transit continue to be the gravest violations of this right. The office in Colombia was able to observe that, during the first months of this year, the civilian population of the Middle Atrato suffered from the imposition by the Military Forces of limitations and restrictions on freedom of movement as well as other impediments to the entry and exit of foodstuffs, pharmaceuticals, fuel and construction materials. In April, members of the Army, the communities and the church reached an agreement to ease these restrictions.

(f) Right to privacy and right to inviolability of the home

12. Both during the time in which the state of exception was in force with the application of Decree 2002, as well as afterwards, these rights were affected by the carrying out of illegal and arbitrary raids and searches. These were undertaken without a court order or under the modality of “voluntary raids or searches”, in which a court order is dispensed with, owing to the supposed authorization by the targets of these procedures. It is worth noting those carried out in the Comuna 13 of Medellín (Antioquia), in Saravena and Arauquita (Arauca), in the rural zones of Caquetá and Santander, and those undertaken in July by the Army in the Sabanetas reservation at El Tambo (Cauca). Complaints were also recorded with respect to violations of privacy in the carrying out of Army roadblocks (the taking of fingerprints and photographs), including cases of abuses committed against certain ethnic groups who were the victims of stigmatization, such as the indigenous populations of the Embera-Katíos (Córdoba) and of the Sierra Nevada de Santa Marta (Magdalena, La Guajira, Cesar).

C. International humanitarian law

(a) Homicide and threats directed at protected persons

13. The illegal armed groups continued to carry out homicides, both individual and collective, although lesser in number than in 2002. The massacre of seven people in Caldas (Antioquia), six of whom had their throats cut, and another that claimed the lives of five people in Suratá (Santander), both of which occurred in April, as well as that of five persons in a village near Sincelejo (Sucre) in August were attributed to the paramilitary groups. The January massacre of 17 people in three villages of San Carlos (eastern Antioquia) was attributed to FARC-EP.

14. In 2003, the paramilitaries and, increasingly, the guerrillas continued to make use of selective homicides and social cleansing as a military strategy. High rates of selective homicides were recorded in the Middle Magdalena, in the Montes de María (between Sucre and Bolívar), in Tolima, Antioquia, Meta, north Santander and Arauca. These were routine practices on the part of the paramilitaries in the Sierra Nevada de Santa Marta and specifically affected the Kankuamo indigenous people. In some cases, these communities were also the

victims of homicides committed by FARC-EP. The paramilitary groups also carried out a strategy of making their victims disappear and then killing them, as in Barrancabermeja (Santander). The murder of local officials in Arauca, Cauca, Caldas and Antioquia demonstrate the victimization of mayors, municipal representatives and town and city councillors as part of a strategy involving systematic attacks by FARC-EP and, to a lesser extent, the paramilitary groups, especially in Cundinamarca.

15. The office in Colombia of the High Commissioner also received complaints about homicides that were attributed to members of the Security Forces. For example, during *Operación Marcial* (eastern Antioquia) in March, the murder of two civilians, one of whom was a minor, was denounced, and in *Operación Emperador* in January in Granada (eastern Antioquia) a complaint was made with respect to the killing of four civilians, including a minor.

16. Death threats continued to be the most frequent means employed by the illegal armed groups to cause the displacement or subjugation of civilians, to take over their properties or to force them to make a financial contribution.

17. The office in Colombia also received various complaints of threats to the civilian population that were attributed to the Army, such as those related to the above-mentioned operations in eastern Antioquia, or to an operation carried out in Bolívar (Cauca) in February.

(b) Attacks on the civilian population and indiscriminate attacks

18. The humanitarian principles of distinction, limitation, proportionality and immunity of the civilian population continued to be violated by all of the parties to the conflict and particularly by the illegal armed groups. FARC-EP have resorted to the indiscriminate use of explosive devices, killing many civilians. The death of five civilians, including two minors, were recorded in Saravena (Arauca) in August as a result of the detonation of a car bomb directed at a military patrol. The same thing occurred in Granada (Antioquia), claiming the lives of three minors and one adult and leaving 14 civilians wounded. In other cases, FARC-EP used the civilian population as human shields or for transporting explosive devices. In Fortul (Arauca) in April, a minor died when the bicycle he was riding exploded near a military checkpoint. Complaints were made of guerrilla attacks on the civilian population, especially on the part of FARC-EP, such as in the municipal centres of Jambaló and Toribío (Cauca). A policeman was killed and three civilians were wounded in the locality of Ricaurte (Nariño).

19. The paramilitary groups also continued to carry out attacks and indiscriminate attacks on the civilian population, such as one that took the lives of four people in Tierralta (Córdoba), in May. An attack by AUC on the indigenous reservation at Aponte (Nariño) in May, in which there was a complaint of joint action with members of the Army, resulted in one person dead and various wounded.

20. The office in Colombia of the High Commissioner received reports of attacks on the civilian population and indiscriminate attacks attributed to members of the Military Forces. Reports were made of joint action between members of the Army and AUC in April during an operation in the Sierra Nevada de Santa Marta (La Guajira), with respect to which there were

reports of the killing of a Wiwa indigenous person, whose body was found dismembered, as well as of threats, mistreatment, looting and the desecration of tombs. Other examples were connected to the above-mentioned *Operación Emperador* and *Operación Marcial*. The latter operation also caused a massive displacement. There were cases of indiscriminate aerial bombardment and machine-gunning that damaged civilian property in Cauca, in February and September, as well as civilian dead and wounded in El Carmen (north Santander), in February and in *Operación Independencia* (Arauca), in July.

(c) Acts of terrorism

21. These acts were part of the systematic strategy of the guerrillas, particularly FARC-EP. Various cases were attributed to the latter, such as the explosion of a car bomb in a shopping centre next to the Attorney-General's Office in Medellín (Antioquia) that took the lives of 5 persons, including a minor, while wounding 41, and the February car bomb at the Club Nogal in Bogotá that killed 36 and wounded more than 160, many of them minors. Other examples were the explosion of a house bomb in Neiva (Huila) in February during a raid by members of the Attorney-General's Office and the National Police that killed 15, including a number of minors, as well as wounding more than 50 others, and the explosion of a bomb in Puerto Rico (Meta) in August that claimed the lives of 5 people, including 2 minors and left 46 wounded. FARC-EP were also blamed for the detonation of a house bomb in Chita (Boyaca) in September that killed 8 and wounded 20 and for the attack in Florencia (Caquetá) in September that took the lives of 12 persons, among whom 2 were minors. An attack on a commercial centre in Cúcuta (north Santander) in March, which caused the deaths of 13 people and more than 60 wounded, was attributed to ELN.

22. The paramilitary groups also carried out actions and threats aimed at creating terror among the civilian population, such as in the case of an incursion into Ituango (Antioquia) in June that included acts of pillage and violence in a church.

(d) Torture and other attacks on personal dignity

23. Torture continues to be practised by the illegal armed groups. There were complaints of the torture and killing of two peasants by paramilitary forces in El Salado, El Tarra (north Santander) in February as well as the use of torture on the part of paramilitaries in the Comuna 13 in Medellín (Antioquia) and in Viotá (Cundinamarca). The cadavers found in various mass graves and individual graves and whose deaths are attributed to the paramilitary forces, showed signs of torture and mutilation, particularly in Tolima, Arauca and Antioquia. The torture and subsequent deaths of two people, including an unarmed soldier on leave in Turbo (Antioquia) in January are attributed to FARC-EP.

(e) Hostage taking

24. The guerrilla groups and, to a lesser extent, the paramilitary groups, have continued with the practice of taking hostages, although a decrease was recorded. It affected diverse sectors of the population along with departmental and municipal officials, including the Peace Adviser of Meta, who was taken hostage by FARC-EP in October. According to the office of the Vice-President, during the first nine months of the year, the responsibility of this group in the taking of 545 hostages was established, along with that of ELN with respect to 281 others and the paramilitary groups in 149 cases.

25. On occasion, FARC-EP killed their hostages, as in the case of the Governor of Antioquia, Guillermo Gaviria Correa, and his Peace Adviser, Gilberto Echeverri Mejía, along with eight captured members of the military forces, during a rescue operation mounted by the Military Forces in Urrao (Antioquia) in May. This was also the case in the deaths of Helmut and Doris Bickenback in June and that of a Japanese citizen, Chikao Muramatsu, in November.

(f) Forced displacements

26. The illegal armed groups have continued to cause forced displacements, both individual and collective. The paramilitary forces were responsible for massive displacements in El Tarra (north Santander) and Viotá (Cundinamarca) in April. The massive displacement in Argelia (eastern Antioquia) in June was attributed to FARC-EP. There were complaints in some cases of displacements caused by members of the Security Forces, such as during *Operación Marcial* in San Francisco (eastern Antioquia) in March.

(g) Children who are victims of the armed conflict

27. Children continued to be the victims of hostage-taking, recruitment, the use of anti-personnel mines, forced displacement, indiscriminate attacks and acts of terrorism on the part of the illegal armed groups. The *Fundación País Libre* ("Free Country Foundation") recorded 243 children kidnapped as of September. The office in Colombia received information on various cases of recruitment of indigenous minors in Cauca by FARC-EP and in Cesar on the part of ELN. The paramilitary forces also recruited young people, in many cases in exchange for remuneration, or they made use of them for investigating or following certain persons in exchange for money or clothing, such as in Barrancabermeja (Santander).

28. The office in Colombia received reports of the use of minors by the Army as informants or within the framework of intelligence operations, such as in the case of minors belonging to the Esperanza de Dios ("God's Hope") humanitarian zone in the Lower Atrato (Chocó) in May.

(h) Women victims of the armed conflict

29. The office in Colombia received information about the diverse forms of violence, particularly sexual, with which the illegal armed groups afflict women in different areas of the country, such as Córdoba and Tolima, on the part of the paramilitary forces, as well as in Putumayo, where cases of sexual slavery by the guerrillas were denounced. The illegal armed groups, and especially the paramilitaries, continued threatening women and their organizations, as in the case of the leaders of the National Association of Indigenous and Peasant Women of Colombia (ANMUCIC, from its Spanish initials) and of the Popular Women's Organization (OFP). In this last case, it is pertinent to point out the murder of human rights defender Esperanza Amaris Miranda in Barrancabermeja (Santander) in October. Women are often the victims of violence on the part of the illegal armed groups when they have a family member in an opposition group, or are viewed as having contacts with members of an opposing group, or for a personal relationship with a member. The case of the killing in April of a schoolteacher in Cocorná (Antioquia) by ELN was observed with concern. Complaints of the deaths of sexual professionals with sexually transmitted diseases at the hands of illegal groups in north Santander are a source of concern.

30. There were also complaints recorded of rapes on the part of members of the Security Forces in Antioquia, Chocó and Cauca. At the same time, judicial underreporting of sexual crimes persists, because the women tend not to denounce them out of fear, modesty or mistrust of the judicial system. The lack of entries in the forensic reports, as we have already stated, is an additional factor that contributes to impunity.

(i) Attacks on the medical mission

31. The members of the medical mission were affected by homicides, threats and harassments on the part of the illegal armed groups, especially FARC-EP, in the departments of Arauca and Cauca. The office in Colombia recorded the disappearance and subsequent homicide of a doctor in March and the planting of an explosive device in a hospital in September, as well as the killing of a hospital director in Santander de Quilichao (Cauca) during the same month. Cases of attacks on ambulances must also be mentioned, mainly on the part of FARC-EP, as in Cocorná (Antioquia) in October.

(j) Attacks on civilian property

32. The guerrilla groups continued their attacks on civilian property and on State infrastructure. According to the Office of the Vice-President, infrastructure attacks decreased by 35 per cent in the period up until September, destruction of bridges by 66 per cent and of electrical towers by 61 per cent. In contrast, attacks on oil pipelines increased by 61 per cent.

33. FARC-EP caused damage to civilian property in repeated attacks using explosive devices, such as the one at Coloso (Sucre) in April that left the local aqueduct in ruins. The illegal armed groups committed acts of pillage and destruction of civilian property, such as the

pillage committed by paramilitaries in Abejorral (Antioquia) in October. In other cases, these groups forced civilians to sign over title to their farms, threatening to kill them if they refused.

34. There were also cases of pillage attributed to the Military Forces in operations in eastern Antioquia and the Guajira. There were also complaints made of damage to civilian property in indiscriminate operations carried out by the Air Force in Cauca in February 2003.

(k) Use of anti-personnel mines

35. Massive use of mines on the part of the illegal armed groups continued to be recorded. FARC, ELN and the paramilitary groups have been those principally responsible, in that order. According to the Observatory for Anti-personnel Mines, a large number of incidents continued to occur in 2003, with 253 new victims (69 dead) between January and August, of whom 87 were civilians.

36. The illegal armed groups have continued to use home-made mines that are difficult to detect, such as home-made plastic mines. It has been reported that FARC-EP indiscriminately planted mines and booby traps in Piamonte (Cauca), locating them in private residences, on outlying paths and heavily travelled roads. In May, mines wounded one person in this municipality and, hours later a young girl was killed and her child disfigured in the same place due to failure to take immediate measures for posting warnings or re-routing transit. In another episode perpetrated by FARC-EP, 11 members of the military were killed and 8 more wounded when they came across a minefield in Aracataca (Magdalena) in March.

Notes

^a These same observations were made by the Prosecutor-General's Office in their special reports on the zones for rehabilitation and consolidation in Arauca and Sucre-Bolívar. See, for example, chap. II, point 7.2 (ii) of the latter report.

^b According to this concept, because it is a permanent crime, a person accused of rebellion is found to be permanently in a situation of "flagrante delicto", without requiring application of such elements as immediacy, identification or individualization, or the possession of incriminating elements.

Annex III

LEGISLATIVE POLICY a/

Introduction

1. Legislative policy has been closely linked to the goals and implementation of the so-called policy for democratic security. The Government emphasized that “strengthening democracy requires not only effective institutions ... and a judicial system that provides support for the exercise of rights and liberties. It equally supposes that all of the State’s actions will be subject to this organization This is the guarantee that the constitutional order and respect for human rights will prevail over the arbitrary actions and abuses of the illegal armed organizations”.b/ Nonetheless, various regulations and projects turned out to be incompatible with international principles in terms of restrictions on basic rights and liberties, and imply changes to the Constitution.

2. On 5 February 2003, the Government approved Legislative Decree 245, by means of which it extended the state of internal commotion (state of emergency). On 29 April of this same year, the Constitutional Court issued ruling C-327/03, in which it declared that this decree was unconstitutional. Faced with this situation, the Government considered it necessary to seek constitutional modifications with the aim of implementing certain restrictive measures on rights and liberties that it deemed necessary in order to achieve the objectives of its security policy. Approval of the National Development Plan was another of the Government’s legislative priorities in 2003.

3. Various legislative projects aimed at modifying the Constitution were presented. Proposed laws were submitted, one known as the “Antiterrorist Statute” and another that attempted to remove jurisdiction from the Procurator General’s Office to specifically examine disciplinary violations committed by members of the Armed Forces.c/ Another such proposed law aimed at decreeing structural reforms in the organization of the State. Projects were also presented for modification of the penal code, the code of criminal procedure, the penitentiary and prison code, the Organic Statute of the Attorney-General’s Office, the Statutory Law on the Administration of Justice as well as with respect to some regulations regarding compulsory military service. Additionally, other proposed legislation aimed at the inclusion of new regulations, such as the National Statute For Countering Terrorism, a proposed law dealing with national defence and security and the proposed Statutory Law on the Re-Incorporation of Members of Armed Groups. Law 418 was also regulated by means of Decree 128 of 2003.

4. In a parallel initiative, the Government promoted adoption of a referendum that proposed amendments to 15 articles of the Constitution in the economic and political fields. After the referendum, whose proposals were almost entirely rejected, the Government pushed forward a series of proposed laws in order to obtain legislative approval of the unapproved proposals.

5. A number of these legislative projects have been the object of analysis and observations on the part of the office in Colombia of the United Nations High Commissioner for Human Rights pursuant to its mandate to advise and ensure that projects that adopt or modify norms be respectful of international norms and obligations.

Progress and difficulties relating to the ratification of international treaties

6. In the legislative field, it is worth noting the adoption of laws by means of which different international treaties have been internally approved as a prior step towards their ratification. Among these, it is worth mentioning Law 800 of 13 March 2003, by means of which the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was approved, supplementing the United Nations Convention against Transnational Organized Crime; Law 833 of 10 July 2003, by means of which the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was approved; and Law 837 of 16 July 2003, by means of which the International Convention against the Taking of Hostages was approved. It is also important to point to the adoption of Law 823 of 10 July 2003 containing rules with respect to equal opportunities for men and women.

7. In spite of these important legislative initiatives, it must be mentioned that, with the exception of the Optional Protocol to the Convention on the Rights of the Child relative to the sale of children, child prostitution, and child pornography, they have not been accompanied by action on the part of the Government to deposit instruments of ratification and assume the corresponding international obligations, in accordance with the recommendations of the High Commissioner and other international bodies. Ratification is thus pending of ILO Convention No. 182 (1999) on the worst forms of child labour (Law 704 of 2001); the Inter-American Convention on the Forced Disappearance of Persons (Law 707 of 2001); and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, (Law 762 of 2002). Also, the process of approval for the Optional Protocols to the Convention for the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment has yet to be initiated. Nor has the Government promoted actions aimed at recognition of the competence of the Committee against Torture and the Committee on Racial Discrimination to examine individual communications.

Analysis of certain projects and regulations

(a) Regulation of Benefits for the Demobilized (Decree 128)

8. Decree 128, of 22 January 2003, regulates Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002, with respect to re-incorporation into civil society of demobilized members of outlaw groups (guerrilla groups and self-defence groups). In the matter of legal benefits for the demobilized, the decree refers to regulations established under

Law 418 and its amendments for the granting of pardons, conditional stays of enforcement of penalties, discontinuance of proceedings and preclusion of investigation or inhibitory orders, limiting them to political and related crimes and excluding heinous crimes. Analysis of the text raises certain questions regarding the fight against impunity and the rights of victims to truth, justice and reparation, in that it makes no explicit reference to these international obligations of the State.

(b) “Draft law for penal alternatives”

9. On 21 August 2003, the Government presented the draft Statutory Law 85 of 2003 to the Senate, which proposes to award legal benefits to those members of the illegal armed groups who are unable to benefit from the regulations contained in Decree 128, due to their responsibility for grave crimes, which include conduct constituting war crimes and crimes against humanity. The project establishes the possibility of suspension of prison sentences and proposes a series of measures that it calls “alternative penalties”.

10. The office in Colombia of the High Commissioner, by means of a communiqué issued on 8 September 2003 and during the public hearing carried out on 23 September 2003 in the First Committee of the Senate, provided observations regarding the incompatibility of its dispositions with international obligations. Among these, the project allows the State to suspend the execution of prison sentences of persons who have not even begun to serve the sentences imposed for the commission of heinous crimes; it allows the application of so-called alternative punishments instead of imprisonment to those responsible for international crimes that are so lenient and of such short duration that they violate the principles of just retribution and proportionality in penal sanctions. It does not clearly recognize the State’s obligation with respect to reparation when they are not remedied by the party directly responsible for the crimes; it establishes reparation mechanisms that do not adequately compensate or indemnify the victims; at the same time it does not adopt measures to impede the victimizers from benefiting from the suspension of the penalties before the victims have received effective reparation. The alternative punishments included in the project are neither quantitatively nor qualitatively comparable to being deprived of liberty, nor to the gravity of the crimes, reason for which they do not respect the principle of proportionality of punishments. All of these belong to the realm of what in comparative criminal law are referred to as accessory penalties, and which are imposed as a compliment to the main penalty and, therefore, do not replace it.

11. The office in Colombia also commented on the opportunity, convenience and modalities of the proposal. Among these, it raised various questions considering that the proposal refers not only to members of illegal armed groups that have signed peace agreements, in that it includes among the beneficiaries members “who individually and voluntarily give up their arms”, a reason for which it is not circumscribed as a corollary to the peace negotiations. In this respect, the office in Colombia stated that the concession of certain benefits to isolated persons, without reference to negotiations and without establishing serious commitments with the illegal armed organizations with respect to future behaviour, does not necessarily strengthen

efforts aimed at the search for a lasting peace and the achievement of national reconciliation. The office in Colombia also presented elements for reflection on this topic regarding the future.

(c) “Antiterrorist Statute”

12. The draft Legislative Act 223 of 2003 of the Lower Chamber and 015 of the Senate, known as the “Antiterrorist Statute”, was presented by the Government on 24 April 2003 with the aim of modifying articles 15, 24, 28 and 250 of the Constitution in order to fight terrorism. In its articles, the proposal provides the Military Forces with judicial police powers, in contradiction to the expressed recommendation of the High Commissioner. It also orders restrictions on the right to privacy and the right to appeals and provides for administrative detentions and other procedures without a court order. The project was approved on 10 December. The office in Colombia of the High Commissioner sent two messages to the members of Congress and participated in a public hearing held in the House of Representatives on 23 September 2003. The office in Colombia has voiced several objections to the project, as follow below.

13. The international organs for the protection of human rights have stated that the exercise of the functions of judicial police by persons of a military character violates the principles of independence and impartiality in the administration of justice, as enunciated in international instruments ratified by Colombia. The office in Colombia also observed that this proposal concedes faculties to the administrative authorities whereby, without a previous court order, they can carry out detentions as well as intercept or search correspondence and other private communications. In accordance with that stipulated in international norms and jurisprudence, jurisdiction in these matters must belong to the public servants of the judicial branch. The office in Colombia considered the establishment of excessively long time periods for submitting administrative detentions of persons deprived of their liberty to judicial control “in cases of terrorism” to be incompatible with international obligations. At the same time, there are observations with respect to the applicability of habeas corpus during this period. The office in Colombia emphasized that the right to submit this type of measure to the competent judicial authorities must be applicable at all times and without temporary restrictions.

(d) National Statute for Countering Terrorism

14. The Senate’s draft Statutory Law 18 of 2003, by means of which an antiterrorist statute is created, provides for new crimes and increases the punishments for crimes perpetrated with terrorist objectives and in support of terrorism. At the same time, it modifies certain penal classifications, such as terrorism, or the management of terrorist resources. This project includes a number of crimes that are not necessarily related to terrorism and constitute breaches of international humanitarian law, thus identifying these breaches of international humanitarian law (IHL) with crimes related to terrorism. The office in Colombia declared that, given the particular circumstances and gravity of terrorist acts, it is of fundamental importance that the strategies and policies of the fight against terrorism be specifically oriented to this type of

conduct and that it be differentiated from others that constitute violations of IHL. The project also contains dispositions that raise questions in the area of due process and judicial guarantees, particularly those related to the autonomy of the investigating prosecutor, the right of the accused to defend themselves, of discrimination against foreigners and of insufficient clarity in certain criminal classifications.

(e) “Law of national security and defense”

15. The Senate’s draft Law 022 of 2003, which contains rules on the policy for national security and defence, includes certain dispositions that could endanger the principle of distinction. It is important to establish clear limits with respect to the solidarity and support provided by the civilian population in the task of national security and defence, so as not to involve the civilian population in the armed conflict and so that the principle of distinction is not placed in question. This signifies a limit on the imposition of duties on private individuals in the field of public order. Clear separation between the actions, duties and responsibilities of authorities and those of the civilian population in relation to security and defence also permits and facilitates concrete application of the humanitarian principle of distinction.

(f) “Reform of the justice system”

16. On 29 October 2002, the Government submitted proposed Legislative Act 10 of 2002, which had the goal of modifying certain dispositions of the Constitution with respect to the administration of justice. The draft law proposed modification of the tutela (action in search of relief of a violation of a constitutional right), making it inapplicable for the protection of economic, social and cultural rights, including the rights of children and young people, the right to healthcare, the rights of the aged or the right to review of arbitrary judicial decisions that had been handed down without recognizing fundamental rights. It also proposed to limit the faculties of the Constitutional Court for guaranteeing the supremacy of the Constitution, restricting its competence and the effects of its decisions. Lastly, the draft proposed elimination of the Superior Council of the Judiciary and the creation of a new body that would be charged with administration of the judicial branch and would include members of the executive branch.

17. The draft law was later shelved because it was unable to fulfil the terms for its approval.^{d/} The Government declared its intention to submit the project to Congress when it had obtained the approval of the High Courts. The Constitutional Court publicly stated that the draft “eliminates the effectiveness of the tutela ... it impedes the Constitutional Court from defending the supremacy of the Constitution and from protecting people from arbitrary acts and abuses of power, by drastically restricting its competences, all of which gravely affects the principle of the social and democratic rule of law. Additionally, there are proposed reforms in the project that go against the autonomy and independence of the judicial branch”.^{e/} The new Minister of the Interior and Justice has stated that the Government will present this draft next year.

(g) Penal and Criminal Procedural Codes

18. On 20 July 2003, proposed Laws 01 of the Senate and the Lower Chamber, were presented to modify the penal and criminal procedure codes and introduce the accusatory system. Of concern is the fact that the democratic aspiration to implement an accusatory penal procedure, as a contribution towards more transparent and democratic administration of justice, appears frustrated by the presence in this comprehensive reform proposal of such elements as the evident imbalance between the accuser (the Attorney-General's Office) and the defence, the secret character of an important phase of the investigation and the widespread use of preventive detention.

19. The model suggested by the reforms is not in accord with a criminal justice policy capable of guaranteeing the civil liberties of the individual versus the arbitrary exercise of State power. Nor is it in concurrence with the principle of minimum intervention, the acknowledgement of absolute limits for the exercise of the power of the criminal justice system, control over the institutions in charge of exercising punitive actions, or with respect to dignified treatment for people deprived of their liberty. In general terms, one notes an incongruity between the elements that provide guarantees, and the guiding rules that recognize principles in accordance with the State's international obligations, on the one hand, and the changes contained in the articles, on the other. If they are not approved before 20 June 2004 due to a lack of consensus, the President of the Republic, endowed with extraordinary powers, can approve and enact these codes.

(h) Penitentiary and Prison Code

20. On 20 July 2003, the proposed Senate Law 03, which proposes modification of the Penitentiary and Prison Code, was submitted. This draft law is directly linked to the accusatory system with respect to criminal procedural reform in Colombia. The draft lacks documentary support in the form of an empirical study on the problems afflicting the prison and penitentiary system. Even when it gives formal recognition to the basic rights of persons deprived of their liberty, it repeatedly emphasizes "the limitations inherent to their special condition". On the other hand, the project delegates regulation of many aspects of the prisons' and penitentiaries' internal regulations to the administrative authority. In addition, the project announces restructuring and fundamental changes in the entity that coordinates the national prison and penitentiary system without there being any mention of the authority or entity responsible for this reform.

(i) National Development Plan

21. The National Development Plan (NDP) was adopted on 26 June 2003 by means of Law 812. NDP sets out State policy in the economic, social and environmental fields. In a general way, it could indicate that the Government has given priority to the areas of social investment, democratic security and economic revival. The largest item in social investment,

comprising 61 per cent, is directed at the social sector. According to NDP, social investment is composed of monies assigned to healthcare, employment, education, culture, housing, basic medical treatment and royalties. At the same time, democratic security and economic reactivation constitute important concerns for the Government at the moment when expenditures are allocated. The budget for social investment represents slightly more than 11 per cent of the total budget.

22. It should be noted that the Government is not sufficiently investing in areas where there are human rights concerns in order to effectively improve their situation. This can probably be explained by the fact that the Government's policies during this year have not given this topic a sufficiently comprehensive and priority treatment, nor have they done so with respect to the High Commissioner's recommendations. At the same time, the lack of a national plan for action on human rights can be another factor that led to this weakness.

Notes

^a This annex complements the High Commissioner's report on the human rights situation in Colombia.

^b See the document entitled "*Política de Defensa y Seguridad Democrática*" ("Democratic Defense and Security Policy"), Office of the President of the Republic, Ministry of Defense, 2003, p. 15, para. 12.

^c Its sponsor withdrew this project due to the fact that it was unable to fulfil the terms contained in the Constitution for its approval during the current legislative session.

^d The Colombian Constitution mandates that legislative projects aimed at modifying the Constitution must be approved in eight debates during two ordinary and consecutive sessions (from 20 July to 16 December and from 16 March to 20 June).

^e Constitutional Court, press communiqué, 29 April 2003.

Annex IV

Activities of the Office in Colombia of the United Nations High Commissioner for Human Rights

1. The High Commissioner for Human Rights of the office in Colombia continued to carry out its mandate in the area of observation, advice, technical cooperation, promotion and dissemination.

Observation

2. The office in Colombia of the High Commissioner fulfils its task with respect to observation based on thematic and geographical priorities that enable analytical and systematic follow-up on the situation of human rights and international humanitarian law in Colombia.

3. During 2003, 168 field missions were carried out and 1,144 complaints were received, of which 936 were admitted.

4. Field missions and the permanent presence in the branch offices in Cali and Medellín, enable the office in Colombia to follow up on the regional and local situation as well as to provide advice to the authorities and institutions of civil society in the field of human rights and international humanitarian law while accompanying local processes undertaken in the areas included in the mandate. In order to facilitate this work, the office in Colombia of the High Commissioner will open a new branch office in Bucaramanga in January 2004.

5. Additionally, although it is difficult to measure their impact, field missions fulfil the purpose of promoting preventive and protective measures for the communities. These visits, carried out mostly with the Colombian authorities, are made to zones in which the presence of the State has been traditionally weak or non-existent.

Advisory services

6. The office in Colombia of the High Commissioner participated in numerous activities related to advising State entities and civil society. In addition to providing documents relating to the compatibility of proposed legislation with international norms, it provided the authorities with advice in the definition of policies and programmes and stimulated follow-up on recommendations in committees and other inter-institutional bodies. Periodic dialogue was established with the authorities, in particular with the Office of the Vice-President, with various ministers, members of Congress and judicial and control bodies. The office in Colombia provided quality and impartial advice to State institutions and civil society organizations. It promoted international human rights and international humanitarian law instruments through forums, workshops and seminars.

7. The office in Colombia aided in substantive and logistical preparation for the carrying out of missions in October 2003 to Colombia by the Special Rapporteurs on the right to education and on contemporary forms of racism, racial discrimination, xenophobia and related forms of intolerance. It issued two publications that afforded a better understanding of their mandates and the fields in which they work.

Technical assistance and cooperation

8. In order to fulfil its mandate to advise governmental and non-governmental institutions, the office in Colombia began with the supposition that initiatives for technical cooperation must promote the active participation of these institutions in tasks that imply respect, protection and guarantees for human rights. International recommendations formulated on this subject, and especially those of the United Nations High Commissioner for Human Rights, constituted the basis for the office in Colombia's development of diverse projects for institutional strengthening and training.

9. In November, the office in Colombia of the High Commissioner signed a letter of understanding with the Office of the Attorney-General aimed at carrying out a project for institutional strengthening, in which the recommendations formulated and addressed to that institution by the High Commissioner were gathered together.

(a) National Plan of Action on Human Rights

10. The office in Colombia of the High Commissioner received a first draft proposal for a concerted National Plan of Action on Human Rights from the Presidential Programme for the Promotion, Respect and Guarantee of Human Rights and the Application of International Humanitarian Law. The office in Colombia has shared its observations with the Office of the Vice-President with respect to this document and has offered its technical cooperation and advice.

(b) Institutional strengthening

11. The studies carried out by the office in Colombia in a number of important State institutions, and the recommendations contained in them, have been the subject of accompaniment and follow-up aimed at contributing to their implementation.

1. Ombudsman's Office

12. National Office of the Ombudsman (DNNDP): Based on its study of the civil criminal programme of the Public Ombudsman, four areas of work were developed during the first half of 2003: (a) technical advice in drawing up a study of the functioning of the public defender; (b) establishment of a permanent national observatory on deprivation of liberty in the national sphere; (c) adoption of a system for management and control to enable the measurement of

quality, promptness and effectiveness of the service, and (d) technical assistance in the fields of internal regulation and legislative proposals.

13. The office in Colombia has provided advice to the National Office of the Ombudsman regarding legal concepts related to the right to legal defence. In the context of penal reform, it contributed analytical documents comparing the different experiences in Latin America as regards the figure of the public defender. With respect to the proposed legislation on the National System for Public Defenders, the office in Colombia analysed the proposal of the Ombudsman's Office and made contributions and observations in this respect.

14. National Directorate for Receiving and Processing Complaints: The office in Colombia completed its *Manual de Conductas Violatorias de Derechos Humanos* (Manual on Conduct in Violation of Human Rights). This document incorporates national and international jurisprudence and legislation in this field, with the aim of improving the classification that the Ombudsman's Office makes with respect to conduct reported to it that constitutes human rights violations and infractions of international humanitarian law.

2. Office of the Procurator General

15. The Procurator General issued the document "*Función preventiva de la Procuraduría en materia de derechos humanos*" ("Preventive function of the Office of the Procurator General in the field of human rights"), drawn up within the framework of the agreement for technical cooperation signed with the office in Colombia. This document has been widely disseminated within the Office of the Procurator as the basis for the work of the institution's employees in the area of prevention.

16. As a follow-up to the study made of the role of the Procurator's Office in disciplinary actions, the office in Colombia drew up the *Guía práctica de pruebas para las investigaciones disciplinarias por violaciones de derechos humanos e infracciones al derecho internacional humanitario* ("Practical guide to evidence in disciplinary investigations for human rights violations and breaches of international humanitarian law"). This document is aimed at public servants charged with investigating human rights violations and establishes guidelines and parameters for action that permit prompt, exhaustive and impartial action.

3. Inter-institutional project on the situation of persons deprived of their liberty

17. This project is aimed at strengthening the Office of the Procurator, the Ombudsman's Office, the Ministry of Justice and the National Institute of Penitentiaries and Prisons, with the goal of endowing their work with greater impact in improving the

living conditions of persons deprived of their liberty. The project was initiated in July 2003 with co-financing from the European Union.

18. With respect to the Office of the Procurator, the office in Colombia of the High Commissioner has provided advice to the Delegate for Prevention in the Field of Human Rights and Ethnic Affairs in drawing up thematic documents that serve as inputs for the adoption of instructions for internal coordination as well as in the development of a policy for protection and prevention in the field of imprisonment.

19. The Ministry of Justice and the National Institute for Penitentiaries and Prisons (INPEC for its Spanish initials) have facilitated the work of the office in Colombia with all of their offices with the aim of identifying the areas that are to receive assistance and advice as part of the project. Visits to 16 prisons at all levels have been carried out in order to provide suitable advice with respect to their needs. Additionally, a study was completed of the National Penitentiary School and the training of penitentiary personnel in general, a document that will be jointly analysed with INPEC authorities.

20. The Ombudsman's Office has accompanied various visits that were undertaken and has begun a process of active intervention with the Delegate for Criminal Policy and the Regional Offices of the Ombudsman in order to formulate an institutional strategy that will permit the strengthening of this control organ in the field of penitentiaries and prisons.

(c) Training in human rights and international humanitarian law

21. Training in the field of human rights and international humanitarian law for governmental institutions and civil society organizations, as well as for the agencies of the United Nations system, continues to be a very important activity for the office in Colombia. The development of techniques for teaching these subjects has made it possible to update this teaching and involve the recipients more closely with human rights in an open and active manner. With respect to the publications that support this training, updates were made of compilations of international human rights law, international humanitarian law and international criminal law.

22. Training for public servants: The office in Colombia, within the framework of agreements signed with diverse State institutions, has carried out courses and workshops for training in human rights and international humanitarian law with:

(a) 7 congressmen, 30 advisers and collaborators from this branch; (b) 357 public servants from the entities charged with supervising the legality of actions on the part of the Government (Office of the Procurator, Ombudsman's Office and the municipal ombudsmen); (c) 34 military penal judges; (d) 80 directors and aspiring directors of prisons and penitentiaries, and 60 guards and custodial and supervisory staff from the INPEC; (e) 141 magistrates, judges and prosecutors from the College of Judges and Prosecutors of Antioquia; and (f) 52 members of the network of trainers of the justice sector.

23. Training for municipal ombudsmen: During the period 2002-2003, 90 per cent of the country's municipal ombudsmen have been the beneficiaries of the training programme in human rights, which contributed towards strengthening the important work carried out by these functionaries. The populations of 980 of the country's 1,098 municipalities have benefited from the presence of a local public servant who is more able to provide them with representation and defence in the field of human rights. This year, 16 training workshops, 4 in evaluation and validation and a national forum on municipal ombudsmen were carried out.

24. The programme benefits from the inter-institutional effort represented by the agreement signed between the Office of the Procurator, the Ombudsman's Office and the Office in Colombia of the High Commissioner, with co-financing on the part of the European Union.

25. The project intends to invigorate the functions fulfilled by the municipal ombudsmen in defence of human rights. A sense of belonging with the State Procurator's offices has been encouraged among municipal ombudsmen and joint actions between the Office of the Procurator and the Ombudsman's Office aimed at strengthening this institution regionally and locally, have been promoted.

26. The production of teaching tools has facilitated the Municipal Ombudsmen's work of dissemination, prevention and protection of human rights. The Institute for Studies of the State Procurator's offices will be entrusted with all of these tools and will undertake the future formation of municipal ombudsmen.

27. International symposium on human rights and international humanitarian law: The College of Judges and Prosecutors of Antioquia, with the support of the office in Colombia and the Embassy of Sweden, carried out a symposium in Medellín that was

attended by 150 participants and included presentations by distinguished national and international speakers.

28. Programme of scholarships for human rights defenders: The office in Colombia of the High Commissioner, the Universidad Alcalá de Henares of Spain and the American University of the United States awarded five scholarships for human rights studies to human rights defenders and public servants.

29. Civil society and the Church: A basic course on human rights and national protection mechanisms was given in Rivera (Huila) to 30 priests, religious workers and lay people from the diocese of San Vicente del Caguan and the diocese of Florencia. At the same time, the office in Colombia and the Centre for Research, Training and Information for the Amazon Service has agreed to execute the project "Training for pastoral agents of the diocese of Florencia and the Apostolic Vicariate of San Vicente del Caguan-Puerto Leguizamo from the perspective of rights".

30. The office in Colombia and the organization *Planeta Paz* ("Peace Planet") drew up a communication manual that will be published in early 2004. Also, a document was written on the right to information for low-income sectors of society, a document that was used in the preliminary work of the World Conference on the right to communication held in late 2003.

31. Global Programme "Assisting Communities Together (ACT)": Seven projects for training and promotion in human rights were executed in the departments of Nariño, Arauca, Boyacá, Chocó, Antioquia, Caldas and Bolívar.

32. United Nations system: In fulfilment of the Plan for Action contained in the Secretary-General of the United Nations' reform programme, the office in Colombia has initiated a close working relationship with the Resident Coordinator and the representatives of the system's agencies in order to gradually incorporate human rights as a central focus of its programmes, plans and activities. Four courses for training and up-dating in human rights, humanitarian law and international criminal law were provided to 79 United Nations system employees.

Information, promotion and dissemination

33. With the goal of reaching the most remote and isolated populations, an agreement was signed with the Radio Nederland Training Center. The office in Colombia received 2,000 CDs containing children's stories about human rights, which

are disseminated by 300 community radio stations throughout the country through the radio programme *Naciones Unidas Manos Amigas* (United Nations, Friendly Hands).

34. Among the publications created by the office in Colombia, it is worth mentioning the 5,000 copies of *Compilación de Derecho Penal Internacional* (Compilation of International Criminal Law); 3,000 copies of the *Informe annual* (Annual Report); 20,000 newspaper supplements of the *Recomendaciones para Colombia 2003* (Recommendations for Colombia 2003); 20,000 copies of the pocket edition of the Universal Declaration of Human Rights; 40,000 copies of the Universal Declaration (children's version); and 10,000 copies of the calendar *Colombia: Imágenes y realidades 2004* (Colombia: Images and Realities 2004) were printed for nationwide distribution. The total number of copies of publications of the office in Colombia distributed throughout the territory of Colombia reached 100,000.

35. The office in Colombia participated in numerous activities (seminars, forums, workshops and conferences) and was present at the Bogotá Book Fair where all of its publications were for sale. Within the framework of its work with the media, the office in Colombia organized nine workshops with regional journalists and three thematic discussions with journalists from Bogotá. Training was provided to 170 journalists.

36. Advice was provided to different civil society organizations with respect to managing communications, including the Fundación Dos Mundos (the "Two Worlds Foundation") on creating human rights murals in the department of Cauca. The office in Colombia disseminated information with various public libraries in Bogotá and organized a painting contest on human rights with children from six different schools.

37. The office in Colombia issued 37 press releases and organized eight press conferences. There appeared 1,100 press articles, 700 radio reports and 290 television reports concerning the office.

38. A National Photography Contest on human rights was undertaken jointly with the Fundación Dos Mundos, in which professional and amateur photographers, graphic reporters and students participated. An exposition of 100 photographs on human rights, out of the 1,130 submitted to the contest, was presented in the National Museum of Bogotá.

39. The office in Colombia commissioned an opinion poll with respect to its image and impact. The results showed that all of the sectors interviewed considered the presence of the office and the work it is carrying out to be of great importance for the country.
