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Chairperson: Mr. Iwasawa

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The meeting was called to order at 3.05 p.m.

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

Sixth periodic report of Colombia (CCPR/C/COL/6; CCPR/C/COL/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the members of the Colombian delegation took places at the Committee table.*

2. **Ms. Arango Olmos** (Colombia), introducing the report, underscored her country's commitment to cooperating with international institutions. The Office of the United Nations High Commissioner for Human Rights (OHCHR) and 23 other United Nations agencies, as well as the International Committee of the Red Cross (ICRC) and the International Labour Organization (ILO), had a presence in Colombia. In 2002, Colombia had issued a standing invitation to human rights special procedures mandate holders of the United Nations and of the inter-American human rights system. It had also created a body — involving the Government, civil society and representatives of 36 countries through their embassies — to monitor initiatives relating to human rights, cooperation and public policy. Over the past eight years Colombia had received 42 visits from representatives of international organizations and other entities. It had voluntarily submitted to the Human Rights Council's universal periodic review and to date was the only country to have established a governmental mechanism for monitoring follow-up to the 133 accepted recommendations and to commitments made in the framework of the review. All the articles of the Covenant were reflected in domestic legislation, and all inhabitants of the country could invoke them.

3. Colombia was working to strengthen its human rights institutions. The Office of the Vice-President was coordinating the Presidential Programme on Human Rights and International Humanitarian Law. The ministries of defence, foreign affairs, the interior and justice, and social protection had all created human rights units that were responsible for ensuring the implementation and application of various standards in that area. The Public Legal Service (*Ministerio Público*) also oversaw the protection and promotion of human rights, through the Office of the Attorney-General (*Procuraduría General*) and the Office of the Ombudsman (*Defensoría del Pueblo*). Regarding the judiciary, the Prosecutor-General (*Fiscal General*) was responsible for investigating and prosecuting breaches of the law with the support of a human rights and international humanitarian law unit. Colombia had a constitutional court, whose rulings had been termed progressive with regard to the protection of human rights. The executive branch adhered strictly to all decisions by the judiciary and implemented them. Congress had established human rights commissions. In addition, civil society organizations were very active and helped to strengthen public policies. A law had been passed to support those organizations' activities through public funds. The Government strongly condemned all attacks on defenders of human rights and social or community leaders, and investigations to identify and punish the perpetrators of such acts were carried out with diligence. Recently, four human rights defenders had been kidnapped in Colombia. Colombia called on the international community to appeal to their abductors to release the hostages.

4. In 2002, the State had set itself the task of halting the violence, which claimed countless victims each year, by devoting all its efforts to achieving that goal. It had developed a "democratic security policy" which had never resulted in the adoption of the measures provided for in article 4 of the Covenant. Since then the threats posed by illegal armed groups had been countered in full accordance with the law, and the exercise of rights and the authority of democratic institutions were protected throughout the land. Security was now strengthened, and the number of homicides had fallen from 28,837 in 2002 to 15,817 in 2009, the lowest figure in 23 years. Between 2002 and 2009, killings of teachers and trade unionists had decreased by 85.7 per cent and the number of persons protected by the State had increased by 130 per cent. While in 2002 there had been 2,882 kidnappings, in

2009 there had been only 213, which represented a 93 per cent decline and the lowest figure in 23 years. The number of displaced persons had also fallen significantly (from 446,444 in 2002 to 146,681 in 2009).

5. The outgoing Government had held eight elections, including national, regional and local ones. The Organization of American States (OAS) election monitoring missions in March, May and June 2010 had noted that they had been the most peaceful of the past 40 years. Campaigning had been possible throughout the country and access to the media and to public funding had been assured, as had access to polling stations, despite the country's geographical complexity. No party now held 30 per cent of parliamentary seats, and Congress was thus quite pluralistic; ethnic groups were also represented. The Justice and Peace Act, passed in 2005 by Congress at the Government's initiative, then revised and declared applicable by the Constitutional Court, sought to safeguard victims' rights and encourage the demobilization of members of armed groups. After negotiations with those groups, 31,671 people had handed in their weapons. The main leaders of the movements had been arrested and their collaborators brought to justice without amnesty or pardon. Both individual and collective demobilization were options. Of the estimated 53,000 members of paramilitary forces who had laid down their arms between 2002 and 2009, 3,000 had been minors and 17,700 members of guerrilla groups. This complex phase was ending and the country could now move towards reconciliation. The justice system had focused its efforts on finding the missing and dead and on helping to identify and exhume victims with due respect for family and community customs. To date 2,719 graves had been found, containing 3,299 corpses.

6. The victims had been able to participate in the justice and peace process and to have their rights recognized. The National Justice and Peace Unit of the Office of the Prosecutor-General (*Fiscalía General*) had registered 299,551 victims requesting full reparations. Criminal investigations into massacres, forced displacements, more than 40,000 murders, acts of torture and other offences were in progress.

7. The State was promoting the rights and culture of ethnic minorities on the basis of legislation and case law. Indigenous and Afro-descendant communities now had a special system of political representation. Affirmative action was being undertaken on their behalf in the areas of health and education, and their dialogue with the Government had been institutionalized. Indigenous communities, which made up 4 per cent of the Colombian population, collectively owned lands representing 35 per cent of the country's territory. Under ILO Convention No. 169, a prior consultation mechanism had been established to enable them to participate in decisions that affected them directly. A total of 110 such consultations had been held in 2009. Fairness was a fundamental principle of public policy. Thus 17 measures had been enacted on behalf of women, and institutional capacity in that regard had been strengthened. To better target aid to displaced populations, it had been decided that public policy would take into account factors such as the physical, social and cultural particularities of each person.

8. The experience of recent years showed that security was a prerequisite for full enjoyment of human rights. Despite all the difficulties it had encountered, the State had managed to significantly reduce the effects of crime by strengthening its presence throughout the country. It aimed to continue to strengthen all the safeguards that enabled civil society organizations to function and to encourage dialogue and democratic debate. Enormous challenges lay ahead. Under the justice and peace process, the State would continue to pursue the goals of truth and justice and to do everything possible to ensure that history did not repeat itself.

9. Regarding the police, the State must ensure that law enforcement officials operated in strict compliance with human rights and international humanitarian law protocols and standards, following the rules set by the Ministry of Defence, and prosecuting and

punishing those who failed to comply. The State had resolved to strengthen respect for human rights within the society, respect that had been undermined by the long period of violence in the country. Dissemination of the Covenant would be an element in the process of educating society about, and increasing its awareness of, human rights.

10. The State reaffirmed its commitment to maintaining a frank and constructive dialogue with international human rights organizations and would strive to provide the Committee with all the information it requested. It trusted that that information and the report as a whole would enable the Committee to better understand its efforts to fully meet its international obligations.

11. **The Chairperson** thanked the delegation for its presentation and invited it to reply to questions 1 to 18 on the list of issues.

12. A slide presentation was given on all the new developments outlined by the delegation.

13. **Ms. Rey** (Colombia) said that, in order to answer the question on measures taken to implement Act No. 288 of 1996, which had established mechanisms for compensating victims of human rights violations in accordance with decisions by various international bodies dealing with human rights (question 1), it was necessary to speak also of the Justice and Peace Act and the national human rights plan of action. Act No. 288 established a simple and speedy mechanism whose activation required, first, a prior explicit written decision by the Human Rights Committee of the United Nations or the Inter-American Commission on Human Rights, and, second, acceptance of that decision by a committee appointed by the ministers for the interior and justice, foreign affairs and defence. The Justice and Peace Act was designed to facilitate the demobilization of members of illegal armed groups and to address victims' compensation claims. The following implementation mechanisms had been established: demobilized paramilitaries (currently 4,346 individuals) agreed to follow the "*versión libre*" procedure, under the supervision of a special unit of the Office of the Prosecutor-General that was staffed by prosecutors who worked completely independently of the Government. They analysed the *versión libre* statements of demobilized members of paramilitary groups in the light of case files submitted to them (over 300,000 to date), reports by national and regional NGOs, and victims' testimony. They conducted investigations before interviewing demobilized individuals. The fact that 299,000 people were currently authorized to testify in the *versión libre* process attested to the legitimacy of that process. To date 46,000 people had participated in the process and had put some 27,000 questions to members of demobilized armed groups. In December 2009 it had been decided that partial indictments could be prepared on the basis of incomplete cases, and that had paved the way for the first sentence in the justice and peace process, in which two demobilized persons had been found guilty. The backlog was huge, with 250 people awaiting verdicts. The prosecution services had established conclusively that 215 massacres had taken place and 684 homicides had been committed; there had been 387 displacements, more than 600 enforced disappearances and 2,775 cases of torture. The obligation to investigate remained as long as justice had not been handed down. The right to know the truth was an essential element of the mechanism. Special chambers had been created and 46,000 victims had attended the hearings. *Versión libre* statements from the remote parts of the country had been transmitted in real time and victims had been able to put questions to demobilize paramilitaries through prosecutors working under the Justice and Peace Act. The historical memory unit of the National Reparation and Reconciliation Commission had published its first two reports reconstructing the facts of two serious cases of human rights violation and planned to publish reports on another eight cases. It was important to note that when a demobilized person alleged that someone who was not part of the justice and peace process was an accomplice or the perpetrator of an offence, the matter was immediately turned over to the ordinary justice system. Currently 6,834 such

investigations were under way, involving mayors, governors, members of Parliament and other holders of political office. Also pending were 344 investigations against members of the army and police. Finally, the Supreme Court had convicted 16 members of Parliament with links to paramilitary forces.

14. Regarding reparations, 11,000 claims, totalling US\$ 100 million, had been paid out in 2009, and the reparations budget for 2010 was US\$ 150 million. The National Reparation and Reconciliation Commission had 11 regional commissions around the country. As to mass graves, 2,719 graves had been identified and 3,299 corpses exhumed, nearly half of which had been identified and returned to families.

15. The human rights plan of action, established in 2004 through cooperation between the State and NGOs, had led to substantial progress in determining working methods and areas of focus at the national, departmental, regional and local levels. In 2008 NGOs had withdrawn from the plan of action, claiming that there were problems with the guarantees of their participation. The State had subsequently created bodies tasked with improving the situation.

16. **Ms. Fonseca** (Colombia), referring to the prevention of sexual violence (question 8), said that the Government had made progress in that area through the formulation and implementation by the Ministry of the Interior and Justice of 10 major lines of action as outlined in the written responses, which included improving women's legal literacy and the legal defence of women, combating human trafficking, taking into account the special needs of displaced women, prevention of domestic and gender-based violence and implementation of international instruments. That set of policies would of course require continual follow-up and strengthening in cooperation with other relevant ministries and entities. An inter-agency working group had been created to press for the elimination of violence against women. A detailed report on combating violence against women had been prepared for the Committee.

17. **Ms. Abaunza Millares** (Colombia) added that the Ministry of Defence took the issue of violence against women very seriously and had designed a strategy to prevent and punish sexual violence, including training to raise awareness of human rights among members of the armed forces and to draw their attention to particular issues, such as the increased vulnerability of certain sectors of the female population, notably as a result of the armed conflict. Specific instructions to strengthen those measures were in the process of being adopted. Measures taken to effectively implement Act No. 1257 of 2008, which set standards for awareness-raising, prevention and punishment in respect of acts of violence and discrimination against women (question 9), included the creation of a national task force of all the institutions involved in implementing the Act, as well as thematic working groups focusing on various aspects of its implementation (health, labour law, education), which put forward proposals on regulation. A presidential decree was expected to be adopted before year's end.

18. Concerning the adoption of legislation against racial discrimination (question 10), Colombia had made progress in combating discrimination against Colombians of African descent and against indigenous peoples. However, the bills introduced thus far in Congress had not borne fruit, either because their sponsors had withdrawn them or because they had been rejected.

19. She said that the Ministry of Defence had adopted Directive No. 10 of 2007 establishing a committee to deal with complaints of killings of protected persons or non-combatants in order to facilitate investigation and take preventive measures. The committee was chaired by the Minister of Defence and comprised of military commanders, inspectors-general, human rights officials in the police and armed forces, and representatives of the military criminal justice system. Also participating were the Office of the Prosecutor-

General, the Office of the Attorney-General, the OHCHR Office in Colombia and ICRC. The committee had held 14 meetings, and the next one was to take place on 16 July 2010. Its work had led to the adoption of several other directives, including Directive No. 19 of 2007, which instructed military commanders to provide assistance to criminal investigations by facilitating access by the judicial police to crime scenes and ensuring the preservation of technical and scientific evidence. Under Directive No. 300-28 of 2007 promulgated by the high command of the armed forces, the criteria for evaluating the results of police work had been revised to reduce the emphasis on losses inflicted on enemy forces and give more weight to the taking of prisoners and even more to demobilization.

20. In January 2008, the Minister for Defence had launched an integrated policy on human rights and international humanitarian law, whose main components were the revision of the system for training police officers in human rights and international law, the development of new instruments regulating the conduct of the police in carrying out its operations, the protection of vulnerable groups, cooperation and coordination with international organizations and investigative bodies, and informing the general public about efforts in that area, particularly through the media.

21. To date, the Minister and Vice-Minister for Defence, the commanders of the armed forces and the director of the national police force had appeared eight times on television to explain what action had been taken on allegations of police human rights violations. In the first programme, on 17 November 2008, the Minister for Defence had announced the adoption of 15 key measures, as set forth in a paper which would be circulated to Committee members. Another important step had been the publication of the first operational law handbook in December 2009.

22. The reward system was governed by three directives adopted in 2005, 2008 and 2009 and was subject to several oversight mechanisms. Under no circumstances could a reward be paid to a State agent. Rewards were given only for information leading to a concrete operational outcome by the police. The payment was made only after the account of the outcome had been verified by the relevant committee.

23. **Ms. Rey** (Colombia) said that, according to figures provided by the unit of the Office of the Prosecutor-General that investigated complaints concerning killing of non-combatants, 1,216 cases had been reviewed to date and 73 convictions had been handed down against 177 members of the armed forces. There had been 11 acquittals involving 33 people, and 53 decisions to close investigations involving 215 members of the armed forces.

24. On 1 June 2009, the National Economic and Social Policy Council (CONPES) had adopted a document (No. 3590) on the consolidation of mechanisms for finding and identifying missing persons in Colombia, aimed at enhancing the effectiveness of search and identification mechanisms in order to enable victims to exercise their right to truth, justice and reparations. The Government had allocated US\$ 60 million for implementation of that policy.

25. Pursuant to a ministerial directive of 2006, the Ministry of Defence had adopted a series of measures to facilitate investigations into disappearances and searches for missing persons in the framework of the urgent search mechanism. The National Plan to Search for Disappeared Persons covered the country's entire territory. Relatives of victims and the organizations assisting them had gradually been brought in to help carry out the plan and NGOs, OHCHR and ICRC were also helping. Currently there were 18 exhumation groups operating under court supervision.

26. To date 9,253 people had benefited from the protection programme established by the Ministry of the Interior and Justice and the protection programme for victims and

witnesses operated by the Office of the Prosecutor-General. None of the protected persons had been killed. Funding for the programmes totalled US\$ 60 million.

27. Different authorities were responsible for implementing the protective and provisional measures mandated by the inter-American human rights system, depending on whether the measures were individual or collective. Measures concerning individuals were applied under the protection programmes already mentioned. Collective measures were implemented at the local and regional levels and involved coordination between the relevant civil, military and judicial authorities.

28. The bill authorizing the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance had been adopted on its first reading by the Senate.

29. **Mr. Franco Jiménez** (Colombia) said that, according to the National Registry of Displaced Persons, 788,333 households (3,445,754 persons) had been displaced in Colombia since 1950, more than 720,000 of them since 1997. Since 2009 the number of displacements had fallen sharply. Reporting of displacement had, however, remained comparatively high, mainly because of the increase in late reporting. An estimated 40 per cent of reports received in recent months had related to incidents that had occurred more than 5 years previously, and 20 per cent to cases dating back more than 10 years. To cope with the situation, the Government, working with civil society and the Constitutional Court, had drafted proposals to set a time limit on submission of reports.

30. Taking into account decision No. T-025 of the Constitutional Court and the recommendations of the Representative of the Secretary-General on the human rights of internally displaced persons, the Government had since 30 October 2009 been applying a new policy on prevention and protection, full support for victims, promotion of truth and justice, and reparation. The first report on the subject had been submitted to the Court on 1 July 2010.

31. The Government sought to apply a specific approach in each of its policies on internally displaced persons in order to strengthen the protection of women, children, the disabled, indigenous peoples and Afro-Colombians. Recognizing the need to adapt existing instruments, it had begun consultations with concerned groups. Meanwhile many programmes had been set up to implement relevant orders by the Constitutional Court. Thus special protection measures had been adopted for 600 women, and 10 programmes had been established under Order No. 92 of 2008, on displaced women. Particularly noteworthy were the prevention and assistance programme for female victims of sexual violence and the programme for the prevention of violence against women in the family and for victim support. Three other programmes were being developed, on women's exercise of their right to truth, justice and reparation; protection of indigenous women; and the protection of Afro-Colombian women in the context of displacement.

32. The application of Order No. 4 of 2009 had resulted in the largest prior consultation process ever seen in Colombia, with a view to developing a programme to guarantee the rights of displaced indigenous peoples. A total of 72 local meetings, 27 departmental meetings, 5 regional meetings and 1 national meeting had been held. Moreover, 34 specific protection plans had been developed for 33 indigenous peoples designated by the Constitutional Court, with 5 of the plans already in place, 3 nearing completion and others at the consultation stage.

33. A comprehensive plan for prevention, protection and support for displaced Afro-Colombians had been developed under Order No. 5 of 2009 and approved by the High-Level Advisory Committee. In addition, 62 plans for specific communities had been developed with the active participation of those communities. There had also been progress in implementing the plan to identify collective and ancestral territories and in readjusting

the “ethnic” land protection procedure, given that Act No. 1152 (on rural development) had been declared unconstitutional.

34. **Ms. Fonseca** (Colombia) stressed that the Office of the Attorney-General and the Office of the Ombudsman were both absolutely independent of the executive and played an essential role in protecting human rights. Despite limited budget resources, the Government had sought to strengthen the capacity of the two bodies, as shown by the clear increase in funding allocated to them in recent years. There were currently 39 community ombudsmen in the regions most affected by conflicts.

35. **Mr. Franco Jiménez** (Colombia) said that between 2002 and 2006 the early warning system (SAT) had generated 703 risk reports and follow-up notes, which had resulted in 259 early warnings. In 2009 there had been 61 risk reports and follow-up notes and 21 early warnings. Civil authorities at the local and departmental levels played an important role in the verification and monitoring of measures for the protection of displaced persons and in the implementation of decisions of the Inter-Agency Early-Warning Committee (CIAT). A recent example was the municipality of Barrancabermeja, in Santander, which had been the subject of a follow-up monitoring note by CIAT in March 2009. The following month, an early warning had been issued because of the threat posed by the activities of the criminal “Los Rastrojos” group. In July 2009 a team of municipal and departmental representatives had been to look into the situation on the ground. In October civil and military authorities and the local police had held a meeting which had led to the issuance of a second follow-up note in November. Subsequently, in February 2010 several steps had been taken at the local level, including the creation of a municipal peace council and rural and urban security councils, the organization of 15 “humanitarian days” and the building of a police station in an indigenous community in the municipality.

36. **Ms. Fonseca** (Colombia) said that the fourth periodic report of Colombia to the Committee against Torture in November 2009 (CAT/C/COL/4) contained extensive information on the prohibition and prevention of torture. The situation had changed in recent months with the creation of a national mechanism for the prevention of torture under the Ministry of the Interior and Justice, and the institution of monthly inter-agency meetings with a view to setting up a central registry of cases of torture and enhancing the training of Government officials in matters relating to the Istanbul and Minnesota Protocols.

37. **Mr. Alonso Sanabria** (Colombia) said that the prohibition against torture was enshrined in article 12 of the Constitution. According to article 93, international human rights treaties ratified by Colombia prevailed over domestic legislation. Act No. 599 of 2000 (Criminal Code) criminalized torture and established harsh penalties for perpetrators. Those penalties had been further increased under Act No. 890 of 2004.

38. In decision No. 358 of 1997, the Constitutional Court had ruled that torture lay outside the jurisdiction of the military criminal justice system, as it was a crime against humanity. Article 3 of Act No. 522 of 1999 (Code of Military Justice) prohibited military courts from trying cases of torture, genocide and forced disappearance.

39. Regarding abortion, Colombia had moved from a total ban to recognition of the right to voluntary termination of pregnancy in certain circumstances. In decision No. C-355 of 2006, the Constitutional Court had decriminalized abortion in three situations: when the mother’s life and health were in danger; when the pregnancy resulted from rape, incest or insemination without consent; and when the foetus had severe deformities. Decree No. 4444 of 2006 had been enacted to implement that ruling by mandating the inclusion in health plans of rules and provisions regarding abortion. In decision No. T-388 of 2009, the Constitutional Court had implemented the right to abortion, setting as the sole condition that the pregnant woman must have previously filed a criminal complaint in the case of a

sexual act without consent, or that a medical certificate must have been issued in the two other situations provided for by law. On the question of doctors' freedom of conscience in connection with abortion, the Court had stipulated that the freedom of conscience clause could be invoked by a person but not by an institution. However, a physician could not as an individual refuse to perform an abortion if they were the only person able to perform the procedure in the area where they practised.

40. **Mr. Salvioli** (Country Rapporteur) said that the Committee had received from the State party, Colombian civil society organizations and now from the delegation an impressive amount of information that portended a rich and fruitful dialogue. However, there were still some issues on which he would like more details. The legal situation of demobilized members of paramilitary groups not eligible to be tried under the Justice and Peace Act (question 2) had not been clarified. The Committee was concerned — a concern shared by other treaty bodies and by the Inter-American Commission on Human Rights — that the application of the Justice and Peace Act might ultimately result in impunity for those who had committed the most serious human rights violations. What steps were being taken to avoid that? The delegation had stated that two people had been convicted under the Justice and Peace Act, but had not specified the charge or the sentences. The Committee would like more details. It would also be interesting to know whether demobilized members of paramilitary groups whose confessions had helped to shed light on certain crimes had been prosecuted and sentenced. More information about the outcome of investigations by the monitoring committee and any action taken to follow up its findings would be appreciated. Clarification on the rules governing the application of the principle of prosecutorial discretion would also be useful; in particular, it was important to ensure that refusal to prosecute was not an option in cases of serious human rights violations.

41. Significant efforts were being made to train law enforcement officials, but they seemed to concern primarily senior officers. Were steps being taken to improve the training of junior officers?

42. The State party had provided detailed information on compensation awarded under Decree No. 1290 of 2008. It would be interesting to know whether the Decree provided for non-financial forms of compensation and whether the victims of human rights violations directly attributable to the State could claim compensation under the Decree.

43. He had noted with satisfaction the information provided by the State party on the National Plan to Search for Disappeared Persons but would like clarification of the role of civil society, in particular victims' associations, in the plan's implementation.

44. The State party had not answered the Committee's question regarding the number of people who had been killed while subject to protective measures, notably under the inter-American human rights system (question 13 (c)). The delegation could perhaps fill the gap by specifying whether such killings had been investigated and whether those responsible had been prosecuted and convicted.

45. It was very good to hear that all torture cases were now under the jurisdiction of ordinary and not military courts, something that had repeatedly been recommended by the Inter-American Court of Human Rights. However, in a recent speech the President had said that the jurisdiction of military courts should be extended, and that could not help but raise concerns regarding international human rights standards, especially as the military jurisdiction was already very broad. The Inter-American Commission on Human Rights had on numerous occasions denounced the fact that cases of serious human rights violations tried by military courts in the past had resulted in impunity. It was therefore important for the State party not to let up on the efforts made thus far to prevent a return to such situations. In that context, it would be useful to have information regarding the composition

of the High Council of the Judiciary, and particularly on measures taken to ensure that it was balanced.

46. The Committee was aware that paramilitary leaders had been extradited to the United States of America to be tried for drug trafficking. It was important to ensure that this did not mean they would escape Colombian justice, and that they were held accountable for the serious human rights violations attributed to them. Were arrangements to that effect being made?

47. In the annexes to its written responses, the State party indicated that 7 cases of homicide with torture and 257 cases of misconduct on duty, including cases of torture and cruel, inhuman or degrading treatment, had been brought before the courts, but did not state whether they had resulted in convictions. Information on the number of convictions and the sentences actually imposed for acts of torture or cruel, inhuman or degrading treatment would be welcome.

48. According to information before the Committee, the decision of the Constitutional Court defining the circumstances in which women could have abortions legally and safely had not resulted in concrete measures to guarantee women the right to safe legal abortion. Indeed, it seemed that it was being blocked. How did the Government plan to safeguard women's access to abortion in the circumstances defined by the case law of the Constitutional Court?

49. **Mr. Pérez Sánchez-Cerro** said that, according to information available to the Committee, investigations conducted thus far under the Justice and Peace Act had only very rarely resulted in prosecutions of those responsible for serious human rights violations, and victims' access to justice remained very limited. Detailed statistics on the number of investigations initiated, the number of prosecutions and resulting convictions, and the number of cases in which victims had been awarded reparations, would be useful. The programme of individual reparation through administrative channels, established under Decree No. 1290 of 2008, seemed more like a humanitarian aid programme than a genuine reparations programme; it did not include mechanisms to safeguard victims' right to truth, which was nevertheless an essential element of reparation. One could also wonder why the Victims' Compensation Fund had not yet paid out any compensation. In that context, what measures was the State party considering to ensure that those responsible for violations were prosecuted and punished and that victims' right to truth, justice and fair compensation was respected?

50. The delegation had stated that the lack of cooperation from NGOs made it difficult to continue the implementation of the national human rights plan of action (question 7). For their part, representatives of NGOs had told the Committee that the repeated violence against civil society actors — assaults, killings, forced disappearances — created a climate of insecurity that made them inclined to remain on the sidelines. The State party could not rely on the cooperation of NGOs unless it took the necessary steps to stop such violence.

51. The State party had not yet adopted a law against racial discrimination, although several bills had been submitted to Congress. It was time that the Constitution contained provisions that expressly prohibited racial discrimination in the name of the right to equality, but those provisions had never been implemented. The Committee on the Elimination of Racial Discrimination had recommended that the State party enact a law to that effect (CERD/C/COL/CO/14, para. 13), and it would be interesting to know whether steps had been taken in that regard. It would be desirable that better coordination be established among the various national bodies dealing with issues relating to Afro-Colombian communities and that the State party consider developing a national action plan to combat racial discrimination.

52. The fact that displaced persons could benefit from assistance programmes only if they were on the central register of displaced persons unfairly deprived those unable to register, notably in regions affected by armed conflicts, of access to the help they needed. Furthermore, that requirement skewed census data on displaced persons as only those registered were counted, which led to an underestimation of needs and thus of the capacity required to respond to those needs. The launch of the justice and peace process in 2005 had not thus far had any tangible impact on the risk of clashes between armed groups, which remained high in many parts of the country. The Committee needed to know what other measures the State party intended to take to prevent that risk and to ensure better protection of internally displaced persons in those areas.

53. The original mission of the early-warning system (SAT), which had been to prevent forced displacements associated with the risk of armed clashes, seemed to have been distorted to justify increased militarization of high-risk areas and the involvement of civilian populations in hostilities. OHCHR had expressed concern at the system's loss of independence as a result of the Government's establishment in 2003 of the Inter-Agency Early-Warning Committee. In addition, the Office of the United Nations High Commissioner for Refugees (UNHCR) had repeatedly denounced the authorities' hostile stance towards SAT teams and the absence of measures to ensure their protection. The Committee needed to know what the State party intended to do to enable SAT to play its preventive role to the full and to ensure that warnings were followed by appropriate action. In several cases, warnings had been ignored, with tragic consequences; seven people had been murdered in Puerto Libertador in July 2008 and eight indigenous people killed in January 2009.

54. **Ms. Keller** said that it would be desirable for the State party to develop a system of detailed statistics concerning acts of sexual violence, including those committed in the context of the armed conflict. Stigmatization still made it difficult for victims of sexual violence to report attacks. It would be useful to know whether the programmes implemented to prevent sexual violence included measures to combat the prejudices that burdened victims with shame and forced them to remain silent. She also wished to know whether protection was provided for victims of sexual violence when the perpetrator threatened to retaliate if they filed a complaint, including when the assailant was a member of the police or security forces.

55. Despite efforts by the Office of the Prosecutor-General to recruit specialists to investigate cases of sexual violence, the rate of impunity in such cases remained very high. In 2009 the Constitutional Court had found that investigations by the Office into 183 cases of sexual violence had not been conducted satisfactorily. It would be interesting to know whether any steps had been taken to render investigations more effective. Sexual violence in the context of forced displacement was a problem that deserved the full attention of the State party. Nearly half of internally displaced persons were women, and it was known that displacement increased the risk of violence, including sexual violence. Displaced women were thus particularly vulnerable, and the Committee needed to know if that had been taken into account in the programmes and strategies implemented to prevent sexual violence. Details on how the State party ensured that decisions taken in the capital were implemented in departments and municipalities would also be useful.

56. The regulations implementing Act No. 1257 of 2008 on awareness-raising, prevention and punishment in respect of all forms of violence and discrimination against women had still not been adopted. Perhaps the delegation could indicate whether that would happen in the near future. Act No. 1257 provided for changes to the Criminal Code, the Code of Criminal Procedure and Act No. 294 of 1996. Details on the substance of those changes would be welcome. It would be interesting to know whether the non-mandatory conciliation currently provided for could be directly implemented by the competent

authorities or required the adoption of specific implementing regulations. It would also be interesting to know whether the State party assessed the effectiveness of the policies in place to prevent sexual violence and ensure that perpetrators were prosecuted and punished, and what criteria and objectives it had set for that purpose.

57. **Mr. Thelin** said that, according to figures provided by the State party in its written replies on the matter of investigations into extrajudicial executions, the National Human Rights Unit had 1,244 cases pending as at 15 February 2010, and the various investigation offices of the Office of the Prosecutor-General around the country had 436 cases as at December 2009, yet there had been only 45 convictions in all. He trusted that did not mean that the majority of cases were dismissed or resulted in acquittal. He also wished to have confirmation that those cases were sent to ordinary courts, not military courts. Finally, he wished to know the average length of proceedings and whether changes had been observed since the entry into force of the new accusatorial procedure.

58. **Mr. Bhagwati** said that the State party was to be commended for having established the National Reparation and Reconciliation Commission as a mechanism offering non-judicial alternatives, but he wished to know what the Commission had achieved and in particular how many cases had been resolved through its offices over the past three years. He would also like to know whether the decisions of the Prosecutor-General were binding. If so, in what way? Could they be appealed?

59. Regarding the very important institution of the Ombudsman, he wished to know what qualifications were required of applicants for that office, who appointed the Ombudsman, what the powers of the office were and how they were defined. It would also be useful to know whether a procedure existed, in law or in practice, enabling individuals to appeal to the Ombudsman. In addition, he wished to know whether the decisions of the Ombudsman had been compiled and published. Lastly he asked what steps the Colombian authorities had taken to arrest, prosecute and try those responsible for kidnappings, and with what results.

60. **Mr. El-Haiba** said that the reparations programme was apparently limited to financial compensation. He wondered what measures were taken to help victims' families in other ways – for example, to support them in their grieving process, which was an important part of the pursuit of transitional justice. Regarding the notion of collective reparations, he asked what the differences were between the individual and collective reparations programmes. Did collective reparations apply to certain regions that had been particularly affected by violence in the past, or to entire communities? It would also be useful to know what measures the authorities had taken to ensure that the reparations programme did not turn into a humanitarian assistance programme, but rather remained an important component of the framework for safeguarding victims' right to compensation.

61. He welcomed the establishment of a new prison inspection mechanism implementing the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He was nevertheless surprised that the mechanism had been placed under the authority of the Ministry of the Interior and Justice. While the Optional Protocol gave States the freedom to choose the most appropriate institutional solution for their national prevention mechanism, it expressly provided that the solution must take account of the Paris Principles. He would be grateful if the Colombian delegation could provide more information on the mechanism.

The meeting was suspended at 5.15 p.m. and resumed at 5.35 p.m.

62. **Ms. Rey** (Colombia) said that, with regard to the remedies available for violations committed by Government officials, victims could obtain compensation through existing judicial remedies. For example, they could bring criminal indemnification proceedings or

apply to the administrative court. Colombian case law regarding administrative litigation had moreover been strengthened by the application of the standards of international law.

63. Regarding the legal position of members of paramilitary groups to whom the Justice and Peace Act did not apply and who were not under investigation for serious human rights violations, war crimes or crimes against humanity, it could not be denied that, until the demobilization process had been initiated, the Government had not been aware of the magnitude of the problem posed by paramilitaries. It was the demobilization process, and in particular the adoption of the Justice and Peace Act, that had allowed the authorities to gradually grasp the full extent of the problem. Previously, for example, there had been no indicators on membership of a paramilitary group, so the Office of the Prosecutor-General had requested the drafting of legislation (Act No. 1312 of 2009) that would allow the court to take into consideration an explicit statement by the individual concerned that they were not responsible for the offences they were charged with. In fact the law in that regard had changed, and Act No. 1312 was no longer applicable, but the provisions for investigating cases of suspected criminal acts still applied, and any paramilitary suspected of human rights violations, war crimes or crimes against humanity was prosecuted and tried by ordinary courts under ordinary law. State monitoring of demobilized paramilitaries was carried out by senior advisers for reintegration, who were available to assist judicial authorities as needed.

64. Discretion to prosecute was regulated by the Code of Criminal Procedure, but the rules for its application were set forth in a decision by the Prosecutor-General which provided first that, for the prosecutor to decide not to prosecute a case, the offence must be a minor one or carry a prison sentence of less than 7 years. The option not to prosecute could not under any circumstances be exercised for acts constituting human rights violations, war crimes or crimes against humanity. Furthermore, the decision not to prosecute could not be made by one prosecutor alone but was always reviewed by a superior, the Deputy Prosecutor (*Fiscal Delegado*). To date the option of refusing to prosecute had never been exercised in the context of the Justice and Peace Act.

65. Regarding penalties for members of paramilitary groups, the “alternative penalty” provided for in the Justice and Peace Act was 5 to 8 years’ imprisonment. This was the main penalty, and the one the court was obliged to impose. It could also hand down accessory penalties, such as a ban on holding public office or engaging in political activities.

66. Regarding indictments in incomplete cases (partial indictments), she said that currently there were 259, and the authorities hoped that with the change in case law that had allowed an initial conviction of paramilitaries on 29 June 2010 under the Justice and Peace Act, those 259 cases would result in sentences imposing the “alternative penalty” provided for under the Act. The two paramilitaries who had been sentenced on 29 June under the Act had been convicted of forced disappearance, forced displacement and killing of protected persons; they had been sentenced respectively to 468 and 462 months’ imprisonment, and had each been ordered to pay US\$ 450,000 for compensation of victims. The Colombian delegation would provide the Committee with a copy of the ruling.

67. The decision to extradite 29 paramilitaries to the United States had been made by the State authorities, with the approval of the Supreme Court. The President had discretion to execute an extradition order. Regarding the reasons for the decision on extradition, the State party acknowledged its limitations in the face of the Autodefensas Unidas (United Self-Defence Forces), which consisted of groups of drug traffickers with significant power to corrupt State institutions. It should be noted, however, that the case law on extradition had changed: the Supreme Court had stated that a person suspected of serious human rights violations, war crimes or crimes against humanity could not be extradited as long as they did not meet the conditions set by Colombian law to guarantee the right to truth, justice and

reparation. The authorities acknowledged that they had encountered logistical problems that had hampered the application of the justice and peace process to the extradited paramilitaries, and steps had been taken to strengthen and improve procedures under the Justice and Peace Act on the basis of the Inter-American Convention on Mutual Assistance in Criminal Matters. Now, paramilitaries who were extradited had been on the basis of partial indictments.

68. Commenting on the Committee's concerns about the impunity that could result from the application of the Justice and Peace Act, she said that the Act was only five years old and had only been applied for four years. The establishment of all the institutions provided for by the Act had taken time, and it was also true that the authorities had misjudged the situation in providing, in the Act, for only 20 prosecutors specializing in cases involving members of paramilitary groups. Recognizing their mistake, they had increased the number in practice so that it now stood at 94. To carry out their mission, the prosecutors had first had to analyse the development of paramilitary activity, which had varied from region to region, and acquire in-depth knowledge of the milieu they would be investigating, including by collecting press and NGO reports and especially the 300,000 court cases generated by the Act's adoption. Implementing the Act was clearly a great challenge, and the authorities were aware that there was a long way to go, but the judiciary had made very significant efforts that had already yielded some results. A total of 215 partial indictments had been issued in 3,874 cases of forced displacement, 6,843 homicide cases and 2,775 cases of torture. The Supreme Court had handed down 16 decisions, including 14 convictions in cases where the judge had established that there were links between members of Congress and members of paramilitary groups. Many politicians were currently in custody awaiting trial.

69. More generally, one should not forget that the Colombian people were particularly keen for the Act to yield results as quickly as possible. Colombian practice with regard to prosecution of serious human rights violations must also be considered in the light of other countries' experience and that of the international criminal tribunals. While the results achieved by the Government were certainly still insufficient, they nevertheless reflected the efforts of the judiciary, which must be commended.

70. Regarding administrative compensation, the programme undertaken in that respect had paid out compensation in 11,000 cases, to a total of US\$ 10 million, which placed a heavy burden on the national budget. Budget allocations for 2010 ought to make it possible to double the total amount paid in compensation in comparison with 2009.

71. The National Plan to Search for Missing Persons was implemented by the Commission on the Search for Disappeared Persons, whose tripartite composition (Government, public bodies and NGOs) had been a major factor in the success of its work. NGOs had not only supported the work of the Commission but given it a significant boost. To implement the relevant recommendations of the Inter-American Court of Human Rights, the Colombian State had, through its prosecutors, initiated an extensive process of consultation and participation in the context of the search for missing persons, which had been applied in specific cases and had been further developed.

72. With regard to protective measures and provisional measures, the inter-American system of human rights protection included preventive measures comprising two components, one relating to the protection of rights and the other to the need to conduct investigations. In that context, measures for reducing risk factors were very important, and the Office of the Prosecutor-General participated in various activities to improve the detection of sources of risk and the identification of those responsible for offences. Provisional measures had been adopted in respect of several indigenous communities, and the courts had tried and duly punished some individuals who had committed violations against these communities, including several members of the Fuerzas Armadas

Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People’s Army) (FARC-EP). Regarding requests for information from the Inter-American Court of Human Rights regarding the massacre perpetrated against the Awá indigenous community, the Colombian authorities had ascertained that FARC-EP was responsible. The Inter-American Court of Human Rights had also requested the application of provisional measures to the peace community of San José de Apartadó, and the Colombian courts had ascertained that members of the regular armed forces had participated in the massacres in San José in 2006.

73. **Ms. Abaunza Millares** (Colombia), replying to questions on Directive No. 10, said that the monitoring committee established pursuant to the Directive had made possible the strengthening of inter-institutional linkages, the participation of international organizations in the investigation of complaints and the heightening of the Colombian Government’s awareness of the issues involved. The Ministry of Defence, which had issued the Directive, had been the first to recognize the existence of problems in the area covered by the Directive and had decided to take action, notably by involving the Office of the Prosecutor-General, to prevent the recurrence of offences such as those described in the complaints. While criminal conduct by police officers was dealt with on a case-by-case basis, the authorities in no way wished to condone such behaviour and were eagerly awaiting the court decisions, which ought to help them to further improve the prevention mechanism. Also under the Directive, the armed forces were to receive assistance from the criminal investigation police, and in particular from the technical and forensic services, in all military operations which could result in combat deaths.

74. With regard to possible conflicts of jurisdiction between civil and military courts, under Colombia’s adversarial system of criminal procedure, the ordinary courts should be the first to try an offence. Another positive step was that, under Directive No. 10, representatives of OHCHR had made 21 visits to the seven divisions of the Colombian Armed Forces and had thus been able to help in investigating complaints and in fact-finding in cases where there were grounds for suspicion. Also noteworthy was the promulgation of Directive No. 300-28 of 2007, which meant that more weight could be given to demobilizations rather than to numbers captured or killed in battle. A draft had been prepared containing more specific legal rules governing the indictment of members of the Armed Forces for human rights violations, and seminars on the issue had been organized with the help of the Office of the Prosecutor-General – a capacity-building exercise that had made it possible to conduct 685 investigations with no conflict of jurisdiction between the civil and military authorities, and the handling of complaints had noticeably improved as a result. Significant additional resources from international cooperation had been allocated to the programme to combat impunity. In addition, a special unit to investigate crimes committed by State officials had been created in the Human Rights Unit of the Prosecutor-General’s Office and was now operational.

75. **The Chairperson** thanked the Colombian delegation and invited the Committee to continue consideration of the report at its next meeting.

The meeting rose at 6.05 p.m.