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**RAPPORT ANNUEL DU HAUT-COMMISSAIRE DES NATIONS UNIES AUX DROITS
DE L'HOMME ET RAPPORTS DU HAUT-COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME ET DU SECRÉTAIRE GÉNÉRAL**

**Note verbale datée du 26 février 2008, adressée au secrétariat du Conseil des droits
de l'homme par la Mission permanente de la Colombie**

La Mission permanente de la Colombie auprès de l'Office des Nations Unies et des autres organisations internationales à Genève présente ses compliments au secrétariat du Conseil des droits de l'homme et a l'honneur de lui faire tenir ci-joint les observations* de l'État colombien au sujet du rapport de la Haut-Commissaire des Nations Unies aux droits de l'homme sur la situation des droits de l'homme en Colombie en 2007 (document A/HRC/7/39).

La Mission permanente demande au secrétariat de faire distribuer le texte des observations de l'État colombien en espagnol et en anglais, en tant que document officiel de la septième session du Conseil des droits de l'homme, en même temps que le rapport.

* Ces observations sont reproduites en annexe dans la langue originale et en anglais seulement.

Annexe

OBSERVATIONS OF COLOMBIA CONCERNING THE REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN COLOMBIA, 2007

I. GENERAL OBSERVATIONS

1. Colombia wishes to highlight the constructive spirit that characterized the work undertaken jointly by the country's institutions and the High Commissioner's office in Colombia during 2007. This attitude helped make it possible to identify the principal challenges and launch strategies for overcoming them in an atmosphere of respect and trust, in strict compliance with the office's mandate.

2. Colombia wishes to draw attention to the following positive developments in its relationship with the office:

- (a) The visit of the High Commissioner to Colombia in September 2007;
- (b) The maintenance of a frank and open dialogue with the High Commissioner on the topics of greatest significance for human rights in Colombia;
- (c) The review exercise carried out jointly by the State and office staff to mark the office's 10 years of existence in Colombia;
- (d) The visits by other senior OHCHR officials;
- (e) The impact assessment under the direction of the High Commissioner;
- (f) Extension of the Agreement establishing the office in Colombia until October 2015.

3. The ongoing dialogue and exchange achieved as a result of the visits to Colombia by office staff have resulted in a clearer picture of the situation in the country and the efforts that the State is making to promote the full enjoyment of human rights. They have also led to a better understanding of the many factors that must be taken into account when studying the situation in Colombia, an objective assessment of the activities undertaken and the search for ways of guaranteeing human rights in Colombia more effectively.

4. Colombia wishes to point out that a more extensive dialogue with civil society was achieved in 2007. In the course of this expanded dialogue major agreements were reached on methodology, the scope of the consultation process and the ground rules for the joint elaboration of a National Human Rights Plan of Action. In addition, preparations were undertaken jointly for the Third International Conference on Colombia, which was held in Bogotá in November 2007; agreement was reached on a mechanism for evaluating the implementation of the High Commissioner's recommendations, which was put into operation, and numerous sectoral and regional activities were carried out.

5. In the light of the foregoing, Colombia recognizes that this dialogue has been influenced by observations from both sides that reflect the need to continue efforts to build trust between the State and civil society. It has also been influenced by the revelation of threats against certain organizations that are participating in the process and different assessments of the problems involved and the State's commitment to overcoming these problems. The Government wishes to reiterate its readiness to redouble its efforts to provide all guarantees that will allow the work of civil society organizations to flourish, and to pursue a wide-ranging and sincere debate, as befits a democratic society.

6. It should be emphasized that interaction between the State and civil society is not limited to follow-up to the London-Cartagena-Bogotá process, nor to the human rights dialogue. The State maintains ongoing communication with the community in such forums as the community councils, the security councils, in the debate on subjects of interest to citizens and in the daily activities of the members of Government. It should also be noted that business circles, local authorities, the National Planning Council and other civil society organizations are attaching increasing importance and becoming more actively involved in the study of and search for alternative solutions to the human rights challenges facing Colombia.

7. Colombia wishes to express its appreciation for the report and to draw attention to the following aspects of that document:

(a) The situation of human rights is linked to subjects that have an impact on the consolidation of Colombian democracy, such as the persistence of violence, the influence of drug trafficking and organized crime;

(b) The importance of the demobilization of members of the Autodefensas Unidas de Colombia (AUC);

(c) The firm commitment of the Government to addressing reports of alleged killings of non-combatants by members of the law enforcement authorities.

8. Colombia would also like to draw attention to the following examples of progress cited in the report:

(a) The improvement in security conditions for the population throughout the country;

(b) The holding of local elections with full guarantees in October 2007, the results of which confirmed that Colombia does indeed have a multiparty political system;

(c) Direct and indirect efforts by the Government to obtain the release of persons who have been kidnapped and subjected to cruel and inhumane treatment by armed illegal groups;

(d) The establishment of operational advisers in the military units to strengthen the capacity of commanders to plan and execute operations while observing human rights and international humanitarian law;

(e) The adoption by the Ministry of Defence of a comprehensive human rights policy;

(f) The existence of an active press that reflects the diversity of opinions and their free expression in Colombian society;

(g) Budgetary efforts by the State to help displaced persons and persons covered by protection programmes.

9. Colombia would also note that the report clearly indicates that the illegal armed groups active in Colombian territory disregard humanitarian norms, the rights of the population and the recommendations of the United Nations High Commissioner for Human Rights.

II. PROGRESS AND DEVELOPMENTS

10. Colombia will continue to make every effort to promote the implementation of the recommendations of the United Nations High Commissioner for Human Rights. With regard to the implementation of all previous recommendations,* it intends to work with the OHCHR office in Colombia to establish mechanisms for analysing each recommendation, reviewing any reservations that may have arisen in exceptional cases and prioritize their implementation.

11. With the aim of providing the international community with information that expands on the contents of the 2007 report, Colombia wishes to submit additional information on the following subjects:

A. Human rights defenders

12. It is a source of concern to Colombia that certain isolated incidents that have been noted in the report have been generalized so that they describe the existence of certain behaviour in the country. These include allegations concerning cases of torture and the excessive use of force as well as references to the situation of human rights defenders. Here it must be admitted that situations involving cruel treatment and the use of excessive force by certain State agents have occurred in Colombia. However, respect for citizens while fulfilling their constitutional duties is the rule.

13. Similarly, Colombia has been making systematic efforts to provide full guarantees for the work of human rights defenders, including the strengthening of protection programmes, the maintenance of permanent channels of communication with the authorities, the facilitation of their work throughout the country and effective responses to their requests for information and their complaints. The Government thus considers that any description of the situation of human rights defenders must take into account the fact that such cases as may arise and be considered sources of concern are isolated exceptions.

* The first recommendation contained in the 2007 report is a compilation of all recommendations made in previous years.

B. Unlawful or arbitrary detentions and due process

14. Colombia would also like to draw attention to the need for a thorough revision of the descriptions of certain behaviours. For example, the report uses the terms “unlawful or arbitrary detention” to describe arrests that are based on testimony of demobilized persons. Experience has consistently shown that the testimony of any persons who have participated in criminal activities is of great significance in clarifying what happened and determining who is responsible. The Colombian system of justice has been extremely careful to guarantee the independence of prosecutors in weighing these elements and offering all guarantees of due process to trade unionists, and has even requested special agents of the Attorney General’s Office in highly sensitive cases. Thus the recently introduced oral accusatory system of criminal justice restricts only the ability to impose measures of assurance in respect of guarantee judges.

C. The indigenous and Afro-Colombian population

15. Colombia wishes to draw attention to certain aspects of the public policy regarding the indigenous and Afro-Colombian population:

(a) On 29 October 2007, Decree No. 4181 was issued; this Decree establishes a high-level Intersectoral Commission which has as its primary task the formulation of policy recommendations for overcoming racial discrimination;

(b) Pursuant to Constitutional Court decision SU 383, consultations on the eradication of illicit crops have been held in 158 indigenous town halls; these meetings have covered 696 communities and have produced 27 agreements;

(c) Some 23 consultations have been held on hydrocarbon projects; in only four of these either an agreement was not produced or one is in process;

(d) In 2007 the Office of the Public Prosecutor made a major effort to bring to justice the perpetrators of grave violations of the human rights of the Kankuamo indigenous community located in the Sierra Nevada of Santa Marta. This resulted in the capture of AUC leaders who had not been demobilized; an investigation strategy has been developed that will involve other special commissions to deal with the allegations made by such communities as the Emberá Katío.

D. Caring for victims and guaranteeing their rights

16. Colombia has continued to adopt measures within the framework of a comprehensive policy that promotes and expands human rights guarantees for victims of any type of violence. These measures include:

(a) The Care of the Displaced Population Act; 2007 marked the tenth anniversary of implementation of the Act, which is recognized as one of the world’s most advanced pieces of legislation in this field;

(b) The classification of minors having ties to illegal armed groups as victims;

(c) The establishment of economic compensation in cases of death caused by violent or terrorist acts;

(d) The establishment of truth, justice and reparation as necessary elements of the peace processes that have resulted in collective and individual demobilizations since 2005.

17. As part of these measures, from 2005 to 2007 Colombia awarded compensation in the amount of \$250 million to 33,000 families of persons whose deaths had occurred between 1996 and 2007. During the past four years a total of 8,000 homes that were destroyed by armed illegal groups in 196 communities have been rebuilt.

18. In 2007, the town of Bojayá, where 102 persons were massacred by FARC in May 2002, was completely rebuilt in a new location. The design and relocation of the town were agreed with the community. Since 2007, Colombia has had an annual budget of \$500 million to meet the needs of populations displaced by violence. A protection programme for victims and witnesses in cases covered by the Justice and Peace Act was established by Decree No. 3570 of 18 September 2007, and a budget of \$9 million was provided to launch its implementation.

19. Lastly, it should be noted that in order to implement the Justice and Peace Act and meet the anticipated deadlines for implementation of the reparation measures provided for under this legislation, the Government is promoting a process of consultations for the establishment of an administrative reparation programme so that this responsibility to victims can be fulfilled as quickly as possible.

E. Implementation of the Justice and Peace Act

20. Act No. 975/2005 created a legal framework for the disarmament, demobilization and reintegration process currently under way. One of the Act's fundamental objectives is to guarantee the rights of victims to truth, justice and reparation and to ensure that they participate in all phases of the process.

21. The Justice and Peace Act imposes conditions on anyone seeking to benefit from its provisions. These include: genuine demobilization; the renunciation of all criminal activity; confession of any incidents in which the individual may have taken part in his or her capacity as a member of an illegal armed group; non-recidivism and contribution to the reparation of victims from his or her own resources. The Act thus sanctions with the loss of benefits any person who fails to honour the above commitments or who is sentenced in respect of other incidents not previously confessed. To date, implementation of the Act has yielded the following results:

(a) The claims of 126,000 victims have been registered;

(b) The first phase, which involved the receiving of 1,036 voluntary depositions from demobilized individuals, has been completed;

(c) Information has been received regarding 4,493 incidents affecting 8,200 victims;

(d) Some 1,056 graves have been identified and exhumed, yielding 1,257 bodies;

(e) A total of 217,500 court cases relating to incidents that occurred in areas where groups that have agreed to be bound by the Act operated have been reviewed;

(f) A total of 2,700 edicts have been published to inform potential victims of individuals' agreement to be bound by the Act.

22. As noted in the report, the Government has significantly increased the size of the Attorney General's Office by conferring extraordinary powers, through Congressional action, that authorize the Office to build its capacity to take on the most important tasks in this process. In addition, new temporary posts have been created to support the work of the Justice and Peace Unit, which has responsibility for satisfying the judicial requirements of this process.

F. Combating impunity

23. Colombia wishes to reiterate its firm commitment to the policy of combating impunity, which was agreed by all the institutions of all powers of the State. This policy seeks to promote efforts in four strategic areas: institutional and organizational development; resource management; care of victims and witnesses; and operational conditions for investigation and punishment.

24. The Government remains determined to ensure the free, independent and untrammelled functioning of the judiciary. To this end, the executive power has guaranteed conditions of security throughout the country, the presence of institutions and the weakening or removal of illegal armed groups and their interference in the economic, social and political life of the country.

25. As noted in the previous section, article 47 of the National Development Plan for the period 2006-2010, which was adopted by Congress in 2007, authorizes the Government, with the agreement of the Attorney General's Office, to increase the number of permanent and temporary staff to deal with cases in which they are deemed necessary. In exercise of this authority, Decree No. 122 of 18 January 2008 was issued, which created 1,133 new permanent posts in the Office's staff and 753 new temporary posts. Accordingly, Colombia wishes to draw attention to the recommendations contained in the High Commissioner's report concerning increased resources for the judiciary and suggests that these recommendations be evaluated in the light of these efforts.

26. During 2007 Colombia also appointed 33 new officials, 18 of whom were auxiliary magistrates, to bolster the investigative capacity of the Criminal Division of the Supreme Court of Justice, which has responsibility for investigating civil servants having constitutional authority.

27. To deal with the situation of trade unionists who were victims of aggression in recent years, Colombia continued to take action under the tripartite agreement concluded with the assistance of the International Labour Organization (ILO) in 2006. Under this agreement:

(a) A prosecutorial sub-unit was established with a mandate to clarify those incidents;

(b) A total of 13 prosecutors, 78 judicial police officers, 24 lawyers and 13 deputy prosecutors were appointed to the sub-unit;

(c) Three relief judges were appointed to hear only cases involving union members; they were provided with a support staff of 14;

(d) Some 36 decisions were issued in 2007, out of a total of 82 decisions in such cases since 2002.

G. Demobilization

28. In application of the measures provided for in Act No. 975/2005 to deal with the failure of demobilized persons or persons having renounced criminal activity to honour commitments, the following activities were undertaken in 2007:

(a) The Director of the National Police issued monthly public progress reports on the activities of the police in combating the so-called emerging criminal gangs;

(b) The Joint Verification Mechanism established to provide ongoing monitoring of possible criminal activity by demobilized persons or emerging criminal gangs held 22 national meetings and 88 regional meetings;

(c) Some 1,943 members of emerging criminal gangs (including 303 demobilized individuals) were captured and 619 (including 19 demobilized individuals) were dismissed under army or police procedures;

(d) Diego Fernando Murillo (alias “Don Berna”) and Carlos Mario Jiménez (alias “Macaco”), leaders of demobilized groups, were placed in isolated detention facilities on charges of resumed criminal activity;

(e) Some 20 leaders of emerging criminal gangs having ties to drug trafficking were captured, including Diego Montoya (alias “Don Diego”) and Hebert Veloza García (alias “Hernán Hernández”);

(f) The commander of the Cacique Pipintá Front, one of the few groups that did not participate in the demobilization process, was captured. The group was subsequently disbanded, as the report acknowledges;

(g) Criminal gangs operating in the departments of Meta and Vichada were disbanded and 140 of their members captured.

29. It is important to stress once again that, owing to the verification, follow-up and monitoring mechanisms that were established to maintain control of the territory, guarantee institutional presence and provide all citizens with guarantees of security, Colombia is firmly convinced that the criminal gangs are made up of delinquents involved primarily in drug trafficking. Consequently, it does not believe that they should be considered to be groups with responsible leaders or any claims to territorial control, much less that there is an ideological basis to their activities. In some areas, the State has even found evidence that criminal gangs have formed alliances with the illegal armed groups - FARC and the National Liberation Army (ENL) - in order to fight other groups for control of the production and trafficking of narcotic drugs.

30. Lastly, with regard to certain views that have been disseminated at the international level, Colombia wishes to reiterate that the legal framework that has governed the demobilization process explicitly and absolutely precludes the possibility of offering benefits as an incentive or amnesty to any person who can be linked to crimes against humanity or crimes of war; only persons who have been demobilized are entitled to receive an alternative punishment that meets all the requirements of the Justice and Peace Act, and then only by judicial decision.

H. Reintegration

31. The reintegration strategy which the Government has implemented following the demobilization of members of illegal armed groups is designed to give groups or individuals who choose to terminate their activities with such groups an opportunity to reintegrate themselves in society. As at 31 December 2007, some 31,671 persons had been demobilized in collective demobilizations and 14,456 had undergone individual demobilizations, yielding a total of 46,127 demobilized persons.

32. During 2007 the reintegration strategy was given a new direction, with greater emphasis placed on the community approach, which seeks chiefly to develop the regions in which this population is located and thus provide opportunities for both the demobilized and the host communities by creating tools for reconciliation.

33. Within the context of this approach, Colombia wishes to highlight the importance of not creating a situation that may create confusion between granting of benefits to persons through the reintegration process and the recognition of victims' rights. International experience, and Colombia's strategy has drawn on this, has shown that unless victims' rights are recognized, peace processes achieved through demobilization are not sustainable, and that unless opportunities for reintegration are provided, demobilization can fail or give rise to new social problems. The guarantee that violent acts against victims will not be repeated is strengthened if there is a possibility of effective reintegration of the demobilized in society that offers genuine opportunities for reparation and reconciliation in the affected communities.

I. Combating poverty

34. In its section on economic, social and cultural rights, the High Commissioner's report cites various indicators and corresponding Government statistics, which were generated by means of a statistical methodology that has undergone recent modifications. It should be noted here that the figure for poverty, which the report places at 45 per cent of the population at the end of 2007, is taken from Mission for the Design of a Poverty and Inequality Reduction Strategy (MERPD), an independent body which, furthermore, calculated the Gini index for the same period at 0.54.

35. Colombia would also like to note that, in order to provide continuity and expand the Government's efforts to ensure the enjoyment of economic, social and cultural rights, efforts were made in 2007 to consolidate the Social Protection Network for Overcoming Extreme Poverty (the Juntos Network) as a comprehensive strategy for coordinating the activities of the State agencies involved in this project. Strategic goals for the period 2006-2010 are to:

- (a) Provide coverage to 1.5 million families;
- (b) Achieve 51 targets in nine areas: identification; income and employment; education and training; health; housing; nutrition; family dynamics; banking and savings; and access to justice;
- (c) Concentrate all State services through coordinated efforts on the part of all institutions in respect of identified families.

36. Lastly, Colombia wishes to clarify the statements contained in the report concerning changes in the system of budget transfers from the central Government to local governments, which were adopted by Congress through Legislative Act No. 04/2007. It should be noted in this connection that pursuant to this Act and its implementing regulations, the volume of resources actually transferred to the regions under the decentralized model of public resource administration rose from 17.3 billion pesos in 2007 to 19.5 billion pesos in 2008. Of these additional resources, 1 billion pesos were earmarked for funding of the public education system. Colombia is unaware of any econometric studies that show that resource transfers from the central to the regional levels for the education, health and basic sanitation sectors have decreased as a result of the recent reforms.

J. Action taken in response to complaints of alleged killings of protected persons

37. The OHCHR office in Colombia has regularly followed up complaints relating to presumed killings of protected persons and takes note in the report of the political will displayed by Colombia in dealing with the cases that have been brought to its attention. In this connection, attention is drawn to the issuance of three directives by the Ministry of Defence in 2007 and the spirit of compromise that has characterized the Government's decision to take forceful measures to tackle this problem. By way of providing further information, Colombia wishes to report the following additional efforts taken in 2007:

- (a) The creation of a special sub-unit within the Human Rights Unit of the Attorney General's Office to deal with cases relating to presumed killings of protected persons (resolution 3854 of 19 October 2007, modified by resolution 0-0325 of 28 January 2008);
- (b) The appointment of 9 prosecutors, 27 investigators and 4 analysts throughout the country;
- (c) Establishment of two prosecutors' commissions within the Human Rights Unit to assist with investigations in cases reported in the departments of Meta and Antioquia;
- (d) The referral to the ordinary courts by military criminal judges in 2007 of 72 cases in which the existence of a direct link between the incident and the army or the police was found to be questionable;
- (e) In the light of the foregoing, the Human Rights Unit of the Attorney General's Office took note of 243 investigations, of which 128 are in the preliminary phase, 27 are at the inquiry phase under the oral accusatory system of criminal justice and 74 are in the pretrial preparatory phase;

(f) The existence of cases involving split trials, of which three are cases at the preliminary investigation phase, two at the preliminary investigation and sentencing phase, two at the summary and trial phase, and one at the summary and sentencing phase;

(g) A total of 412 working missions were conducted, which led to 308 persons being implicated, with 49 brought to trial and 12 sentenced;

(h) Joint follow-up by the Ministry of Defence and the OHCHR office in Colombia of cases reported in every division of the army.

III. CONCLUDING OBSERVATIONS

38. Colombia wishes to reiterate its appreciation of the new phase that has begun in the dialogue and cooperation since the extension of agreement between OHCHR and the Government and, in the context of this dialogue, will continue to maintain, with respect and transparency, an open agenda with regard to the situation of human rights in the country.

39. The Human Rights Council is this year entering a decisive phase in which the various reforms that were agreed during the institution-building period will be tested. For Colombia, the principal value added of the Council as the lead body for human rights is the universal periodic review of all States Members of the United Nations. This review, which is beginning in 2008, affords an opportunity for States to set out their policies, goals and achievements in the area of human rights and to undertake, where they deem it appropriate, voluntary commitments before themselves and the international community.

40. Colombia made a number of contributions to the building of the institution of the universal periodic review and, acting on the basis of the agreed criterion of voluntarism, offered to undergo such a review as an observer State in 2008. In order to prepare the relevant submission during the month of December 2007, the Government, working with the majority of State institutions, began a process of study and endeavour that will be reflected in the corresponding report. This process will afford a valuable opportunity for continued progress in the formulation of increasingly effective policies and measures with a view to achieving full enjoyment of human rights.

41. Colombia also wishes to reiterate its unwavering commitment to achieving the full enjoyment of human rights and to express the hope that the information contained in the present document will help to provide a better understanding of the efforts being made by the Government of Colombia and other State institutions to meet the challenges that persist and consolidate the policies it has undertaken with a view to ensuring the fulfilment of its ethical, constitutional and legal obligations.
