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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston\***

### **Addendum**

### **Mission to Colombia\*\***

#### *Summary*

The challenges faced by the Government of Colombia in providing peace, justice, security and economic opportunity to its citizens cannot be underestimated. Colombia has endured decades of armed conflict and gross human rights violations that have caused a protracted humanitarian crisis, social and political polarization and uneven economic growth. By the same token, Colombia has made significant progress since 2002.

The Government has increased security in many parts of Colombia and reduced the overall number of killings. Other improvements include: disruption of the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) and *Ejército de Liberación Nacional* (ELN) guerrillas groups' command and communications structures and their ability to conduct hostilities and recruit members; reduction in drug trafficking and associated revenues; and initiation of the demobilization of paramilitaries.

Despite these important gains, very serious problems remain. Security forces have carried out a significant number of premeditated civilian murders and fraudulently presented the civilians as "killed in combat". Although it appears that these so-called *falsos positivos* (false positives) were not carried out as a matter of State policy, they were also

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\* Late submission owing to lack of editorial capacity in the Office of the High Commissioner for Human Rights.

\*\* The summary of this mission report is being circulated in all official languages. The report itself is contained in the annex to the summary and is being circulated in the language of submission and in Spanish only.

not isolated occurrences. The killings were committed around the country and by a large number of military units. They occurred because military units felt pressure to show success against the guerrillas through “kill counts”. There were incentives: an informal incentive system for soldiers to kill and a formal one for civilians who provided information leading to the capture or killing of guerrillas. The latter system lacked oversight and transparency. Overall, there was a crucial failure of accountability, with problems at all stages of the investigatory and disciplinary processes.

Guerrilla forces continue to kill civilians, especially those caught in an impossible middle-ground between the guerrillas and State Armed Forces. Civilians are also killed by the guerrillas’ indiscriminate use of force and illegal use of landmines. The Government’s security strategy may contribute — even unintentionally — to the precarious situation of civilians when the Armed Forces adopt a “you’re either for us or against us” approach to civilians, seeing them as potential enemies to be stigmatized as opposed to neutral individuals or victims.

Other non-State armed actors, including groups composed of formerly demobilized paramilitaries, have also carried out many killings and the numbers are rising. The groups’ existence and growth are largely due to demobilization and transitional justice processes that have resulted in impunity for paramilitaries’ human rights violations. Neither victims nor the nation at large have seen justice done. The truth of why tens of thousands died and who was responsible remains hidden, and victims and their loved ones have been deprived of reparations.

My recommendations focus on four broad areas:

First, the Government should scrutinize and reform aspects of its security policies that have undermined the very goals it seeks to achieve. The Government’s legitimacy will be enhanced, rather than undermined, if it acknowledges that, despite the successes of its security policies, there have been some drawbacks and failures. In fact, State institutions, and specifically the military, will be among the primary beneficiaries of reforms. As the Government itself notes, the Armed Forces’ “most prized asset” is their legitimacy. Increases in transparency, respect for the rule of law and accountability will promote respect for the military and enable it to carry out its critically important security function more effectively.

Second, the Government should devote more resources to and bolster the ability of State institutions to provide accountability for human rights and humanitarian law violations committed by all actors – State forces, guerrillas and illegal armed groups alike. In some instances, this will require the removal of institutional barriers to cooperation among entities responsible for investigation, prosecution and adjudication of violations. In others, it will require greater accountability on the part of State institutions – for example, military courts that have failed to transfer cases of unlawful killings to the civilian justice system, as required by the Supreme Court. In still others, it will require rethinking entire processes, such as the Justice and Peace Law, which has not achieved the transitional justice intended for paramilitary crimes.

Third, although there is no substitute for the prosecution of human rights abuses, the Government should consider the establishment of a truth commission to conduct an independent and systematic investigation of the history of, and responsibility for, killings and other crimes committed by the paramilitaries, guerrillas and State forces during Colombia’s conflict.

Finally, the Government should ensure that its policies do not directly or indirectly contribute to the further victimization of groups that have been disproportionately targeted by all sides throughout the years of Colombia’s conflict: human rights defenders, including trade unionists and women’s, minority and lesbian, gay and transgender rights activists;

Afro-Colombian and indigenous communities; and people who suffer a physical or mental disability.

During my mission to Colombia, I received a high level of cooperation from Government officials, who repeatedly expressed their openness to suggestions for reform. Colombia must be commended for its all-too-rare attitude, which is founded on its recognition of the benefits that accrue from international scrutiny, both to the country's citizens and to its State institutions.

## Annex

### Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, on his mission to Colombia (8–18 June 2009)

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## I. Introduction

1. I visited Colombia from 8 to 18 June 2009 to investigate extrajudicial executions. The Government of Colombia provided full and sustained cooperation with my mission. In addition, civil society representatives, victims' family members and those who witnessed human rights violations were extremely helpful. Lastly, I am most grateful to the superb staff of the Colombia Office of the United Nations High Commissioner for Human Rights, especially its director.

2. As an independent expert reporting to the Human Rights Council, my mandate is: to investigate killings committed in violation of international human rights or humanitarian law; to determine the extent and causes of impunity for such killings; and to propose specific and constructive reforms to reduce killings and promote accountability. The mandate thus encompasses more than the statutory definition of "extrajudicial executions" under Colombian law, which includes only killings committed by State forces. In Colombia, I focused on killings by the security forces, guerrillas, paramilitaries and other armed non-State actors and examined the effectiveness of the criminal, civil and military justice systems in relation to those killings.

## II. Background

3. The conflict in Colombia has lasted for almost 50 years, the longest endured by any country in modern times. State forces have fought against left-wing guerrilla groups, primarily the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) and the *Ejército de Liberación Nacional* (ELN). By the mid-1980s, the conflict had grown to include right-wing paramilitaries aligned with the State against the guerrillas. All sides committed gross human rights and humanitarian law violations. The guerrillas and the paramilitaries (who often acted with the cooperation or acquiescence of State forces) engaged in killings, kidnappings, land grabs and other criminal conduct, the effects of which continue today.<sup>1</sup> The challenges presented by the guerrillas and paramilitaries were exacerbated by their involvement in drug trafficking. In order to control land and production for those purposes, traffickers systematically intimidated the civilian population and corrupted public officials.<sup>2</sup>

4. Beginning in 2002, the present Government sought to address the conflict and causes of state instability. Its strategy was set forth in its June 2003 Democratic Security Policy, which defined "terrorism" as the central threat to peace in Colombia, together with drug and arms trafficking, kidnapping, extortion, and homicide.<sup>3</sup> The policy sought to: defeat the FARC and ELN and regain territory taken by them; eliminate drug trafficking; demobilize paramilitaries and reintegrate former members into society; and increase security by strengthening, integrating and expanding the armed forces. In 2007, the Government developed and refined the policy with the Security Consolidation Policy,

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<sup>1</sup> According to Acción Social, a total of 3,046,031 people were internally displaced between 1997 and 2008. In 2008 alone, the number of internally displaced was 281,676.

<sup>2</sup> Colombia remains the world's largest producer (51 per cent in 2008) of cocaine, although there has been a significant reduction in production and production capacity since the heights reached in the 1990s. See *World Drug Report 2009* (United Nations publication, Sales No. E.09.XI.12). Available from <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2009.html>.

<sup>3</sup> Office of the President and the Ministry of National Defence, *Política de Defensa y Seguridad Democrática*, 16 June 2003.

which sought to improve coordination among State security institutions and to further expand security force presence in remote areas of the country.<sup>4</sup>

### III. Legal framework

5. Colombia is a party to the International Covenant on Civil and Political Rights, the American Convention on Human Rights, the Geneva Conventions and Additional Protocols thereto, and the Rome Statute of the International Criminal Court.<sup>5</sup> In the context of armed conflict, customary and conventional international humanitarian law (IHL) also applies. Article 93 of the Constitution of Colombia gives the status of domestic constitutional law to applicable international treaties.<sup>6</sup>

6. The existence of an armed conflict in Colombia is the subject of some controversy. The Government's position is that Colombia is not engaged in an armed conflict and that the FARC and ELN are terrorists, not belligerents under IHL. Some officials were concerned that admitting the existence of an armed conflict would signal a failure of Colombian security policies and negate their successes.

7. It cannot be said as a categorical matter that an armed conflict does not exist in Colombia. As a matter of practice, Colombia does apply IHL, for example, in its operations against the guerrillas. Members of the military receive extensive IHL training. Ministry of Defence officials have engaged in sophisticated analysis of IHL rules, formulated detailed guidelines for their application and demonstrated a determination to grapple with the complexities that arise from the facts on the ground. The Government's application of the correct legal framework signals its willingness to abide by the rule of law and to act for the benefit of its citizens, especially those who have been displaced and are at risk of being caught in the midst of hostilities.

8. As a matter of law, application of IHL is not discretionary; it applies when the defining objective elements of a non-international armed conflict are met. Common article 3 of the Geneva Conventions, therefore, would apply when internal hostilities in Colombia reach a minimum level of intensity and duration and when the opposing armed group is organized and itself has the capacity to engage in military operations. Protocol II to the Geneva Conventions, which Colombia ratified in 1996, supplements common article 3; it applies when opposing forces are under a responsible command, exercise enough control over territory to mount sustained and coordinated military actions and are able to implement Protocol II. This will often mean that IHL will apply in the context of military operations against the FARC or ELN.

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<sup>4</sup> National Planning Department, *Metas del Plan Nacional de Desarrollo 2006–2010*, December 2007.

<sup>5</sup> When Colombia ratified the Rome Statute in 2002, it declared, pursuant to article 124 of the Statute, that it did not accept the Court's jurisdiction for seven years. That limitation expired on 1 November 2009. The International Criminal Court's Chief Prosecutor has visited Colombia twice and Court prosecutors have repeatedly announced their willingness to investigate and prosecute war crimes by the guerrillas, former paramilitaries and State forces.

<sup>6</sup> "International treaties and agreements ratified by Congress that recognize human rights and prohibit their limitation in states of emergency prevail in the national law".

9. Whether or not IHL applies in the context of actions against other armed non-State actors will also depend on whether the objective criteria are met. Generally, operations against such groups should be undertaken by the police, in accordance with human rights law.<sup>7</sup>

#### IV. “Falsos positivos” and killings by security forces

10. The phenomenon of so-called “false positives” (*falsos positivos*) — unlawful killings of civilians, staged by the security forces to look like lawful killings in combat of guerrillas or criminals — are well known to Colombians.<sup>8</sup> While there are examples of such cases going back to the 1980s, the evidence indicates that they began occurring with a disturbing frequency across Colombia from 2004.

11. The factual dynamics of these cases are well-documented, and it is necessary here only to outline the general patterns common throughout the country’s departments. In some cases, civilian victims are lured under false pretences — usually with the promise of a job — by a paid “recruiter” (a civilian, demobilized armed group member or former soldier) to a remote location. Once there, victims are killed by members of the military, often within a matter of hours or days of when they were last seen by family members. In other cases, the security forces remove victims from their homes or pick them up on patrol or at a roadblock. Victims may also be identified to military members as guerrillas or criminals by “informers”, often in exchange for a monetary reward. Once these victims are killed, the military, with varying degrees of sophistication, then sets up the scene to make it appear like a lawful combat killing. This can involve: placing weapons in the hands of victims; firing weapons from victims’ hands; changing their clothes to combat fatigues or other clothing associated with guerrillas; and putting combat boots on victims’ feet. The victims are reported by the military and in the press as guerrillas or criminals killed in combat. Victims are often buried without first being identified (*nombre desconocido*) and some are buried in communal graves. Meanwhile, victims’ families search desperately — sometimes for many months — for their loved ones. When family members discover what happened and take steps to seek justice, such as reporting a case to officials or discussing the case with the press, they often face intimidation and threats. Some have been killed.

12. That there have been such cases in Colombia is not in dispute. At issue is the number killed, the continuing nature of the phenomenon, the extent to which the State has sanctioned the killings, the motivations and causes, and whether the Government is taking sufficient steps in response.

##### A. State policy?

13. Some critics have accused the Government of having a “State policy” of killing civilians. Government officials have contended that many false allegations of *falsos positivos* have been made, and that many of the purported civilian victims were in fact guerrillas or criminals. When questioned, some senior Government officials told me that

<sup>7</sup> IHL and human rights law are coextensive in an armed conflict; both impose a duty on States to investigate alleged violations of the right to life “promptly, thoroughly and effectively through independent and impartial bodies”. See E/CN.4/2006/53, paras. 33–43; A/61/311, paras. 33–45 (law enforcement officers may only apply lethal force to protect life and if it meets the requirements of necessity and proportionality).

<sup>8</sup> Members of the military also often refer to false positives as “legalizations” (*legalizaciones*), denoting a killing that has been made to appear lawful.



while there may have been “some errors”, to the extent that, where unlawful killings were committed by the military, they were isolated cases and not part of a pattern or widespread practice.

14. Neither of these claims is accurate. I have seen no evidence to suggest that these killings were committed as part of an official policy or that they were ordered by senior Government officials. However, I did receive detailed and credible reports of such killings from across the country, committed in numerous departments and by a large number of different military units. It is clear from my investigations that members of Colombia’s security forces have committed a significant number of unlawful killings and that the *falsos positivos* pattern has been repeated around the country. There have been too many killings of a similar nature to characterize them as isolated incidents carried out by individual rogue soldiers or units, or “bad apples”. The Soacha cases are only the most well-known set of such killings.<sup>9</sup> I interviewed many of the families of the numerous Soacha victims. But I also spoke with witnesses and family members of victims — who described the horrors of these killings — from the departments I visited (including Antioquia, Meta and Santander), and with those who travelled from departments around the country to explain the details of their cases to me (including from Arauca, Cali, Casanare, Cesar, Cordoba, Guaviare, Huila, Norte de Santander, Putumayo, Sucre and Vichada). In most of the cases I reviewed, I was provided with evidence that strongly supports the claims of the victims’ families that the killings were unlawful. The forms of evidence received included ballistics and forensics reports, video and photographic evidence, eyewitness testimony and the testimony of soldiers and “recruiters” themselves.

15. It is not yet precisely clear how many killings have taken place. One civil society group has recorded at least 995 allegations of unlawful killings by the security forces from July 2002 to June 2007.<sup>10</sup> Another recorded 2,276 victims of extrajudicial executions and forced disappearances by State agents from July 1996 to June 2008 (1,486 between July 2002 and June 2008).<sup>11</sup> The Ministry of Defence stated that there were 1,391 cases of

<sup>9</sup> During 2008, young men began disappearing from Soacha and Bogota. When some of the bodies of the missing were found in Santander and Norte de Santander, their families began publicly to allege forced disappearances and extrajudicial executions. Press reports initially reported 11 victims; over subsequent months, this increased to 23 victims. The men had been reported by the military as killed in combat, but the families strongly contested this, and evidence strongly suggested that the “combat” was fabricated. As of June 2009, there had been nine hearings for 54 accused soldiers. See MINGA, *Summary of Cases of Extrajudicial Killings in the Municipality of Soacha, Department of Cundinamarca, Colombia*, June 2009.

<sup>10</sup> See Coordinación Colombia Europa Estados Unidos, *Informe de Ejecuciones Extrajudiciales en el Nororiente Colombiano – Presentado a: Relator Especial Sobre Ejecuciones Extrajudiciales en Colombia*, Philip Alston, June 2009.

<sup>11</sup> Colombian Commission of Jurists (CCJ), *Violaciones de Derechos Humanos y Violencia Sociopolítica en Colombia*, 13 March 2009:

July 1996–June 1997	155
July 1997–June 1998	147
July 1998–June 1999	120
July 1999–June 2000	127
July 2000–June 2001	105
July 2001–June 2002	136
July 2002–June 2003	187
July 2003–June 2004	231

homicides allegedly attributed to members of the National Security Forces, although I was not given statistics on the numbers of killings considered by the Ministry to have been unlawful.<sup>12</sup> The Government informed me of 552 complaints, between 2000 and 2008, of homicides allegedly committed by members of the Armed Forces.<sup>13</sup> The Government noted

July 2004–June 2005	218
July 2005–June 2006	267
July 2006–June 2007	287
July 2007–June 2008	296

<sup>12</sup> The Information and Statistics Group of the Ministry of Defence keeps detailed information on killings committed by members of the security forces. The General Command of the Military Forces and of the National Police provides information monthly to the Group. Each unit in the military and the police provides to its command's operational divisions daily information on operation results (date, place, unit, result of operation, e.g. seizures, captures, demobilizations and deaths). The Government informed me that a total of 17,364 guerrillas and criminals had been killed in combat or self-defence by the National Security Forces between 2002 and May 2009 and provided the following figures:

	2002	2003	2004	2005	2006	2007	2008	Jan-May 2009
FARC	1 690	1 953	1 957	1 849	2 151	1 802	1 010	227
ELN	0	11	6	21	8	249	172	21
EPL	0	1	1	0	3	3	0	2
ERG	0	0	0	0	0	0	2	0
JBC	0	0	0	0	0	0	0	0
ERP	0	1	2	0	3	4	0	0
Drug cartels	2	4	4	18	34	33	24	0
Paramilitary groups/ BACRIM	187	352	563	325	196	636	375	27
Common crime	84	69	162	129	322	406	223	40
<b>Total</b>	<b>1 963</b>	<b>2 391</b>	<b>2 695</b>	<b>2 342</b>	<b>2 717</b>	<b>3 133</b>	<b>1 806</b>	<b>317</b>

FARC: Fuerzas Armadas Revolucionarias de Colombia. ELN: Ejército de Liberación Nacional. EPL: Ejército Popular de Liberación. ERG: Ejército Revolucionario Guevarista. ERP: Ejército Revolucionario del Pueblo. JBC: Jaime Bateman Cayón.

Written Response of the Government to Special Rapporteur on extrajudicial executions: Mission to Colombia (8–18 June 2009), Information Request to the Ministry of Defence (Government response).

<sup>13</sup> The Presidential Human Rights and International Humanitarian Law Programme received the following complaints:

2000	13
2001	8
2002	15
2003	30
2004	83
2005	125
2006	136
2007	96

that there may also be additional complaints recorded by the Office of the Attorney-General (*Fiscalía*) or the Office of the Inspector General (*Procuraduría*).<sup>14</sup> The *Fiscalía* reported to me that, in May 2009, its National Human Rights and International Humanitarian Law Unit was pursuing 1,708 homicides allegedly committed by State agents.<sup>15</sup> The *Fiscalía* National Prosecution Unit was pursuing an additional 317 cases. The *Procuraduría* reported 639 preliminary enquiries since 2000.

## B. Reduction in killings since late 2008?

16. From at least as early as 2007, the Government began to take a number of steps to confront the issue of these killings. After the publicity surrounding the Soacha killings, additional significant and specific steps were taken. Measures (analysed further below) have included: disciplinary sanctions, including the dismissal of 3 generals and 24 other soldiers; increased cooperation with the International Committee of the Red Cross and the United Nations with respect to monitoring; the installation of operational legal advisors in military units to advise on specific military operations; increased oversight of payments to informers; the creation of a temporary special commission to investigate operations (the “Suarez report”); appointment of delegated inspectors to army divisions; the introduction of the requirement that deaths in combat be investigated first by judicial police (Directive No. 19); modifying award criteria (Directive No. 142) and military unit performance criteria (Directive No. 300-28); the creation of a specialized unit in the *Fiscalía* to deal with alleged extrajudicial executions; and the requirement that military criminal judges transfer cases to the civilian justice system.<sup>16</sup> In 2009, the Ministry of Defence also issued Directive No. 208, which lays out 15 measures intended to implement the Ministry’s human rights and humanitarian law policies throughout the Armed Forces and strengthen internal command, control, training and evaluation systems.

17. These steps appear to have led to a significant reduction in the allegations made of extrajudicial executions committed by the military since the Soacha scandal in late 2008. The Human Rights and International Humanitarian Law Observatory had received no allegations of unlawful killings in 2009 at the time of my visit in June 2009. The *Fiscalía* received denunciations of six cases of alleged unlawful killings by the security forces after the Soacha killings, each of which was still under investigation at the time of my visit. Non-governmental organizations reported fewer than 10 new allegations. It is important to stress that it is still too early to confirm the extent or nature of a drop in allegations. Past experience in Colombia shows that many cases remain unreported for long periods of time due to witness fear, lack of knowledge about how to make complaints and navigate the

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2008

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The departments with the highest numbers of complaints were: Antioquia (187), Meta (40), Arauca (33), Cesar (33), Caquetá (27), Casanare (26), Norte de Santander (21), Cauca (20), Bolívar (20) and Putamayo (19).

<sup>14</sup> See paragraph 30.

<sup>15</sup> Victims included 1,545 men, 110 women and 53 children. Most cases were from: Antioquia (322), Meta (120), Norte de Santander (70), Casanare (53), Cesar (47), Caqueta (42), Cordoba (41) and Guajira (40). The numbers of such cases have spiked dramatically since 2002. From 1985–2001, there were between 0 and 8 cases per year. In 2002, there were 12; 2003, 37; 2004, 93; 2005, 125; 2006, 223; 2007, 397; and 2008, 112 (from Government response).

<sup>16</sup> See Ministry of Defence, “Comprehensive Human Rights and IHL Policy” (2008); Ministry of Defence, *Protecting Rights – Actions and outcomes of the National Security Forces in the protection of human rights 2002–2008* (2009); Ministry of National Defence, *Avances en el cumplimiento de las 15 medidas adoptadas por el ministerio de defensa nacional (noviembre 2008–mayo 2009)* (2009).

justice system, and significant communication and geographic impediments to making complaints.

18. Furthermore, despite these good faith efforts by the Government to reduce killings, there are real gaps between the policies as they exist on paper and the practice on the ground, especially with respect to impunity for past killings. As explained below, the situation in the regions I visited is significantly less positive than the formal steps alone would indicate.

### **C. Causes of killings**

19. Unlawful killings by the military are the result of a set of complex factors, which have both motivated individuals to commit killings, and fostered an environment in which such killings have been able to occur with general impunity.

#### **1. Pressure to “show results”**

20. Many expert and experienced interlocutors — including those in the military — confirmed to me that there was pressure in military units to “show results” and demonstrate that the military was continuing to gain ground against guerrillas and criminals. While senior Government officials disputed this and emphasized that killing civilians does not increase security, it is clear that within the military, success was often equated with enemy “kill counts” – the number of FARC members and others killed in combat.

21. As security in Colombia began to improve from 2002, and as guerrillas retreated from populated areas, some military units found it more difficult to engage in combat. In such areas, some units were motivated to falsify combat kills. In other areas, the guerrillas were perceived by soldiers to be particularly dangerous and soldiers were reluctant to engage them in combat. It was “easier” to murder civilians. In still other areas, there are links between the military and drug traffickers and other organized criminal groups. Local military units do not want to engage in combat with the illegal groups with which they are cooperating, so killing civilians falsely alleged to be part of these groups make military units appear to be taking action.<sup>17</sup>

22. Within this general culture, it has been very difficult for individual soldiers who wanted to speak out against abuses to do so. Some who spoke out have been forced to relocate for their own safety.

#### **2. Rewards and incentives for killings**

23. There is much public confusion about rewards and incentives for killings by military forces. It is difficult to obtain clear and accurate information, including from the Government. Some critics have argued that members of the military receive monetary rewards for killing guerrillas and other personal benefits (holidays, medals and promotions). Critics also attack the payment by the Government of money to informers who provide information leading to the killing or capturing of guerrillas.

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<sup>17</sup> A number of killings also appear to be efforts at “social cleansing” – killings of suspected criminals, drug users and other “undesirables”. In such cases, victims are presented as killed in combat; the social cleansing motive overlaps with pressure to produce results.

(i) *Rewards to civilians for information*

24. The Government does provide rewards to those who provide information on guerrilla and criminal activity. The rewards policy is set out in Directive No. 29 (2005) (no longer in effect), Directive No. 02 (2008) and Directive No. 01 (2009), each of which is confidential, although copies of Directive No. 29 have been widely circulated.<sup>18</sup> Although these rewards have been heavily criticized in Colombia, monetary rewards to civilians for providing information leading to, for example, the capture of wanted criminals, are common in many countries and are not problematic per se. What should be at issue is whether there is sufficient oversight and transparency with respect to payments. It is of significant concern that the rewards may provide a ready source of money for members of the military to pay “recruiters” to assist with the commission of *falsos positivos*.

25. The Government informed me that the directives are all essentially similar, although the newer ones make the system of controls more explicit.<sup>19</sup> According to information provided by the Government, rewards cannot be paid to public servants (such as soldiers) and can only be paid for information leading to clear operational results and following approval by a technical follow-up or central committee.<sup>20</sup> The new directives set out controls and checks that would make it difficult for money to be paid to recruiters for *falsos positivos*.

26. However, other sources of payment in the form of “confidential expenses” (*gastos reservados*)<sup>21</sup> and commanders’ discretionary funds are of serious concern. In fact, in its written comments to me, the Government conceded that there is more discretion for officers in distributing confidential expenses and that there “could be problems there”.<sup>22</sup> One military commander told me that he has a US\$ 2,000 monthly fund, a discretionary fund which he could use to, for example, pay small rewards to informers. Such funds, along with informal funds gained through criminal activity, are the more likely source of payments to recruiters (who are generally paid small amounts of a few hundred dollars or less).

<sup>18</sup> Ministry of Defence, Permanent Ministerial Directive No. 29 (2005) provides for payment of rewards to those who provide “timely and truthful information ... [that leads to, for example] the capture of overthrow in combat of leaders of Illegal Armed Groups”; provides up to 5,000 million pesos for information about top leaders. I could not obtain copies of the new Directive No. 1 (2009), which the Government told me was restricted.

<sup>19</sup> The Government provided information on each of the directives. Directive No. 29 provides for rewards for information leading to the capture or death of leaders of illegal organizations or drug trafficking groups. It specifies precise amounts, creates a technical committee for follow-up on payments and creates a payment procedure. For payment to be made, supporting documents must be provided to the committee. Directive No. 2 strengthens the control system, makes clear that payments cannot be made to Government officials, increases the requirements for documents that must be provided to obtain payment and provides that in certain cases money cannot be offered without prior intelligence department approval. Directive No. 1 further reduces the discretion of the military units, creates rewards for demobilization and rescuing kidnapped victims and provides that unit commanders cannot offer rewards at any level without prior coordination with their intelligence department.

<sup>20</sup> The Technical Follow-up Committee is composed of the Minister of Defence or his delegate, the intelligence chiefs of the Armed Forces and the National Police, and the *Fiscalía*’s Technical Investigation Unit. The Central Committee is composed of the intelligence chiefs, analysts and administrative officials.

<sup>21</sup> According to the Government, confidential expenses are intended to finance intelligence activities, counter-intelligence, criminal investigations and the protection of witnesses and informants.

<sup>22</sup> I asked for, but was not provided, information on the amounts, nature, or purpose of funds paid out to informants under the confidential expenses or other funds.

(ii) *Rewards to military for killings*

27. Significantly, members of the military have also been provided various incentives to kill, including vacation time, medals and promotions. I asked the Government for information on the type and quantity of incentives provided to members of the security forces since 2002, but was not given that information. My investigations did reveal that some incentives are relatively informal and unregulated and differ from unit to unit. One soldier, for example, explained how a killing by his unit would be rewarded with 15 days' vacation. When important holidays approached, he stated, soldiers would attempt to "earn" vacation time. However, a commander from another unit said he would not reward his soldiers with time off, because he believed this could potentially distort their professional judgement.

28. The Government has taken some steps to address these possible distortions. It informed me that demobilizations and captures were now "worth more" than combat killings in evaluating the performance of a military unit.<sup>23</sup> In addition, since Directive No. 142 (2008), demobilizations and captures have been incorporated as part of the criteria for the award of a bravery medal (*medalla Al Valor*) or a public order medal (*medalla de Orden Público*).

**3. Accountability**

29. Lack of sufficient accountability has been a key factor in the continuation of *falsos positivos*. Estimates of the current rate of impunity for alleged killings by the security forces are as high as 98.5 per cent.<sup>24</sup> Soldiers simply knew that they could get away with murder. Recently, delays caused in part by defence counsel in the Soacha cases threaten to result in impunity.<sup>25</sup> More generally, other problems, discussed below, occur at each stage of the investigation and disciplinary or criminal justice process.

30. Colombia has a complex and sophisticated government structure and responsibility for responding to citizens' complaints about killings is shared by a number of different institutions, including the Offices of the Attorney-General (*Fiscalía*), the Inspector-General (*Procuraduría*), and the Ombudsman (*Defensoría*). Each of these institutions has an important role under the 1991 Constitution's system of checks and balances. The *Fiscalía*, part of the judicial branch, is the civilian prosecutorial authority with prosecutors (*fiscales*) assigned both at the national level, sometimes in specialized units, and to local offices. The *Procuraduría* is a civilian entity that has jurisdiction over disciplinary matters related to public servants (including the military) and can conduct investigations and impose administrative sanctions, such as suspension or dismissal. The *Defensoría* is the national public defender service and also incorporates a nationwide system of regional ombudsmen (*personeros*) to whom citizens can complain of abuses.

<sup>23</sup> An excerpt from Ministry of Defence, Military Forces General Command, Permanent Guidelines 300-28 (2007) states: "the Military Forces General Command, through the Force Commands and Joint Commands, provides as of this date that to measure operating results it shall privilege the collective and individual demobilizations over any capture, and shall favour captures over deaths in combat; giving greater value to the deaths in combat when dealing with heads of illegal groups".

<sup>24</sup> See, e.g., US Office on Colombia, "A State of Impunity in Colombia: Extrajudicial Executions Continue, Injustice Prevails", 2009.

<sup>25</sup> See, e.g., *El Tiempo*, "Por lentitud en la justicia quedaron libres 17 militares implicados en; 'falsos positivos' de Soacha", 8 January 2010.

(i) *Forensics and the Technical Investigation Unit*

31. When a military unit reports a killing in combat, the initial inspection of the scene and the corpse is now generally undertaken by the *Fiscalía*'s Technical Investigation Unit (*Cuerpo Técnico de Investigación, CTI*).<sup>26</sup> To the Government's credit, it ensures a CTI presence at combat death sites in most cases, even at considerable expense and practical difficulty.<sup>27</sup> Within 36 hours, CTI officials must report to the relevant prosecutor on their investigation.<sup>28</sup> However, as of July 2009, CTI had 1,800 cases that it had held for more than six months without turning them over to the *Fiscalía*, resulting in significant case delays.<sup>29</sup>

32. The presence of external investigators reduces opportunities for the military to cover up unlawful killings, and promotes transparency. It does not, however, prevent members of the military from interfering with the scene before CTI arrives.

(ii) *Disciplinary investigations*

33. Disciplinary investigations are opened by the Commanders of relevant units,<sup>30</sup> but jurisdiction can be taken by the *Procuraduría* upon request of the Commander or of the *Procuraduría*.

34. I was provided limited information on the disciplinary measures imposed by the Armed Forces on its members. From 2004–2009, a total of 75 members of the army were dismissed from service, though the Government did not provide information on how many of these were dismissed for having committed unlawful killings.

35. The *Procuraduría*'s office reported 639 preliminary inquiries relating to unlawful killings by security forces since 2000; 506 disciplinary investigations have been opened, and there have been indictments in 78 cases, judgement in 18 cases, and 33 cases were closed. While this indicates some limited progress, most cases remain at the preliminary stage only.

(iii) *Defensoría*

36. The *Defensoría* received and processed 169 complaints of unlawful killings by security forces in 2008 and 22 in the first six months of 2009.<sup>31</sup> While the *Defensoría*'s *personeros* can play an important role in local communities, they generally lack any real

<sup>26</sup> Under the Military Criminal Code, the military prosecutor has the duty to examine the corpse. Law No. 522 (1999), art. 472. However, by an agreement between the Minister of Defence and the *Fiscalía* dated 14 June 2006, deaths in combat must first be inspected by CTI. A standing directive also requires commanding officers of military units to "exhaust all available resources" to ensure that CTI can carry out its investigations. See Ministry of Defence, Standing Directive No. 19 (2007), instruction No. 5; see also Ministry of Defence, Standing Directive No. 10 (2007), instruction No. 5.

<sup>27</sup> The Ministry of Defence informed me that, while it does not have records on operations that CTI inspected, CTI attends the "great majority". CTI officials stated they were able to attend 95 per cent of crime scenes. CTI was unable to attend the other 5 per cent because of a lack of transportation, danger (e.g., ongoing conflict) or difficulty in reaching the site because of terrain and geography. According to the military, its facilitation of CTI investigations can cost US\$ 8,000 per case.

<sup>28</sup> Criminal Procedure Code, art. 205.

<sup>29</sup> Ministry of Defence, written response to requests from Special Rapporteur, annex 3 (Ministry of Defence response).

<sup>30</sup> Where there is a death, the relevant law would generally be Law No. 836 (2003), art. 58, para. 30.

<sup>31</sup> In 2009, there were 18 complaints against the army and 4 against the police. Most of the facts underlying the complaints occurred before October 2008. *Defensoría*, Written Response to Questions by the Special Rapporteur (*Defensoría* response).

power and are often prevented from rigorously pursuing cases due to resource constraints, threats and intimidation.

(iv) *Military and civilian criminal investigations*

37. Criminal investigations can take place either in the military or civilian criminal justice system. The most significant obstacle to effective prosecution of extrajudicial executions by members of the security forces are the continuing jurisdictional conflicts between these two systems and the failure of military judges to transfer cases to the civilian justice system.

38. The *Fiscalía* has and should have primary responsibility for prosecution of military personnel accused of human rights violations. The Constitution provides (art. 221) that “crimes committed by members of the National Security Forces on active service, and related to that same service” are within the jurisdiction of the *military* criminal justice system. However, the Constitutional Court and the Superior Council of the Judicature have clarified that the military courts do not have jurisdiction when force members engage in conduct contrary to the constitutional functions of the forces (such as unlawful killings) and that where there is doubt, civilian jurisdiction should apply.<sup>32</sup>

39. Despite these clear judicial rulings, directives to the same effect from the Minister of Defence and a memorandum of agreement (2006) between the Ministry of Defence and the *Fiscalía*, it remains the case that jurisdiction over far too many cases is contested. There have been some improvements in recent years – a total of 526 cases have now been voluntarily sent by the military criminal courts to civilian courts.<sup>33</sup> Another 75 cases have been transferred following orders from the Superior Judicial Council. However, as of May 2009, there were still 221 cases of conflict between the military and civilian jurisdictions. One cause of delay can be the Supreme Judicial Council’s failure to decide jurisdictional challenges on a timely basis. These decisions should be made more expeditiously.

40. In some of the areas visited, including Medellín and Villavicencio, there appears to be a conscious attempt by military judges to frustrate the efforts of the civilian justice system. This also creates incredible delays — often of months or years — in the investigation and prosecution of alleged extrajudicial executions, during which time alleged perpetrators are often at large and the value of testimony and evidence can be lost. Military judges who do assist the civilian justice system may be subject to harassment, threats or transfer to other jurisdictions.

41. Resource constraints also inhibit effective prosecutions. The *Fiscalía* has a specialized human rights unit, including a sub-unit for extrajudicial executions (established in 2007). In 2008, the numbers of prosecutors focusing on executions more than doubled (from 8 to 20). However, the *Fiscalía* continues to suffer from a lack of staff and funding, which prevents it from investigating and prosecuting all of the cases reported to it. I met, for example, with families of victims who were told that they would have to wait for the Soacha cases to finish before their own cases could be examined. Of the 1,056 cases of killings by Armed Forces that were assigned to the *Fiscalía*’s Human Rights Unit through to the end of April 2009, only 16 have resulted in convictions.<sup>34</sup>

<sup>32</sup> See Constitutional Court Judgements C-358 (1997) and C-878 (2000); *Case of “Jamundi”* of 14 August 2008 (Superior Council of the Judicature).

<sup>33</sup> Government response.

<sup>34</sup> Another important cause of impunity is witness fear. See section X.D.



## D. Killings by police

42. The police have killed civilians, although there appears to be little information on, let alone scrutiny of, the legality of these killings.<sup>35</sup> The Ministry of Defence stated that it had “no information ... in relation to unlawful killings by Police”.<sup>36</sup> However, I did receive some complaints of killings by police during my mission, and given that a number of the alleged extrajudicial killings reported since Soacha were carried out by members of the police, it is essential that the Government prioritize the investigation and prosecution of such killings. Civil society should also devote more attention to such killings.

## V. Killings by guerrillas

43. The FARC and ELN both carry out many unlawful killings<sup>37</sup> and often target or victimize the very populations on whose behalf they claim to fight.<sup>38</sup> Such killings are often

<sup>35</sup> Ministry of Defence response. Numbers of members of illegal groups that were killed between 2002 and 2009 by the police:

	2002	2003	2004	2005	2006	2007	2008	Jan-May 2009
FARC	63	53	33	42	37	15	21	11
ELN	0	11	6	21	8	6	1	3
EPL	0	1	1	0	3	0	0	0
ERG	0	0	0	0	0	0	0	0
JBC	0	0	0	0	0	0	0	0
ERP	0	1	2	0	3	2	0	0
NARCOTRAFIC	0	3	1	0	1	0	1	0
BACRIM	14	24	34	25	5	7	16	8
DELCO	55	33	119	80	109	85	113	35
<b>Total</b>	<b>132</b>	<b>126</b>	<b>196</b>	<b>168</b>	<b>166</b>	<b>115</b>	<b>152</b>	<b>57</b>

<sup>36</sup> Ministry of Defence response.

<sup>37</sup> While the majority of reports of guerrilla killings received were committed by the FARC, ELN also committed a significant number. Government response:

<i>Presumed authors</i>	2003	2004	2005	2006	2007	2008	Jan-May 2009
Paramilitaries	294	319	190	25			
Criminal gangs					4	34	106
Common criminals	688	4 754	3 986	3 055	2 689	2 532	589
ELN	147	64	42	41	16	38	17
FARC	782	661	761	593	420	250	112
Unidentified	21 601	14 405	13 127	13 739	1 468	13 286	5 815
Other guerrilla	10	5	5	26	1		
<b>Total</b>	<b>23 522</b>	<b>20 208</b>	<b>18 111</b>	<b>17 479</b>	<b>17 198</b>	<b>16 140</b>	<b>6 639</b>

Government note: “This information corresponds to data collected on the scene of events and initially reported ... in 85 per cent of cases of homicide the alleged author is not known at the time of the initial proceedings.”

aimed at instilling fear in civilian populations, such as in Antioquia. The goal is to exert control over territory through fear for drug-trafficking and other illegal purposes, including extortion and kidnapping for ransom.

44. In some parts of the country (such as Meta and Cauca), guerrilla groups are fighting the military. In other areas, even within the same department, a guerrilla group may be allied with a criminal band against another guerrilla group or the military. In all these settings, civilians have been placed in an untenable position. One group forces them to cooperate or provide support in the form of food or labour; as a result, the civilians risk being accused of collaboration and killed when the territory is taken over by another group.

45. Those killed or threatened by the FARC and ELN in the last two years include: farmers and labourers; communal leaders and human rights defenders who speak out against guerrilla activity; municipal and State government officials and candidates for office; soldiers on leave; family members of soldiers; and demobilized former FARC or ELN members. Victims may also be killed at roadblocks for violating so-called guerrilla “travel orders” that seek to limit civilian mobility or for refusal to pay bribes or guerrilla-imposed “taxes”. Others are killed in retaliation for publicizing complaints against guerrilla forces for looting or other property damage.

46. Guerrilla activity has had an especially negative impact on indigenous communities and Afro-Colombian communities that are caught in the conflict between the Government and guerrilla groups. For example, in February 2009, the Awa indigenous community reported that 27 of its members had been massacred by the FARC in Narino; 8 bodies were later recovered. The killings are an example of the disregard shown by the FARC for civilians and the right to life. They also raise concerns about Government responsibility for preventing abuses and protecting civilians. Before the massacre, the *Defensoría’s* Early Warning System<sup>39</sup> issued two risk reports, in 2007 and again in January 2009, warning that illegal armed groups, the FARC and ELN had moved into the Awa’s territory and that the resulting combat operations placed the community at risk. The 2009 report specifically warned that the FARC was likely to retaliate against civilians it accused of collaborating with the military. Government authorities failed to respond and the killings occurred a month later.

47. Both the FARC and ELN continue to recruit and use child soldiers, subjecting them to violence and death, including in combat.<sup>40</sup> Both groups, but especially the FARC, rely heavily on the use of weapons forbidden by international humanitarian law, including anti-personnel mines and unexploded munitions, causing indiscriminate killings of civilians as well as security forces.<sup>41</sup>

48. Although the number of killings by guerrillas declined in 2008, it rose again in 2009. Although still weaker than in past decades, the FARC and ELN are increasingly active.<sup>42</sup>

<sup>38</sup> Although their ideological roots differ, both the FARC and ELN claim to represent the interests of the country’s rural poor and oppose privatization of natural resources and the United States’ role in Colombia.

<sup>39</sup> Discussed in greater detail in Section X.B.

<sup>40</sup> See Report of the Secretary-General on children and armed conflict in Colombia, S/2009/434, paras. 15–35.

<sup>41</sup> According to CCJ, 149 of the 166 people whose deaths between July 2007 and June 2008 CCJ attributes to guerrillas died because of such weapons. See also Myra Torres, “Colombia tiene el récord de ser la nación con más víctimas por causa de minas antipersonas”, *El Tiempo*, 15 October 2009 (Armed Forces Commander stating that Colombia holds the record for most landmine victims – over 8,000 between 1990 and August 2009).

<sup>42</sup> Corporación Nuevo Arco Iris, “¿El declive de la Seguridad Democrática?”, 2009.

They continue to be a major cause of instability in many parts of the country. The Government must ensure that its anti-guerrilla strategy includes resources to protect civilian populations placed at risk as a result of hostilities. While the Government has until now focused on a military solution, it should also consider humanitarian accords and negotiation as part of its strategy. The United Nations and humanitarian actors also need to be able to have contact with guerrillas in order to further civilian protection activities.

## VI. Killings by illegal armed groups

### A. Demobilization and implementation of the Justice and Peace Law

49. The Government has taken important steps to reduce paramilitary killings and violence. It disbanded the paramilitaries' umbrella organization, *Autodefensas Unidas de Colombia* (AUC)<sup>43</sup> and began a programme of demobilization, reintegration and transitional justice. Paramilitaries started to demobilize in November 2003 and the majority had demobilized by the time the Justice and Peace Law (JPL) was passed in 2005.

50. The JPL was intended by the Government to achieve justice, truth and reparations in response to the paramilitaries' decades-long record of killings and other abuses.<sup>44</sup> Under the law, candidates who meet eligibility conditions<sup>45</sup> undergo a confession and investigative process conducted by the *Fiscalía*'s Justice and Peace Unit (JPU).<sup>46</sup> The Unit can bring charges under a JPL-established system of trial and punishment. If paramilitaries "accept" the charges, they can escape trial and receive an aggregate reduced sentence (i.e., for all charges) of up to eight years, regardless of the seriousness of the offences.<sup>47</sup>

#### 1. Truth and justice

51. The Government considers demobilization and the JPL to have been successful. In part, this is true. According to Government data, 48,616 members of illegal armed groups demobilized from August 2002 to March 2009.<sup>48</sup> The JPL process has resulted in the identification of thousands of crimes, disclosure of mass graves and the recovery of 2,666 bodies. Numerous families whose loved ones were registered only as "disappeared" now at least have some solace in the recovery and burial of their remains.

52. However, the full picture of the demobilization programme and the JPL shows an alarming level of impunity for former paramilitaries.

<sup>43</sup> The AUC was formed in 1997 as an umbrella organization for what had been disparate paramilitary groups. Under the leadership of Carlos Castano, the AUC rapidly expanded, became increasingly involved in the drug trade and expelled the FARC and ELN from significant areas. By 2003, when the Government signed a peace deal with the AUC, it was estimated to have penetrated over 700 of Colombia's roughly 1,100 municipalities. The history and consequences of paramilitary conduct and killings in Colombia are well documented and do not require repetition here. However, some paramilitary characteristics contextualize current failures in accountability, and the causes and patterns of killings by IAGs; these are briefly described in appendix B.

<sup>44</sup> Appendix C gives a brief description of the JPL. The law also applies to FARC and ELN guerrillas; 116 guerrillas are taking part in the JPL process (Government response).

<sup>45</sup> See appendix C.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Number includes both paramilitaries and FARC and ELN guerrillas.

53. The vast majority of paramilitaries were demobilized without investigation.<sup>49</sup> Those who had not been convicted of human rights crimes or, critically, were not then under investigation for such crimes — and most were not — were effectively granted amnesties.<sup>50</sup>

54. The JPL has not been an effective tool for justice or truth. Although paramilitaries have confessed to over 30,000 crimes, including 20,675 homicides, only 136 cases have been referred for trial<sup>51</sup> and not a single person has been sentenced. There has been no account given of how such massive numbers of crimes came to be perpetrated, by whom or under whose command. Few paramilitaries have even been through the JPL process fully. As of June 2009, there had been 3,751 candidates for the process; of these, 1,210 candidates had withdrawn before making any disclosure statements.<sup>52</sup> According to some interlocutors, participants leave the process if they find no investigations are pending or charges likely to be brought. Many of the most senior paramilitary leaders were extradited to the United States of America for drug crime prosecutions in May 2008.<sup>53</sup> The ranks of those participating in the JPL process are unknown despite a request to the Government for the information.

55. The process as a whole has been plagued by a lack of resources, planning and clarity and by procedural problems, and the JPU lacks both resources and personnel. A staff of 295 was initially authorized, with an increase to 1,048 in 2008.<sup>54</sup> But, given the magnitude of the task, this remains inadequate. Senior members of the *Fiscalía* also admitted that the JPU lacks the capacity and resources to conduct the strategic and complex investigations and prosecutions necessary to prevent the structure of paramilitary groups from surviving and being replicated.

56. Before it can bring charges, the law requires the JPU to prove the truth of all confessions by each individual regardless of the relative seriousness of crimes.<sup>55</sup> *Fiscales* consider this standard to be impossibly burdensome. Efforts to expedite the process through indictments on only some of the possible charges have been successfully challenged. Clarity and strategic thinking about how the Government would identify and recommend candidates for the JPL process and prosecution has also been lacking.<sup>56</sup> The *Fiscalía's*

<sup>49</sup> The vast majority of demobilizations were conducted under a set of laws and decrees that allowed pardons for political crimes, but not for atrocities, and regulated financial and other support to demobilized personnel. They did not include an investigatory component or peace or transitional justice processes. See Law No. 418 (1997); Law No. 782 (2002); Decree No. 128 (2003); Decree No. 3360 (2003); resolution 217 (2003).

<sup>50</sup> See Inter-American Commission on Human Rights, report on the implementation of the justice and peace law: initial stages in the demobilization of AUC and first judicial proceedings, document OEA/Ser.L/V/II, according to which, of 28,000 people initially demobilized, approximately 90 per cent failed to offer “significant” information about crimes committed.

<sup>51</sup> Government response.

<sup>52</sup> Ibid.

<sup>53</sup> The United States prosecutions do not include human rights crimes. In an August 2009 decision, the Constitutional Court refused to allow the extradition of a paramilitary member on the grounds that it would violate victims’ JPL rights to truth, justice and reparation.

<sup>54</sup> Decree No. 1128 (2008).

<sup>55</sup> See appendix C.

<sup>56</sup> Mission to Support the Peace Process in Colombia of the Organization of American States (MAPP/OAS), Fourth Quarterly Report, document CP/doc.3989/05, 11 March 2005.

unfettered discretion in applying the principle of opportunity to paramilitaries seriously heightens impunity concerns.<sup>57</sup>

57. Even those who eventually go through the JPL process will benefit from reduced accountability. The maximum sentence of eight years for crimes against humanity and war crimes is excessively lenient, especially when compared to the life sentences prescribed by ordinary criminal law in Colombia and the relevant sentencing requirements of the Rome Statute of the International Criminal Court.<sup>58</sup>

58. I do not underestimate the challenges of achieving justice and truth for the human rights violations committed by paramilitaries in recent decades. Nevertheless, significant substantive and procedural changes are required before the JPL satisfies the Government's obligation to provide accountability.

## 2. Victims' rights

59. Victims have also been denied the right to restitution and reparation. Approximately 70 former paramilitaries have turned over about US\$ 13 million in assets,<sup>59</sup> far less than the fruits of illegal conduct accrued by many more paramilitaries over decades. In April 2008, the Government created a programme (under Decree No. 1290) for victims of abuses by illegal armed groups to receive monetary reparations from the State. As of April 2009, approximately US\$ 247 million had been allocated for payment.<sup>60</sup> While this is a noteworthy development, it should not be seen as a replacement for restitution from former paramilitaries of illegally-acquired land and other assets. The programme also fails to include reparations for victims of rights violations by security forces and State agents.<sup>61</sup> Indeed, in 2009, the Government had the opportunity to adopt a law providing reparations for all victims of Colombia's conflict.<sup>62</sup> That law could have rectified the failures of the JPL and Decree No. 1290, but it failed to pass because of Government opposition. As a matter of urgency, the Government should ensure passage of such a law.

## 3. Truth Commission

60. Given the record so far, focusing on the JPL as a means of achieving truth for paramilitaries' decades-long human rights violations is perhaps misplaced. However, the JPL does not have to be the exclusive transitional justice mechanism. The Government, in consultation with domestic and international civil society groups, should consider establishing an independent truth commission that would systematically investigate the history of, and responsibility for, killings and other crimes committed during Colombia's armed conflict by the paramilitaries, and by State forces and guerrillas. The commission could build upon the work of the National Commission of Reparation and Reconciliation<sup>63</sup> and the information gathered by the JPU to date.

<sup>57</sup> The principle of opportunity allows the *Fiscalía* to suspend, interrupt or abandon any criminal investigation if "convenient", such as in return for a paramilitary's agreement to provide information about other crimes. See Law No. 906 of 2004.

<sup>58</sup> Rome Statute, art. 77.

<sup>59</sup> See Government response.

<sup>60</sup> Ibid.

<sup>61</sup> The JPU has 136 cases in which demobilizing paramilitaries have implicated members of the State forces in killings (Government response).

<sup>62</sup> The Colombian Senate approved the Victims Rights Act in 2008.

<sup>63</sup> See appendix C.

## B. Killings by new illegal armed groups

61. The seriousness of the flaws in the demobilization and JPL processes is demonstrated by the rise in killings by new illegal armed groups (IAGs). Based on information from the Government, civil society and witnesses, these are composed of: paramilitaries, especially mid-level members, who did not demobilize; formerly demobilized paramilitaries who have returned to criminal conduct; and common criminals who have organized to fight for a share of the drug trade.<sup>64</sup> Information from the Colombian Commission of Jurists indicates that between December 2002 (when AUC declared a ceasefire) and June 2008, 4,261 people, including 350 women and 181 children, were killed by paramilitaries or former paramilitaries.

62. There is much debate about whether these new groups are the next generation of paramilitaries or whether they are criminal gangs (*bandas criminales* or *BACRIM*): however they are categorized, they share certain characteristics.

63. Unlike the original paramilitaries, they generally lack a common ideology. Some wear uniforms of sorts (e.g., camouflage), or other identifying insignia and have informal (and sometimes formal) command structures. Witnesses from some areas (including Cordoba and Meta) described armed patrols carried out openly by what appear to be sub-units of IAGs. These groups may have spread across Colombia<sup>65</sup> and, in the aggregate, their members may number in the thousands.<sup>66</sup> Most individual groups' membership is in the low hundreds. Weapons seized in police operations against the IAGs show they have access to a range of weapons: from January to May 2009, the Government "seized 326 long-range weapons, 543 side arms and 18 support weapons, including machine guns and mortar tubes".<sup>67</sup>

64. The relationship between the new IAGs and other armed groups differs substantially across the country. In some areas, guerrillas and IAGs cooperate closely, in others they are in violent conflict. Violence among the IAGs seems to a large extent to be competitive – relating to "turf wars". Most IAGs engage in and are financially sustained by drug trafficking; many also engage in extortion from local businesses and landowners, kidnapping, money-laundering and other criminal behaviour. When local populations resist

<sup>64</sup> Rearmed groups of formerly demobilized paramilitaries emerged soon after demobilization. See MAPP/OAS, Sixth Quarterly Report, document CP/doc.4075/06, 16 February 2006. According to the Government, of 959 IAG members arrested as of 6 June 2009, 181 were formerly demobilized paramilitary. MAPP/OAS, Thirteenth Quarterly Report, 21 October 2009. The economic and command and control structures of paramilitaries (especially at the mid-level ranks) do not appear to have been effectively dismantled. See appendix D; see also MAPP/OAS, Tenth Report, document CP/doc.4249/07, 31 October 2007 (raising concern about continued existence of chains of command within demobilized groups).

<sup>65</sup> As of February 2009, 14 per cent of total municipalities in Colombia were "negatively impacted" by the presence of IAGs. MAPP/OAS, Twelfth Quarterly Report, document CP/doc.4365/09 corr. 1, 27 February 2009.

<sup>66</sup> Some civil society sources estimate that the number may be as high as 11,000. See also, *¿El declive de la Seguridad Democrática?* Among the more powerful groups: Organización Nueva Generación (Cauca and Narino); Águilas Negras (Antioquia, Magdalena and Norte de Santander; affiliated groups may operate in up to 24 departments); Ejército Revolucionario Anticomunista de Colombia (Meta, Guaviare and Vichada); Autodefensas Gaitanistas de Colombia (Uraba region; Antioquia and Atlantic coast).

<sup>67</sup> MAPP/OAS, Thirteenth Quarterly Report, 21 October 2009, footnote 11.

corruption or participation in illegal conduct, they are threatened with death and, all too often, killed.<sup>68</sup>

65. IAG killings and violence towards civilians follow some of the patterns of paramilitaries.

66. First, IAGs have targeted human rights defenders, leaders and members of indigenous and Afro-Colombian communities and of victims' groups, and local government officials who speak out against IAG activities.<sup>69</sup> In Meta, a local community leader who had criticized the IAGs in his region, including for three killings of community members, told me that he had received anonymous death threats. He had to cease community work and stay home for fear of being killed. Also worrisome are threats against and killings of those seeking to assert their rights under the JPL, or demobilized paramilitaries who refuse to join IAGs.

67. Second, the IAGs have killed or threatened civilians as a means of terrorizing local populations in order to exert control over areas important for the growth, production or transport of drugs or for other criminal purposes. In Meta, I met family members whose loved ones had been killed in order to intimidate local communities. In a deeply troubling development, an Organization of American States monitoring mission has noted "the reappearance of massacres" as an intimidation tool, especially in rural areas including in Narino, Cauca and Cordoba.<sup>70</sup>

68. Third, IAGs have threatened and sometimes killed alleged prostitutes, drug addicts and small-time criminals, as "social cleansing".<sup>71</sup>

69. The widespread fear in the regions in which the IAGs operate may be exacerbated by corrupt and cooperative local authorities, the absence or ineffectiveness of the National Police and the scarcity of victim support organizations.

### Prosecution challenges

70. Investigations of IAGs are largely conducted by the local office of the National Police, with prosecutions conducted by the local *Fiscalía*. While many do commendable work under difficult circumstances, senior *Fiscalía* officials expressed scepticism about the likelihood of successful prosecution in some parts of Colombia because, in the words of one, IAGs "are very economically powerful and they have infiltrated the military and political establishment who help them by providing cover" for their activities and "a lot of money changes hands to prevent justice".

71. Institutional barriers also compromise the Government's ability to shut down IAGs or prosecute their leaders. The *fiscales* are separate from the police, who do the investigation and arrest and both are separate from the National Reparation Fund, which manages seized assets. *Fiscales* indicated that this often results in failures to cooperate and coordinate.

72. Another institutional weakness is that local *fiscales* generally approach the prosecution of each defendant as an individual case. They may not have the sophistication or resources to oversee the kind of complex investigation and multiple prosecutions

<sup>68</sup> See, e.g., appendix D.

<sup>69</sup> Ibid.

<sup>70</sup> MAPP/OAS, Thirteenth Quarterly Report, 21 October 2009.

<sup>71</sup> Ibid. (massacres taking place in the city of Bogota, northern Cauca, southern Bolivar and southern Huila, increasing "the climate of violence").

necessary to target the leadership of an IAG and economic structure and the sources of its support among local elites.

73. To address these problems the *Fiscal General* should create a national unit dedicated to complex prosecutions that would seek to shut down all the major actors in and sources of support for particular IAGs (which could be prioritized by the extent of their organization and illegal activity). Teams of prosecutors from the unit could be assigned to cover different parts of the country, thus avoiding the pressures to which local *fiscales* can be subjected. Donor country agencies with experience in such complex litigation could provide training and support. In addition, the Government should consider seconding police, investigators, and asset confiscation and management experts to such a unit so that all investigation and prosecution activities are strategically coordinated.

## VII. Especially vulnerable groups

74. Important targets of unlawful killings by both Colombian State forces and IAGs have historically included human rights defenders, trade unionists, proponents of women's, victims' and minority rights, lesbian, gay, bisexual or transgender individuals or people with physical or mental disabilities. Statistics about the number of unlawful killings of people in each of these categories differ,<sup>72</sup> but the incontrovertible reality remains that they continue to be disproportionately killed or threatened and are especially vulnerable. Government efforts to hold perpetrators accountable are weak. For example, of 877 trade unionists killed between 1984 and 2008, only 106 cases have reached the sentencing stage, while the vast majority (621) remain at the initial investigative stage. Impunity for killings by State forces and by paramilitaries and IAGs continues.<sup>73</sup>

75. From time to time, Government officials have accused human rights defenders of undermining security policies and even of terrorism. Such accusations were made, for example, when defenders raised concerns about *falsos positivos* killings.<sup>74</sup> I spoke with *fiscales*, judges and other State officials who were similarly accused when they sought to investigate, prosecute or adjudicate cases in which members of the Government or armed forces were defendants.<sup>75</sup> Accusations have been made by high-level officials, both military and civilian. Unfounded accusations of this type put individuals at great risk and are

<sup>72</sup> According to the Government, 470 trade unionists were killed between 2000 and May 2009. The vast majority of the deaths (331) were categorized as committed by unknown perpetrators, with 107 (through 2006) by paramilitaries and 2 by "public servants" (Government response). According to CCJ, between 1986 and 2008, there were 41 cases of extrajudicial executions of trade unionists directly attributable to State forces. The International Trade Union Confederation states that 27 trade unionists were murdered in Colombia between January and September 2009 (see <http://www.ituc-csi.org/colombia-trade-unions-in-mourning.html>). In addition, based on information provided by CCJ, at least 49 human rights defenders were killed in 2008 and, between January 2008 and May 2009, at least 25 human rights defenders had been murdered or disappeared. The Government did not provide statistics on human rights defenders

<sup>73</sup> See sections IV.C (iii) and VI.A (i) and C.

<sup>74</sup> See, e.g., *El Espectador*, "Mindefensa advierte que podrá judicializar a quien levante falsas denuncias contra FF", 5 May 2009; *La W Radio*, "Vicepresidente denuncia plan de desprestigio internacional contra el gobierno", 4 March 2009, <http://www.wradio.com.co/nota.aspx?id=772214>.

<sup>75</sup> In reports beginning in February 2009, Colombian media revealed that the Administrative Security Department (*Departamento Administrativo de Seguridad, DAS*), the President's intelligence agency, conducted an illegal wiretapping and surveillance campaign against Supreme Court justices, lawyers, politicians, human rights defenders, and journalists. The campaign took place from approximately 2003 to 2008, and may have continued into 2009. See, e.g., *Semana*, "El DAS sigue grabando", 21 February 2009; *Semana*, "Increíble ... siguen 'chuzando'", 29 August 2009.



unworthy of a democratic Government. The Government can address the concerns of its critics without recklessly endangering them.

76. Indigenous and Afro-Colombian communities have been victimized by all parties to Colombia's conflicts. According to the Government, 1,039 indigenous persons were unlawfully killed between 2000 and May 2009. Figures compiled by indigenous groups show 1,007 community members killed in that period; 115 were allegedly killed by State forces, 402 by paramilitaries or other IAGs and 223 by guerrillas. Many of these deaths relate to militarily or economically significant locations. Historically, paramilitaries, sometimes in collusion with State forces, appropriated land from the indigenous or Afro-Colombians and committed massacres to intimidate local populations or overcome their resistance. More recently, IAGs and guerrilla forces fighting for control of land and the drug trade have killed or displaced community members. Indigenous and Afro-Colombian communities are often caught in an impossible bind in the conflict – between the demands of cooperation from State forces and those from illegal armed groups. Instead of providing protection, State forces often view efforts by the indigenous population to protect their rights as a form of subversiveness or collaboration with guerrillas.

## VIII. Institutional capacity and reform

77. In addition to various constraints on the Government's ability to investigate and prosecute unlawful killings by State forces or illegal groups, various overarching institutional issues must be addressed if the Government is to fulfil its obligation to prevent and to provide accountability and redress for unlawful killings. In particular, institutional barriers to cooperation and information-sharing need to be broken down. Both structural and cultural changes are necessary and Colombia will need the support of its donor community to ensure that training and funding helps eliminate institutional barriers.

### A. Allocation and effective use of resources – *Fiscalía*

78. The need for additional resources and funding for the *Fiscalía* is addressed above.<sup>76</sup> Various interlocutors, including within the *Fiscalía*, also identified the need for better internal management of the *Fiscalía* in order to maximize the effective use and deployment of attorneys and investigators. Technical assistance from donor countries may be helpful in this regard.

79. As an example, the *Fiscal General* should establish more control mechanisms over *fiscales* in the different jurisdictions. An internal audit could identify cases in each office that have stalled, identify the reason (such as security concerns or lack of resources) and take appropriate action to address them. The *Fiscal General* should also impose time limits for cases to be assigned to a prosecutor and investigations to be opened. Statistics on the number of cases pending investigation, under investigation, at the preliminary hearings stage and at trial stage, broken down by each regional or thematic office of the *Fiscalía*, should be made publicly available and updated on a frequent and regular basis.

### B. Early Warning System

80. The *Defensoría's* Early Warning System (*Sistema de Alertas Tempranas*, SAT) monitors, analyses and reports on risks to civilians and possible violations of international

<sup>76</sup> See paragraphs 41 and 55.

law. The reports describe the local dynamics of armed conflict, the sources of threats, the individuals and populations at risk, an evaluation of the risk and recommendations to reduce or eliminate threats.<sup>77</sup> SAT reports are full of detailed facts and sophisticated analysis.<sup>78</sup> SAT is one of the best tools the Government has for preventing killings and other abuses in Colombia.

81. It is critically important that the Government provide SAT with more staff and resources. At the time of my visit, it had only 6 national analysts and 22 regional analysts, which is not enough to cover the country's geographical expanse or the complexity of its conflict dynamics. Direct access to local communities is integral to the accuracy and usefulness of the SAT monitoring and reporting function. Yet, because of its limited budget, SAT analysts are sometimes unable to travel to the areas they are responsible for covering. Analysts should be able to report on risks posed by the presence or movement of all armed actors, including State forces.

82. It is also crucial that the Government acts upon SAT reports, and that neither the SAT analysis nor the decision by the Inter-Agency Early Warning Committee (*Comité Interinstitucional de Alertas Tempranas*, CIAT) whether to issue an early warning are influenced by political pressures.

83. I was given information about several instances in which killings had occurred after the Government had failed to respond to the SAT warnings. One example is the Awa massacre discussed above.<sup>79</sup> Another death took place in March 2008, after SAT had issued a risk report for municipalities in Caqueta where the conflict against the FARC had intensified. The FARC threatened municipal officials to intimidate them into not supporting the Government's Domestic Security Policy. CIAT determined that no early warning should be issued and a week after the SAT report, the FARC killed a local official. Killings may occur despite early warnings and the Government's best prevention efforts, but the Government's failure to act after notice from one of its own agencies is a stark dereliction of its responsibilities.

84. I was told by some Government officials that political pressure may be a factor in the decision of CIAT not to issue an early warning. Military and civilian officials at the regional and departmental level may be concerned that a warning signals security failures and deters investment and development and press for a warning not to be issued or to be prematurely withdrawn. Given the importance of the SAT function, it is also foreseeable that other Government or civilian actors may try to influence its analysis or recommendations. To reduce such illegitimate pressures and to fulfil its obligation to

<sup>77</sup> In 2007, SAT issued reports describing 90 risk situations covering 85 municipalities in 18 departments. In 2008, SAT reports described 71 risk situations in 145 municipalities of 29 departments. From January to May 2009, it had issued reports on 20 risk situations covering 49 municipalities in 12 departments.

<sup>78</sup> SAT provides the reports to the Inter-Agency Early Warning Committee (*Comité Interinstitucional de Alertas Tempranas*, CIAT), led by the Minister of Interior and Justice and tasked with coordinating the Government's response to SAT warnings of possible rights violations. CIAT includes the vice-president, the high counsellor for Acción Social, the defence minister and the DAS director, or their representatives. While SAT may participate in meetings, it does not have a vote.

If CIAT decides an early warning should be issued, it alerts the governor of the affected department, other regional officials, the Armed Forces, the National Police and the Acción Social agency. The early warning triggers the duty of these officials to prevent human rights and humanitarian law violations (Law No. 1106 of 2006, art. 5). If an early warning is not issued, CIAT may informally notify departmental or municipal authorities of risks and provide recommendations for preventing harm and protecting civilians.

<sup>79</sup> See paragraph 46.

prevent and protect, the Government must ensure that the independence of CIAT and SAT is maintained. It should make SAT reports public (subject to security needs) after an appropriate period, such as three months after the decision of CIAT.

### C. Victims' access to information

85. Coordinating and tracking the results of investigations by the various institutions is problematic and victims' family members justifiably complained about the difficulty of obtaining information about the status of cases. A relatively easy and inexpensive solution would be a centralized database system through which each institution reports its activity and progress on each individual case. Information from this system should be available through institutional representatives at the regional, municipal and community level, so that families would not need to travel long distances to obtain it. Responsibility for maintaining the system and ensuring that all institutions comply with reporting obligations could be assigned to the Office of the Vice-President or another Government unit; the key is that it be an institutional actor with the stature to enforce reporting obligations.

86. Given the influence of IAGs or guerrillas on officials in some local communities, the database should not include sensitive information that could expose witnesses and victims' families to greater security risks. Nor should it include genuinely confidential information related to ongoing investigations or prosecutions (family members could be directed to the local *fiscal* for that information).

### D. Witness protection

87. Witness fear is a major cause of impunity for unlawful killings. I spoke with witnesses who had previously refused to report the details of their cases to any other officials because they did not believe the information would be secure. Significant numbers of witnesses never report their cases at all because of a well-justified fear of retaliation. Some who have filed or discussed cases publicly — including relatives of the Socha victims — have received death threats or been killed. Witnesses' fear extends not just to alleged perpetrators but, especially in more rural and remote areas, to Government actors such as the local *fiscal* or *procurador*, whom witnesses believe may be cooperating with or under the influence of alleged perpetrators. In some instances, the fear may be justified, but in others Government agents are themselves under threat as they seek to prosecute unlawful killings.<sup>80</sup> In all such circumstances, it is difficult for cases to proceed.

88. Presently, multiple sources can provide protection: the police, the Interior and Justice Ministry or, for victims or witnesses participating in criminal proceedings, the *Fiscalía*. Efforts have been made by the Government to improve protection. The budget for the Ministry's protection programme grew 187 per cent between 2002 and 2007, and the United States has worked with the *Fiscalía* to improve its protection programme. Nevertheless, current protection is insufficient to meet witness needs and stronger protection efforts need to be made.

<sup>80</sup> In local jurisdictions, *fiscales* may also have fewer resources and investigatory personnel, resulting in slower development and prosecution of cases, which may give rise to suspicion that the *fiscal* is not proceeding for more nefarious reasons.

## **IX. Recommendations**

### **A. Killings by security forces**

89. In all cases of alleged killings by security forces, the civilian criminal justice system should have jurisdiction. Within two months after publication of this report, the head of the military justice system should conduct an audit of all cases of alleged extrajudicial executions still pending before military courts and should then ensure that such cases are transferred within a short time period. Judges who fail to effect such transfers should be disciplined.

90. The Supreme Judicial Council should adhere to time limits for the resolution of jurisdictional conflicts between the military and civilian justice systems. The Council should publish regularly — and at least biannually — the list of such cases before each judge and the amount of time any such case has been pending before the Council.

91. The Government should prohibit all incentives given to members of the Armed Forces for combat killings. It should not permit any rewards for information to civilians without oversight and should audit discretionary funds for such rewards.

92. The Government should ensure that Technical Investigation Unit (*Cuerpo Tecnico de Investigacion*, CTI) is provided the resources and personnel necessary to carry out, and report on, investigations on a timely basis.

93. Service members suspected of involvement in killings should be suspended for the duration of the investigation and prosecution.

94. The Government should ensure that the specific measures of the Ministry of Defence's Directive No. 208 to implement international human rights and humanitarian law standards are put effectively into practice.

95. The Government should prioritize the investigation and prosecution of police killings. Civil society groups should place increased emphasis on researching and reporting such killings.

### **B. Killings by guerrilla groups**

96. The FARC, ELN and all illegal armed groups should immediately cease their harassment, abuse and murder of Colombians.

97. The FARC and ELN should immediately cease the use of landmines and the recruitment of child soldiers.

98. The Government should ensure that respect for international humanitarian and human rights law are at the forefront of its strategic plans and military operations. It should be open to dialogue and humanitarian negotiations with guerrilla groups. The United Nations and humanitarian actors must be able to have contact with guerrillas in order to further civilian protection activities.

### **C. Killings by former paramilitaries and illegal armed groups**

99. The Government should ensure that perpetrators of human rights violations do not benefit from any legal measures exempting them from criminal prosecution or conviction. The judicial authorities must fully investigate alleged human rights

violations and prosecutions must include supposedly demobilized paramilitaries given de facto amnesties under prior laws.

100. The Government should reform the Justice and Peace Law (JPL) to:
- Provide for the expeditious transfer to the ordinary justice system of candidates who do not cooperate with or fulfil the criteria of the JPL
  - Ensure that the “principle of opportunity” is not applied in ways that reinforce impunity
  - Allow for cases to proceed without the requirement that the *Fiscalía* investigates and verifies all relevant crimes
  - Expedite, in cooperation with other State institutions, the handover to victims of all assets (legal and illegal) from those demobilized under the JPL
  - Adopt measures to ensure that demobilized combatants are not “recycled” into the conflict
101. The *Fiscal General* should consider creating a national unit of *fiscales* dedicated to complex prosecutions that would seek to shut down all the major actors in and sources of support for IAGs. The Government should consider seconding police, investigators and asset confiscation and management experts to such a unit so that all investigation and prosecution activities are strategically coordinated.

#### D. Truth Commission

102. The Government should consider establishing a truth commission to conduct an independent and systematic investigation of the history of and responsibility for killings and other abuses committed during the country’s armed conflict by the paramilitaries, State forces and guerrillas.

#### E. Killings of and threats against vulnerable groups and State officials

103. The Government should ensure that full and impartial criminal investigations into killings and death threats against human rights defenders, including trade unionists and minority group members, are conducted as a priority. Within three months of the publication of this report, the Government should report on the steps being taken and resources devoted to such investigations and prosecutions.

104. The Government should immediately issue instructions to Government officials at all levels to cease making statements or engaging in acts of intimidation of human rights defenders, members of the judiciary, the *Fiscalía* and the *Procuraduría*, and *personeros*. The text of these instructions should be made public. They should specifically prohibit Government officials and State forces from calling into question the legitimacy of the work done by each of the foregoing groups or equating the work of any group or member with the strategy or tactics of guerrillas or other illegal groups.

105. The Government should ensure that independent investigations take place to determine responsibility and, if appropriate, prosecution for the statements or acts of intimidation and harassment. Within three months of the publication of this report, the Government should report publicly on the steps it is taking to prevent and, if appropriate, prosecute any statements or acts of intimidation and harassment.

106. The Government should prioritize the protection of indigenous and Afro-Colombian communities, especially in conflict zones, through development and implementation of detailed protection plans in consultation with the affected communities.

#### **F. Strengthening institutional capacity**

107. The Government should provide additional resources and personnel to the *Fiscalía* and the *Procuraduría* for the investigation and prosecution of all cases of alleged unlawful killings.

108. Both the Government and donor countries should make it a priority to provide the *Fiscalía* with technical assistance for more effective internal management and allocation of resources.

109. The Government should provide additional staff and resources to the Early Warning System (*Sistema de Alertas Tempranas*, SAT). It should implement measures ensuring that SAT reports are acted upon, and that SAT analysis and Inter-Agency Early Warning Committee (*Comité Interinstitucional de Alertas Tempranas*, CIAT) decision-making processes are not influenced by political pressures. SAT reports should be made public, subject to security requirements.

110. The Government should establish a centralized database system through which each State institution responsible for investigation and participating in the prosecution of killings, disappearances and other human rights abuses reports its activity and progress on each individual case. Information from this system should be available through institutional representatives at the regional, municipal and community level, so that families would not need to travel long distances to obtain it. Design of the database system should account for security concerns and the need to protect genuinely confidential information.

## Appendix A

### Programme of the mission

1. I visited Colombia at the invitation of the Government from 8–18 June 2009. I travelled to Bogotá, Antioquia (Medellín), Santander (Bucaramanga) and Meta (Villavicencio).
2. I met with the President, Vice-President, Acting Minister of Defence, Vice-Minister of Defence, Vice-Minister of Multilateral Affairs of the Ministry of Foreign Relations, Vice-Minister of Interior and Justice and Director of the Presidential Programme for Human Rights. I also met with a range of officials responsible for human rights and IHL issues at the Ministries of Foreign Relations, Defence, and Interior and Justice. I also had meetings with representatives of the Constitutional Court, Supreme Court, Supreme Judicial Council, Inspector-General, Public Prosecutor, Ombudsman, and National Commission on Reparation and Reconciliation. In the Public Prosecutor's Office, I met with the heads of the Units for Justice and Peace and the Human Rights Programme and with officials responsible for the investigation and prosecution of unlawful killings and the protection of victims and witnesses. I also met with the Director of the Early Warning System of the Ombudsman's office, officials and attorneys from the offices of the Inspector-General, the Public Prosecutor and the Ombudsman, at the regional and departmental level, and with regional ombudsmen (*personeros*) throughout the country. From the military, I met the Commander of the Army, the Commander of the Air Force, the Inspector-General of the Armed Forces, the Inspectors of the Army, Naval Forces, and Police, the Interim Director of Military Justice, the Commanders of the Seventh, Fourth, and Second Divisions and military legal advisers and judges. In addition, I met the Governor of Antioquia and a number of senators and representatives. I am deeply grateful to the Government of Colombia for the full cooperation I received.
3. I met with a large number of members of the diplomatic community.
4. I spoke with many representatives from international, national, and local civil society organizations, and from the *Secretariado Nacional de Pastoral Social*.
5. My team and I conducted over 100 individual interviews with witnesses, victims, survivors, and family members of victims of unlawful killings by the security forces, the guerrillas and paramilitaries and illegal armed groups.
6. Before visiting Colombia, I was able to analyse in detail the many reports prepared on human rights and humanitarian law issues in Colombia, including Government data and publications, reports by intergovernmental organizations, and reports by international, national and local civil society organizations.
7. I also met with officials from the Office of the United Nations High Commissioner for Human Rights (UNHCR) in Colombia and representatives from many United Nations and other intergovernmental institutions and agencies, including the United Nations Children's Fund (UNICEF), the UNHCR, the Office for the Coordination of Humanitarian Affairs and the Department of Safety and Security. I am indebted to the UNHCR office in Colombia for facilitating my mission and for their superb professionalism.

## Appendix B

### Paramilitaries – brief background

1. From their inception in the 1960s to their more formalized unification under the *Autodefensas Unidas de Colombia* (AUC), the paramilitaries combined the interests of drug lords, local political and economic elites and organized criminals, and sought to protect these interests, which were mainly to obtain and retain land, businesses, and political office. Although they were purportedly established to protect Colombian society from left-wing guerrilla groups, the paramilitaries instead victimized ordinary Colombians and caused massive internal displacement, in particular of indigenous communities, and massacred and abused civilians.
2. Paramilitaries targeted Government critics, in particular human rights defenders, trade unionists and journalists, for perceived “leftist” sympathies with guerrillas. The State, with which paramilitaries were aligned, saw criticism as a threat to social order and contributed to the stigmatization of such persons. Paramilitaries also engaged in “social cleansing” of the socially marginalized, such as gay and lesbian persons.
3. Paramilitaries were used by the Colombian military as auxiliaries in its fight against the guerrillas and by civilian and military elites to increase their political and economic power. Indeed, a success of the JPL process is the information that has come to light about the extent to which paramilitaries infiltrated the highest levels of Colombian politics. According to the Government, as of June 2009, there were a total of 80 investigations, 41 by the Supreme Court and 39 by the *Fiscalía* into collusion between paramilitary commanders and members of Congress.<sup>81</sup>

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<sup>81</sup> Government response.



## Appendix C

### Justice and Peace Law

1. The Justice and Peace Law (Law No. 975) (JPL) was passed in 2005. From its inception, the law was controversial and Colombian human rights groups challenged the JPL before the Constitutional Court for, among other reasons: allowing the possibility that those who committed serious crimes could escape prosecution and not guaranteeing victims' rights to reparations and truth.<sup>82</sup>
2. In May 2006, the Constitutional Court of Colombia upheld the JPL, but struck down some of its most controversial provisions and amended others to provide that: victims could participate in all stages of legal proceedings; prosecutors did not have to abide by time frames restricting their investigations; recidivists or those who did not cooperate with the full process could not receive the benefits of the JPL and would instead be transferred to the regular criminal justice system; candidates had to confess fully to their crimes to benefit from the law; paramilitaries had to turn over not only illegally obtained assets for victim reparation, but also legally obtained ones if necessary for reparation.<sup>83</sup>
3. In essence, the law provided that those who fully confessed to their crimes and participated in the JPL process could receive a single reduced sentence of five–eight years for all crimes committed during paramilitary membership, regardless of the seriousness of the crime.<sup>84</sup>
4. To participate in the JPL process, candidates must meet these requirements:
  - Provide all illegally obtained assets, including land, to a national reparation fund established for that purpose
  - Disclose fully involvement in crimes and knowledge of paramilitary structures and financing sources
  - Dismantlement of the paramilitary unit and criminal networks to which they belonged; candidates must show that they contributed to the dismantlement of the illegal group of which they were a member
  - Stop all conduct that would interfere with the free exercise of political and public rights by others
  - Liberation of all kidnapping victims and identification of the burial sites of disappeared persons
  - Handover of all underage fighters to the Colombian Institute for Family Welfare
  - Assurances that there are no drug traffickers among the JPL-prosecuted individuals; under the JPL, paramilitaries organized for drug trafficking are not eligible for the law's benefits<sup>85</sup>

<sup>82</sup> See, e.g., Amicus curiae brief of the office of the High Commissioner for Human Rights in Colombia to the Colombian Supreme Court; Amicus curiae brief of the International Center for Transitional Justice. Available from <http://www.ictj.org/static/Americas/Colombia/colombia.justicepeacebrief.spa.pdf>.

<sup>83</sup> Colombian Constitutional Court, Sentence C-370/2006, 18 May 2006.

<sup>84</sup> JPL, arts. 19, 20, 21 and 30.

<sup>85</sup> JPL, art. 10.

5. Demobilization may be collective or individual under the JPL and demobilization petitions must be approved by the Ministry of Justice and Interior, which then sends cases to the Justice and Peace Unit of the *Fiscalía* for investigation and prosecution.
6. There are three phases to the JPL process. First, candidates are advised of their rights and obligations, asked whether they meet the JPL eligibility requirements, and required to make a list of actions to which they intend to confess (*versión libre*). In the second phase, candidates provide a detailed account of the actions to which they wish to confess. The required details include circumstances, date, place, motive, participants, and the identity of victims. The assigned *fiscal* will investigate the admissions and question each candidate about each confessed action, as can representatives of the *Procuraduría* and victims. Questioning on each confessed action must be completed before the parties move to the next one. This process can last a maximum of six months. At the third phase, the *fiscal* questions candidates about actions they may have committed based on information supplied by victims, or obtained from other cases or investigations.
7. The JPL also created new institutions. The Justice and Peace Unit (JPU) of the *Fiscalía* was established in early 2006.<sup>86</sup> It is charged with investigating all individuals whose names are submitted by the executive as potential beneficiaries of reduced sentences, dismantling paramilitary leadership and financial networks, collecting voluntary statements from demobilized paramilitaries (both as part of the investigatory function and for determination of demobilized paramilitaries' compliance with the JPL), and collecting victims' statements, setting reparations, and identifying and searching for missing persons.
8. The National Commission of Reparation and Reconciliation (CNRR) was created to help guarantee victims' rights and promote reconciliation.<sup>87</sup> It is charged with informing victims of their rights under the JPL process; registering them as victims; returning land through regional land commissions; guiding victims to legal and psychosocial counselling; promoting reconciliation projects; and guiding State agencies to fulfil responsibilities to victims. It is also charged under the JPL with drafting a public report "regarding the reasons why illegal armed groups started up and evolved". This is not intended to be a comprehensive report and was still in progress during my mission.
9. CNRR also monitors the national reparation funds, which manage assets seized from paramilitaries pending forfeiture proceedings.

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<sup>86</sup> JPL, art. 34.

<sup>87</sup> JPL, art. 51. The CNRR includes the Vice-President, the *Fiscal General*, the *Procurador*, the Minister of Finance, the Director of the *Accion Social* agency, the Minister of Interior and Justice, five members of civil society appointed by the President and two civil society members selected by the Government from a list proposed by victims' rights organizations.

## Appendix D

### Medellín case study

1. The situation in Medellín dramatically illustrates the consequences of a failure to properly demobilize and reintegrate paramilitaries, the risks presented by IAGs, and the challenges the Government will face as it seeks to investigate and prosecute IAGs.
2. According to Government data provided, Medellín witnessed 756 homicides in 2007, 1,045 in 2008, and 721 in 2009 between 1 January and 30 May 2010. Human rights officials explained that the steep increase is due to the fighting among and illegal activities of approximately 150–200 IAGs composed of up to 4,000 members. Many of these IAG members were (and continue to be) members of the *Oficina de Envigado*, an organized crime group that has dominated drug-trafficking in Medellín since the cartel era under Pablo Escobar. The *Oficina de Envigado* came to encompass two paramilitary blocs, *Bloque Cacique Nutibara* and *Bloque Heroes de Granada*. It also entered into criminal partnerships with members of local political and economic elites, including senior members of the military, according to human rights officials.
3. *Oficina de Envigado* was controlled by Diego Murillo Bejarano (“Don Berna”), who became the third in command of the AUC after its formation. He was one of the negotiators with the Government during demobilization talks. Bejarano was arrested in May 2005 and charged with the murder of a congressman. He was extradited to the United States in May 2008 (together with 13 other paramilitary leaders who were being processed under the JPL). In Bejarano’s absence, members of *Oficina de Envigado* jostled for power, and demobilized. According to Medellín officials, 868 members of the *Bloque Cacique Nutibara* demobilized in November 2003, and approximately 2,000 members of the *Bloque Heroes de Granada* demobilized in August 2005. Only a fraction of each bloc has been through the JPL process. According to the Government, as of June 2009, 24 members of the *Bloque Cacique Nutibara* and 79 members of the *Bloque Heroes de Granada* were candidates for benefits under the JPL law. This effectively means that the vast majority of the demobilized paramilitaries in Medellín have never had to confess to crimes, or to be held accountable for them.
4. Despite the demobilization, the former *Oficina de Envigado* members — especially those at the mid-level of the organization — maintained its drug-trafficking business and began to expand into and corrupt other parts of the city’s economy. They did so largely through violence and intimidation. The *Oficina de Envigado* is now a complex mix of legal and illegal businesses.<sup>88</sup> According to Medellín’s human rights officials, the *Oficina de Envigado* not only escaped accountability under the justice and peace process, its members were able to take advantage of demobilization to strengthen the group’s criminal activities. Impunity for former paramilitaries demobilized under the JPL has directly resulted in killings and increased instability.
5. Medellín has a long history of murders of and assaults and threats against human rights defenders. Unsurprisingly, defenders who speak out against abuses by paramilitaries and IAGs are subject to particular danger. The city’s human rights officials emphasized the continuing insecurity of the environment: defenders and local government officials who oppose IAGs have been threatened by telephone and e-mail, and some have had their names on posted or circulated lists of “targets”.

<sup>88</sup> *Semana*, “Los tentáculos de la mafia en Medellín”, 2 May 2009.

6. The head of the National Police has visited Medellín to emphasize the Government's concerns about the law and order situation. While this emphasis is positive, if Medellín's descent into killings and criminality is to be turned around, it is imperative for the Government to address a key long-term cause: failures in accountability for former demobilized paramilitaries. It will need to expend significant resources to investigate and prosecute the many arms of the new Medellín IAGs. As a priority, the Government should also ensure adequate protection for human rights defenders and ensure that local officials do nothing to call their work into question or delegitimize it.

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