



The human rights situation in Colombia  
2002 - 2008

# Report for the Universal Periodic Review on Colombia July 2008



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COLOMBIA (COALICO) - OBSERVATORY ON RACIAL DISCRIMINATION - CENTER  
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ORGANIZATION AGAINST TORTURE (OMCT)**

**FOR MORE INFORMATION:**

CCEEU

Address: Av. Cra. 24 (Parway) No. 37-54

Tel./fax: 2887187/3875/1132 - 2455270

E-mail: [coeuropa@etb.net.co](mailto:coeuropa@etb.net.co)

Web: [www.ddhhcolombia.org.co](http://www.ddhhcolombia.org.co)

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Bogotá, D.C.

[casaeditorial@etb.net.co](mailto:casaeditorial@etb.net.co)

# Report for the Universal Periodic Review on Colombia

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In 2003, the United Nations High Commissioner for Human Rights pointed out that the human rights situation in Colombia “is characterized by serious, massive, and systematic violations of those rights, many of them constituting crimes against humanity”<sup>1</sup>. Five years later, the violations remain serious, massive, and systematic. In many cases they have worsened, and in great part remain unpunished. The responsibility for these violations in the majority of cases is attributed to the Colombian State, as a result of direct perpetration or of tolerance or support of the paramilitary groups<sup>2</sup>. Furthermore, the country is facing a grave rule of law crisis as a consequence of the executive branch’s lack of respect for the separation of powers, which makes the current situation of the country all the more worrying.

As this report will demonstrate, in a context of disregard for human rights, the cases of extrajudicial executions, forced disappearances, arbitrary detentions, and forced displacement have increased dramatically, and Colombia continues to be the country with the highest number of killings of trade unionists in the world. Additionally, an armed conflict, as defined in Article 1 of Additional Protocol II of the Geneva Conventions on armed conflicts of non-international character, has been raging for the past 40 years. In spite of these facts, the President of the Republic insists on disregarding the existence of the armed conflict, thereby questioning the application of humanitarian law<sup>3</sup>.

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<sup>1</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, Doc. E/CN.4/2003/13, 24 February 2003, p.5.

<sup>2</sup> The Inter-American Court of Human Rights has ruled consistently on the responsibility of the Colombian State for: i) having established a legal framework which was favorable to the creation of self-defence groups from which the paramilitaries derived; ii) for not having adopted the necessary measures to effectively put an end to the risk created; iii) for not adopting effective prevention and protection measures in favor of the civilian population at risk with regard to paramilitary groups; and iv) for the violations committed by paramilitary groups with the support, acquiescence, participation and collaboration of members of the State security forces. See Inter-American Court of Human Rights: *Case of the 19 Tradesmen*, Judgment of 5 July 2004, paras.115-124; *Case of the Mapiripán Massacre*, Judgment of 15 September 2005, paras.121-123; *Case of the Ituango Massacres*, Judgment of 1 July 2006, paras. 134 and 135; *Case of the Pueblo Bello Case Massacre*, Judgment of 31 January 2006, paras.125 to 127, 139 and 140; and *Case of the Rochela Masacre*, Judgment of 11 May 2007, paras.78 and following. All these judgments are available at: [http://www.corteidh.or.cr/pais.cfm?id\\_Pais=9&CFID=369073&CFTOKEN=81690055](http://www.corteidh.or.cr/pais.cfm?id_Pais=9&CFID=369073&CFTOKEN=81690055).

<sup>3</sup> Thus was expressed by the President on 11 June 2003 during a meeting with human rights NGOs in Bogotá. He reiterated it at an act swearing in several contingents of peasant soldiers on 16 June 2003, and he insisted, during a speech before the Inter-American Court of Human Rights on 19 June 2003, and more recently at the forum “Sustainability of the Democratic Security Policy” on 23 February. José Obdulio Gaviria, advisor to the President, published in January 2005 a book entitled “*Los sofismas del terrorismo*” (The Sophisms of Terrorism), in which the author claims to justify the President’s thesis that the armed conflict no longer exists in Colombia. See José Obdulio Gaviria, *Sofismas del terrorismo en Colombia*, Bogotá, Editorial Planeta, January 2005.

Although the Government repeatedly insists on presenting its “democratic security” policy as a human rights policy<sup>4</sup>, its implementation has resulted in more violations of citizens’ rights and freedoms, since it is based on the deliberate disregard of the fundamental principles of humanitarian law. Likewise, basic constitutional principles that define this country as a “Social Rule of Law”<sup>5</sup>, have been ignored and the concept of “security” has been reduced to military and police responses, thereby ignoring the fact that it must be based on respect for human rights<sup>6</sup>.

## 1. Violations of the rights to life, personal integrity and liberty in the context of socio-political violence<sup>7</sup>

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During the period July 2002–December 2007, at least 13,634 persons lost their lives out of combat as a result of socio-political violence<sup>8</sup>, of which 1,314 were women<sup>9</sup> and 719 girls and boys. Of these 13,634 persons, 1,477 were forcibly disappeared. When the alleged perpetrator of the violations is known (8,049 cases), 75.4% of the cases are attributed to State responsibility: through the direct perpetration of State agents, 17.53% (1,411 victims) and through tolerance or support of violations committed by paramilitaries, 57.87% (4,658 victims). Guerrilla groups are allegedly responsible for 24.59% of the cases (1,980 victims).

In the past five years, an increase of 67.71% has been registered in extrajudicial executions directly attributed to State security forces. This period coincides with the implementation of the “democratic security” policy promoted by the present Government since it took power on 7 August 2002. Thus, between July 2002 and December 2007, at least 1,122 cases of extrajudicial executions attributable directly to the State security forces have been registered, as opposed to 669 cases registered between January 1997 and June 2002. An international monitoring mission at the end of 2007 was able to prove that victims of extrajudicial executions are usually peasants, community leaders, members of indigenous groups, workers and socially marginalized persons who have been previously

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<sup>4</sup> “*This Democratic Security policy is a human rights policy.*” See speech by President Álvaro Uribe at the promotion ceremony of General Édgar Alfonso Lesmez as commander of the Colombian Air Force, 8 September 2003.

<sup>5</sup> Colombian Constitution, Article 1.

<sup>6</sup> “*Security must not be sought at the expense of human rights, nor should individuals and groups have to endure discriminatory treatment on the basis of race, color, extraction, ethnic or national origin. Indeed, only through promoting a greater respect for human rights, together with democracy and social justice, will we contribute to prevent terrorism.*” Application of the United Nations Millennium Declaration, Report of the Secretary General, Doc.A/57/270, 31 July 2002, para.89.

<sup>7</sup> By socio-political violence we refer to acts against the rights to life, personal integrity, and personal freedom through abuse of authority by state actors; to those that are politically motivated; to those derived from discrimination against socially marginalized persons; or to those caused by the internal armed conflict. Where not otherwise indicated, the source of the figures contained in this paragraph is the database of the Colombian Commission of Jurists.

<sup>8</sup> Between July 2002 and December 2007, at least 23,814 persons lost their life as a result of socio-political violence. This figure includes the persons killed in combat.

<sup>9</sup> Teenagers and girls are included in the category “women”.

and arbitrarily detained often after being singled out by paid informants. The evidence and the scene of the crime are then manipulated to make it appear as if the victims were guerrilla members dead in combat<sup>10</sup>.

Between July 2002 and December 2007 at least 932 persons were victims of torture, of which 201 were left alive and 731 were assassinated<sup>11</sup>. From the total of cases registered, 82 were women and 33 were girls and boys. When the alleged perpetrator of the violations is known (612 cases), 90.51% of the total acts of torture registered during this period involve the responsibility of the State: 32.35% through direct perpetration by State agents (198 victims), and 58.16% through omission, tolerance, acquiescence or support of violations committed by paramilitary groups (356 victims). The alleged perpetration of 9.47% of the cases (58 victims) is attributed to the guerrillas. Cases of cruel and degrading treatment by the police against the lesbian, gay, bisexual and transsexual (LGTB) population have also been registered. Since 2006, the assassinations of 16 transsexual women and 32 attacks have been denounced only in the city of Cali<sup>12</sup>. During 2007, 31 complaints of physical or verbal violence against that population were filed, of which 17 have not been investigated and none of them punished<sup>13</sup>.

Available records on arbitrary detentions show an increase since 2002. Between 7 August 2002 and 6 August 2004, no less than 6,332 persons were arbitrarily detained by State agents<sup>14</sup>. Between 7 August 2004 and 31 December 2007, 2,227 persons were arbitrarily deprived of liberty. Of these, 197 were women and 142 were girls and boys<sup>15</sup>. This increase corresponds to the implementation of the “democratic security” policy that promotes detentions by the State security forces without having caught the person in the act or without a judicial arrest warrant.

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<sup>10</sup> Preliminary report of the International Monitoring Mission on Extrajudicial Executions and Impunity, 10 October 2007, Bogotá.

<sup>11</sup> Due to the under-registration of cases of torture and cruel and inhuman treatment – since in general they are omitted from records of cases in which they appear together with violations of the right to life or personal freedom, or due to the fear of the victims of possible retaliation – the statistics presented here must be understood as a minimum with respect to the total number of victims.

<sup>12</sup> Urgent action of 19 May 2008, by the World Organization Against Torture (OMCT), <http://www.omct.org/index.php?id=EQL&lang=es&actualPageNumber=1&articleSet=Appeal&articleId=7807>.

<sup>13</sup> See Colombia Diversa, [www.colombiadiversa.org](http://www.colombiadiversa.org).

<sup>14</sup> Observatory for Human Rights and Humanitarian Law of the Coalition Colombia-Europe-United States (CCEEU in Spanish), “*Libertad: rehén de la seguridad democrática*,” (Freedom: Hostage of Democratic Security), Bogotá, 2006. This figure was obtained by making comparable four databases of the following human rights organizations: the Cinep Database, the Colombian Commission of Jurists (CCJ), the Permanent Committee for the Defense of Human Rights, and the Committee of Solidarity Toward Political Prisoners (CSPP).

<sup>15</sup> The figure on arbitrary detentions registered between 7 August 2004 and 31 December 2007 comes from the database of the Colombian Commission of Jurists (CCJ). It is worth pointing out that while the Observatory of the CCEEU, articulating four databases, registered 6,332 persons as victims of arbitrary detentions between 7 August 2002 and 6 August 2004, the Colombian Commission of Jurists (CCJ) reported 2,664 victims for the same period. Therefore, when comparing the data for the period 7 August 2002 and 6 August 2004, published by the Observatory of the CCEEU with the information registered by the CCJ, an under-registration of 57,93% appears. This under-registration must be taken into account in analyzing the number of arbitrary detentions for the period between 7 August 2004 and 31 December 2007.

According to data of the *País Libre* Foundation, 8,451 persons were kidnapped between January 2002 and December 2007<sup>16</sup>. Of the total number of kidnappings registered in that period, 23% of the victims are women (1,944) and 14.6% are younger than 18 years (1,235). The alleged perpetration is attributed, in 76.8% (6,491) of the cases to common delinquency, guerrilla groups, and paramilitary groups<sup>17</sup>. Of this number, 2,410 cases are attributed to the FARC-EP guerrilla group, 1,474 to the ELN guerrilla, 511 to paramilitaries, 141 to dissidents of these groups and other organizations. Also, a few cases are known in which active or retired State agents have participated. However, official statistics do not divulge the cases of hostage-taking perpetrated by State agents<sup>18</sup>.

## 2. Other breaches of humanitarian law

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In the context of the internal armed conflict<sup>19</sup>, all the armed groups commit breaches of international humanitarian law against protected persons and goods<sup>20</sup>.

In 2007, the estimated number of boys and girls fighting in the ranks of the guerrilla and paramilitary groups was estimated between 8,000 and 13,000<sup>21</sup>. Despite the obligation to turn over all the minors recruited (Article 10.3 of Law 975 of 2005, known as “Justice

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<sup>16</sup> *País Libre* Foundation, Statistics on kidnapping as of December 2007, available at [www.paislibre.org](http://www.paislibre.org). All data mentioned are calculations based on statistics contained in this report of *País Libre*. The source of the statistics of *País Libre*'s report is Fondelibertad, a section of the Ministry of National Defense responsible for coordinating human and material resources for the fight against kidnapping and other crimes that constitute an attack against personal freedom.

<sup>17</sup> These figures include kidnappings attributed to paramilitaries, common delinquency, the ELN guerrilla group, the FARC-EP guerrilla group, several organizations that are small armed groups, and dissident splinter groups of all the above.

<sup>18</sup> In 2006, in the municipality of San Francisco (Putumayo), a sergeant assigned to the 27th Jungle Brigade of the National Army allegedly participated in the kidnapping of a tradesman of the region. It is a source of concern that the Director of Fondelibertad recently dismissed kidnappings by, among others, common delinquents and State actors when he stated that “kidnappings has never been anything but a crime committed by terrorists.” See *El Espectador*, “It is no more than a crime of terrorism,” 16 July 2008.

<sup>19</sup> “The Colombian armed conflict, as the majority of current wars in the world, continues to become blurred, as the civilian population is the most affected; the civilians are not only victims but objective, target of different strategies of the parties in conflict to terrorize them,” in *Derecho Internacional Humanitario, Conceptos Básicos, Infracciones en el Conflicto Armado Colombiano*, Office in Colombia of the United Nations High Commissioner for Human Rights, Bogotá, December 2007, p. 13.

<sup>20</sup> In what relates to attacks against goods, Additional Protocol II to the Geneva Conventions relative to the protection of the victims of armed conflicts of non-international character, in its Articles 14, 15, and 16 identifies as protected goods those goods deemed indispensable for the survival of the civilian population, the works and installations that contain dangerous forces, cultural goods, and places of worship. Protocol I relative to the protection of the victims of international armed conflicts in its Article 52 determines also that “goods of civilian character will not be the object of attack or of reprisals.”

<sup>21</sup> Coalition against the Involvement of Boys, Girls, and Youths in the Armed Conflict in Colombia (Coalico), *Informe alterno al Comité de Derechos del Niño*, Bogotá, 2007, p.27. In 2005 the Constitutional Court estimated the total number of girls, boys, and teenagers combatants in the guerrilla and paramilitary groups as between 11,000 and 14,000 persons (Constitutional Court, Judgment C- 203, 8 March 2005. Judge Rapporteur: Dr. Manuel José Cepeda Espinosa).

and Peace” Law<sup>22</sup>), only 212 girls and boys<sup>23</sup> have been registered as effectively turned over by the paramilitaries<sup>24</sup>.

Other ways of involving boys and girls in the war have come to light: through the use by the Armed Forces of children as informants, in counter-insurgency and propaganda activities, and through recreational activities and visits by minors to military facilities in the framework of the “Soldiers for a Day” Program<sup>25</sup>. In spite of requests by the Inspector General’s Office (*Procuraduría General*) to put an end to such activities, the military continues to carry them out<sup>26</sup>. In December 2007, the Secretary General of the United Nations pointed out that the State security forces use children for purposes of intelligence, for transporting materials, as well as for weapon maintenance, and that boys and girls no longer taking part in the conflict are detained in police stations and army battalions for unauthorized periods<sup>27</sup>.

With regard to sexual violence against women, the Constitutional Court<sup>28</sup> emphasized on 14 April 2008 that “*it is a customary practice, generalized, systematic, and invisible in the context of the Colombian armed conflict, as are also sexual exploitation and abuse*”, practices attributed to all groups participating in the hostilities, including the State security forces. Similarly, the United Nations High Commissioner for Human Rights has pointed out that “*several complaints were registered regarding women victims of acts of sexual violence in which responsibility was attributed to both members of the illegal armed groups and members of the State security forces*”<sup>29</sup>.

Regarding attacks against goods protected by humanitarian law<sup>30</sup>, it can be said that between July 2002 and December 2007, at least 90 cases were registered of food blockades,

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<sup>22</sup> Law 975 of 2005 establishes the proceeding through which legal benefits are awarded to the members of armed groups (guerrilla and paramilitary) that demobilize and fulfill the conditions stipulated in the Law.

<sup>23</sup> Office of the Ombudsman, Written Notice No.14320-02373939 issued on 17 May 2006.

<sup>24</sup> The Inspector General’s Office has pointed out in this respect that “*the above indicates that the handover of boys, girls, and adolescents is minimal with respect to the total of those used in the armed conflict and in comparison with the total number of demobilized adults, which has as consequence the non-fulfillment of the condition of demobilization stipulated in Article 10.3 of Law 975 of 2005.*” Inspector General’s Office, “*Seguimiento a políticas públicas de desmovilización y reinserción*”, Bogotá, Colombia, June 2006, Tome II, p.338.

<sup>25</sup> The “Soldiers for a day” Program’s objective is “the integration of children in the Army through games, and the visit of military facilities of the country”. Children are taken to see helicopters, take rides in war tanks, and their faces are painted to simulate camouflage. See COALICO and CEJIL, *Report on the situation of girls, boys and young people involved in the armed conflict in Colombia: flaws in the disengagement process of boys, girls and young people from paramilitary groups*, p.12. This report was presented to the Inter-American Commission on Human Rights in Washington D.C. on 18 July 2007.

<sup>26</sup> “Special Report on the Rehabilitation and Consolidation Zone of Arauca”, in *States of emergency*, Inspector General’s Office (*Procuraduría*), Bogotá, May 2004, p.141.

<sup>27</sup> Children and Armed Conflicts, Report by the Secretary General to the General Assembly and the Security Council, A/62/609-S/2007/757 of 21 December 2007, para.115.

<sup>28</sup> Constitutional Court, Judicial Decree N°092 of 14 April 2008 on the protection of the fundamental rights of women victims of forced displacement caused by the armed conflict, issued as part of the monitoring of compliance with Judgment T-025 of 2004.

<sup>29</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia for the year 2006, A/HRC/4/48, para.81.

<sup>30</sup> Additional Protocol II to the Geneva Conventions relative to the protection of the victims of armed conflicts of non-international character, in its Articles 14, 15, and 16, identifies as protected goods those goods deemed

149 cases of roadblocks, 140 attacks against medical missions<sup>31</sup>, and 53 attacks against schools, all of them committed by all groups participating in the hostilities. Likewise, attacks on the environment, fumigations, and indiscriminate aerial attacks persist by the State security forces. The guerrilla groups continue to use forbidden weapons and, between July 2002 and December 2007, committed at least 85 attacks against works and installations containing dangerous substances or forces<sup>32</sup>.

According to Handicap International, Colombia is the country with the greatest number of victims of landmines in the world<sup>33</sup>, (6,238 victims between 1990 and August 2007). In the first semester of 2008, 101 civilian victims were registered, the most affected areas being Nariño, Meta and Antioquia<sup>34</sup>. Of these victims, less than 15% have recovered their rights. It is a source of concern that the Government designed an ill-considered and risky strategy that involves civilians in identifying places where there might be landmines, easily turning these civilians into military targets<sup>35</sup>.

A source of great concern is the fact that, in the course of the military operation “Jaque,” the State security forces used the emblem of the International Committee of the Red Cross (ICRC), thus violating the principle of neutrality recognized by humanitarian law<sup>36</sup>. The ICRC took note of the President’s statement in which he recognized that a member of the State security forces who participated in the operation used the Red Cross emblem. This organization reiterated that “the Red Cross emblem must be respected in all circumstances and cannot be used in an abusive manner”<sup>37</sup>.

### 3. Denial of the armed conflict and absence of a peace policy

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The current Government insists on denying the existence of an internal armed conflict, characterizing it as a struggle against terrorism. However, the thesis about the non-existence

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indispensable for the survival of the civilian population, the works and installations that contain dangerous forces, cultural goods, and places of worship. Protocol I relative to the protection of the victims of international armed conflicts in its Article 52 determines also that “goods of civilian character will not be the object of attack or of reprisals.”

<sup>31</sup> International Committee of the Red Cross (ICRC) Annual Report 2007, p.60; ICRC Annual Report 2006, p.38; ICRC Annual Report 2005, p.30; ICRC Annual Report 2004, p.12.

<sup>32</sup> In conformity with Articles 35(3) y 55(1) of Additional Protocol I to the Geneva Conventions, in the conduct of military operations care shall be taken to protect the natural environment and the use of methods or means of waging war that cause ecological damage or endanger the health and survival of the population are forbidden.

<sup>33</sup> Handicap International, *Colombia Land Mine Report*, 2007, p.22.

<sup>34</sup> Colombian Campaign against Landmines, [www.colombiasinminas.org](http://www.colombiasinminas.org).

<sup>35</sup> Alternate Report of the Humanitarian Action Alliance against Mines/Permanent Civil Society Assembly for Peace regarding compliance with the Ottawa Convention by the Colombian Government, <http://www.asambleaporlapaz.com/?q=taxonomy/term/27>.

<sup>36</sup> The military operation was carried out on 2 July 2008, and led to the liberation of 15 persons held hostage by the FARC guerrilla group.

<sup>37</sup> ICRC Press Release, “Colombia: el CICR reitera la importancia del respeto del emblema de la Cruz Roja” (ICRC reiterates the importance of respecting the emblem of the Red Cross), Bogotá/Geneva, 16 July 2008.

of the armed conflict in the country is so difficult to sustain that the Government itself, in its National Development Plan for 2002-2006, (“Toward a Communitarian State”), in designing the foundations of its policies, recognized that “Colombia faces one of the longest-lasting armed conflicts in the world with deep social repercussions”<sup>38</sup>. Furthermore, military expenditure in relation to the Gross National Product is the highest in the world (more than 6%), a proportion that would be impossible to understand if there were no internal armed conflict<sup>39</sup>.

Through its “democratic security” policy, the State has involved the civilian population in the armed conflict through networks of paid informants and “collaborators”, as well as through the “peasant soldiers’ program”<sup>40</sup>, ignoring the principle of distinction between civilians and combatants. The consolidation of the “democratic security” policy is part of the second phase of Plan Colombia (Plan Colombia II), which was neither consulted with nor reviewed by Congress, and whose operative strategy is the so-called “social recovery of the territory,” implemented through the promotion of the “Doctrine of Comprehensive Action” (“*Doctrina de Acción Integral*” - DAI) and the creation of bodies outside the institutional structure provided in the Constitution<sup>41</sup>. This model puts at risk the autonomy of local civilian authorities, affecting basic rule of law principles. It subjects social policies to the parameters of the war due to the growing involvement of the military in the decision-making process regarding social policy and the satisfaction of economic, social and cultural rights. It evades consultation with indigenous and Afro-Colombian communities on those territories and subordinates humanitarian aid to the military agenda.

On the other hand, while the Government negotiated with paramilitary groups, granting them political recognition and broad legal and economic benefits, it has denied the possibility of a peace dialogue and negotiations with the guerrilla groups, favoring the

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<sup>38</sup> National Planning Department (DNP), *Plan Nacional de Desarrollo 2002-2006: Hacia un Estado Comunitario* (National Development Plan 2002-2006: Toward a Communitarian State), DNP, Bogotá, 2003, p.31. The Government has recognized explicitly the existence of the armed conflict in other documents. See for example Ministry of Foreign Relations, Ministry of Social Protection, and Colombian Institute of Family Welfare, Third Colombia Report to the Committee on the Rights of the Child, 1998-2003, Bogotá, May 2004, pages 27-30.

<sup>39</sup> Isaza, José Fernando and Campos Romero, Diógenes. *Algunas consideraciones cuantitativas sobre la evolución reciente del conflicto en Colombia*. (Some Quantitative Considerations on the Recent Evolution of the Conflict in Colombia), available at [http://www.dhcolombia.info/IMG/pdf\\_ConflictoColombiano.pdf](http://www.dhcolombia.info/IMG/pdf_ConflictoColombiano.pdf).

<sup>40</sup> According to the Defense and Democratic Security Policy of the Ministry of Defense, the *network of collaborators* is composed of citizens who provide information to the authorities allowing prevention and prosecution of crimes (paragraph 61). The objective of the informants’ network is to provide information to the State security forces focused on “*prevention of terrorist attacks or capture of members of illegal armed organizations.*” These persons become beneficiaries of rewards in exchange for information (page 61). Lastly, the “peasant soldiers’ program” establishes that young men required to do their military service can do it in the rural areas where they live (page 10).

<sup>41</sup> The Centers for the Coordination of Comprehensive Action (CCAI in Spanish) are bodies charged with coordinating the implementation of strategies of “social recovery of the territory” in areas recovered by the State security forces. See Ministry of National Defense, “*Política de Consolidación de la Seguridad Democrática*” (Policy for the Consolidation of Democratic Security), Bogotá, 2007, and “*Estrategia de Fortalecimiento de la Democracia y el Desarrollo Social (2007-2013)*” (Strategy for Strengthening Democracy and Social Development).

military solution and blocking any humanitarian agreements highly demanded by the population.

During the course of this year, 21 persons who were in the hands of the FARC have been freed thanks to the good offices of international facilitators, to unilateral gestures, and to a military operation. However, an understanding has not been possible between the guerrilla and the Government to lead to humanitarian agreements guaranteeing the life and integrity of the 1,512 persons who remain in captivity, their prompt return to freedom, and the full respect of international humanitarian law<sup>42</sup>.

Various political parties and social, human rights and peace organizations, as well as friendly countries have made efforts to reach a political solution to the armed conflict and an urgent end to the humanitarian crisis associated with it. However, the Government refuses to come to an understanding with civil society regarding these proposals. A proof of it is that, going against legal provisions and a decision of the Council of State<sup>43</sup>, it has refused to convene the National Peace Council on a regular basis<sup>44</sup>.

#### 4. Persistence of paramilitary groups

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Contrary to what the Government states, paramilitarism has not been dismantled and the close links between State agents and paramilitaries have not been eliminated, despite the reiterated international recommendations insisting on the necessity of such action<sup>45</sup>. Before the beginning of the negotiations between the Government and the paramilitaries in December 2002, the official figures indicated the existence of 12,000 paramilitaries. The non-governmental organization Institute for the Study of Development and Peace (Indepaz) estimates, on the basis of data of the National Police, that there are currently at least 9,000 armed paramilitaries operating in 76 groups that continue to act, some of them with new names, in 25 of the country's 32 departments<sup>46</sup>. They maintain social

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<sup>42</sup> Fundación País Libre, Estadísticas de secuestro a diciembre de 2007 (Statistics on Kidnapping as of December 2007), [www.paislibre.org](http://www.paislibre.org); El Tiempo daily newspaper, "Clara Rojas y Consuelo González se abrazan con sus familiares en la pista del aeropuerto de Caracas" (Clara Rojas and Consuelo González embrace their relatives on the runway at Caracas airport), January 10, 2008, [www.eltiempo.com](http://www.eltiempo.com); Caracol Radio, "Emocionante reencuentro entre familiares y ex congresistas liberados" (Emotional reunion between families and liberated former Congress members), February 27, 2008; El Tiempo, "Rescatada Ingrid Betancourt, los 3 estadounidenses y otros 11 secuestrados de la Fuerza Pública" (Ingrid Betancourt, three U.S. citizens, and 11 other hostages members of the State security forces rescued) 2 July 2007, [www.eltiempo.com](http://www.eltiempo.com).

<sup>43</sup> The Council of State is the highest tribunal in the contentious-administrative jurisdiction (Art. 237 of the Colombian Constitution).

<sup>44</sup> The National Peace Council was created by Law 434 of 1997 as an advisory organ to the national Government in matters of peace and was made up of representatives of the Government, of the State, and of civil society. In six years, under pressure from the Council of State, it has met only six times.

<sup>45</sup> Among others it is worth noting the recommendations contained in the four most recent reports of the U.N. High Commissioner for Human Rights on the human Rights situation in Colombia: A/HRC/7/39, 28 February 2008, para.94d); A/HRC/4/48, 5 March 2007, para.118; E/CN.4/2006/9, 20 January 2006, para.141; and E/CN.4/2005/10, 28 February 2005, para.150.

<sup>46</sup> Instituto de Estudios para el Desarrollo y la Paz (INDEPAZ), *Nuevo mapa paramilitar, 76 grupos paramilitares*, Julio 2007, Bogotá, 21 August 2007, [www.indepaz.org.co](http://www.indepaz.org.co).

control of the population in their territories through human rights violations and breaches of humanitarian law. Likewise, their economic structures have been consolidated through the legalization of goods and businesses obtained through dispossession and forced displacement.

It has been possible to ascertain directly the continued existence of links between the State security forces and paramilitary groups in various departments of the country<sup>47</sup>, such as the case of the extrajudicial of six young men in the municipality of Chinú (Córdoba) on 9 July 2007 who were recruited by members of paramilitary groups and later displayed as “dead in combat” by members of the Eleventh Brigade of the National Army<sup>48</sup>, and the case of the massacre of the members of the Peace Community of San José de Apartadó<sup>49</sup>.

The links with paramilitaries also implicate members of Congress and senior civil servants. As of July 2008, 63 members of Congress, the majority of them members of the same party as and allies of the President, are being investigated for their alleged links with paramilitary groups<sup>50</sup>. The relation between paramilitary groups and officials elected by popular vote in the past few years (mayors and governors) shows the grave fissures in the already weak democratic system of the country. At least 14 departments today face problems because people holding elected public office have alleged or proven links with paramilitary groups. Several documents have come to light that show that politicians and paramilitaries reached agreements to seize public funds and elected public posts in the country<sup>51</sup>.

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<sup>47</sup> In addition to historic links between paramilitaries and State security forces, proven among others, by the Inter-American Court of Human Rights, several cases of recent links have been documented in the departments of Antioquia, Bolívar, Cauca, Cundinamarca, Choco, Cordoba, Meta, Nariño, Norte de Santander, Santander, Putumayo and Valle del Cauca. See the recent publication of the Colombian Commission of Jurists, “El Espejismo de la Justicia y la Paz. Balance de sobre la aplicación de la ley 975 de 2005”, pages 49-53.

<sup>48</sup> Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, A/HRC/7/39, 28 February 2008, para. 25; and Cinep Database, *Revista Noche y Niebla* N°36, p.51.

<sup>49</sup> In the course of that massacre, on 21 February 2005, eight persons were assassinated, among them four minors of 2, 6, 11, and 17 years old. During their testimonies (“free versions” in Spanish), the paramilitaries *alias* Melasa and Don Berna recognized their participation in this massacre. As of now, the Prosecutor General’s Office has called 86 members of the military to submit to formal interrogation for their presumed responsibility in the massacre; of these, seven are under preventive detention. For more information see <http://cdpsaniose.org/?q=node/77>.

<sup>50</sup> In June 2005, the citizen Clara Eugenia López Obregón filed a complaint before the Supreme Court with the purpose of shedding light on the links between politicians and paramilitary groups. This legal action, together with other investigations being carried out by the magistrates of the Criminal Chamber of the Supreme Court, led to the Court taking on systematic and cooperative efforts to bring to light the links between several politicians and paramilitary groups.

<sup>51</sup> Among the documents mentioned can be found the “*Ralito Agreement*” signed on 23 July 2001. By signing this document, many Congress members infringed their constitutional and legal responsibilities and made a commitment with the paramilitaries to “*re-found the State*” by virtue of a “*new social contract*.” Another similar document is one signed in the municipality of Chivolo (Magdalena) on 28 September 2000, in which at least 395 candidates to local councils and assemblies, and 13 candidates to mayoralties in that department met with paramilitary commander Rodrigo Tovar Pupo, alias “*Jorge 40*.” According to media information, a sole candidate was chosen to the governorship of Magdalena for the period 2001–2003. In the elections held in October 2000, twelve of the thirteen candidates for mayor in the department of Magdalena who took part in that meeting won the elections. A pact has also been revealed that politicians in the department of Santander

With regard to public officials, the former Director of the Administrative Security Department (DAS), the intelligence body of the Presidency of the Republic, is being investigated by the Prosecutor General's Office (*Fiscalía General*) and was sanctioned by the Inspector General's Office<sup>52</sup> (*Procuraduría General*) for his links with paramilitaries<sup>53</sup>. Furthermore, the paramilitary leader Salvatore Mancuso has provided information<sup>54</sup> which deserves being investigated regarding possible links with paramilitarism of the Vice-president of the Republic, Francisco Santos Calderón, and of the Minister of Defense, Juan Manuel Santos. In spite of these revelations, neither the Prosecutor General's Office (*Fiscalía General*) nor the President has been willing to take legal and political measures in that regard.

Despite important efforts by the judiciary to investigate links of paramilitaries with Congress members and important sectors of the State, permanent attacks by the Government against the Supreme Court, and the Government's obstruction of legislation seeking to eliminate links between politicians and paramilitaries, have hindered these efforts.

In the framework of the negotiation process between the Government and paramilitary groups, the Government established as a condition for obtaining legal benefits (such as low sentences) the cessation of human rights violations and breaches of humanitarian law<sup>55</sup>. In spite of this, between 1 December 2002 and 31 December 2007, 4,019 persons have been victims of violations of the right to life attributed allegedly to paramilitary groups in at least 27 of the country's 32 departments, with no reaction from the Government<sup>56</sup>. Of these victims, 340 were women and 170 girls and boys. At least 343 have been subjected to cruel, inhuman, or degrading treatment or have been victims of torture and no less than 4,213 persons have been threatened by paramilitary groups. For example, in the same period, indigenous communities have registered the death of 212 of their members by paramilitaries (187 were men and 25 women), 22 cases of forced disappearances (18 men and 4 women), 29 cases of torture (25 men and 4 women), 90 kidnappings (86 men, 3 women, and 1 child), and 24 collective threats against their communities by such groups, which the Government claims to have demobilized successfully<sup>57</sup>.

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signed in the municipality of Puerto Berrío (Antioquia) in order to obtain the support of paramilitary groups in exchange for allowing them territorial control. See in that respect: "Durante 8 días, los 19 fueron seguidos por agentes del CTI" (Eight days long, the 19 were followed by agents of the CTI), *El Tiempo*, 15 May 2007, pages 1-2; "'Pacto de Chivolo' va a enredar a 410 políticos" ('Chivolo Pact' is going to embroil 410 politicians), *El Tiempo*, 18 May 2007, pages 1-5; "Políticos de Santander firmaron pacto con paramilitares en Puerto Berrío denuncia el Senador Petro" (Santander politicians signed pact with paramilitaries in Puerto Berrío, denounces Senator Petro) *El Tiempo*, 14 August 2007, in: [www.eltiempo.com](http://www.eltiempo.com)

<sup>52</sup> [http://www.procuraduria.gov.co/html/noticias\\_2007/noticias\\_470.html](http://www.procuraduria.gov.co/html/noticias_2007/noticias_470.html).

<sup>53</sup> General Prosecutor's Office, "Por homicidio a sindicalistas ex director del DAS no tiene medida de aseguramiento" (For homicide of union members, former director of DAS has not been detained) [www.fiscalia.gov.co](http://www.fiscalia.gov.co).

<sup>54</sup> Hearing of Salvatore Mancuso's testimony (free version), held on 16 and 16 May 2007 in Medellín.

<sup>55</sup> The promise of a cease of hostilities proposed by the paramilitary groups took effect on 1 December 2002, according to information of the Office of the High Commissioner for Peace, "Proceso de Paz con las Autodefensas. Informe Ejecutivo" (Peace Process with the Self-Defense Groups. Executive Report), December 2006, p.5.

<sup>56</sup> Database of the Colombian Commission of Jurists.

<sup>57</sup> Database of CECOIN's Indigenous Observatory of Public Policies and Ethnic Rights.

## 5. Impunity and violations of the rights of victims to truth, justice and reparation

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Impunity and restrictions of access to justice are structural in Colombia, affecting all victims of human rights and humanitarian law violations<sup>58</sup>. This is evidenced by the overwhelming impunity relating to paramilitaries' crimes. Of the 31,671 paramilitaries supposedly "demobilized," 90.1% (28,544) benefited from *de facto* amnesties through Decree 128 de 2003, based on the argument that they were not being investigated and had not been sentenced for serious crimes. The authorities therefore did not demand them to tell the truth about human rights violations and breaches of international humanitarian law in which they participated or about which they had knowledge. It has therefore not been possible to establish who was responsible, the level of command, and the individuals and entities in the society and the State who financed, promoted or were accomplices to these crimes. In particular, crimes such as forced displacement, recruitment of boys and girls, and sexual violence have remained unaddressed. As of December 2007, only 116 paramilitaries (0,3%) out of the 31,671 who supposedly demobilized have been effectively prosecuted under Law 975 of 2005<sup>59</sup> (Law of "justice and peace"), and none have been sentenced. Hence, the rights to truth, justice and reparation have not been guaranteed.

Furthermore, through regulating decrees in the framework of Law 975 and in practice, the Government is trying to limit the rights of victims to truth, justice and reparation, contradicting explicit decisions of the Constitutional Court, which, in its Judgment C-370 of 2006, ordered that they be guaranteed. The Government has interfered in the judge's sphere, by determining what reparation to grant, or including or expelling persons from legal proceedings<sup>60</sup>. Additionally, the Government has denied its duty to provide reparation, has used humanitarian assistance and social policies as methods of reparation and has stated that the restitution of property is not a priority<sup>61</sup>. It has also introduced illegal reductions of sentences favoring the perpetrators<sup>62</sup>.

The security of the victims and witnesses who have participated in the "justice and peace" proceedings has not been guaranteed either since, according to the National Commission of Reparation and Reconciliation (CNRR)<sup>63</sup>, 15 of them have been assassinated and over

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<sup>58</sup> Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, Document A/HRC/7/39, 28 February 2008, para. 4.

<sup>59</sup> "As of 19 December 2007, the Prosecutor's Office had begun hearing 1,057 testimonies (*versión libre*), of which 941 were suspended because the candidates did not ratify their willingness to invoke Law 975 of 2005 and the process thereof." Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, Document A/HRC/7/39, 28 February 2008, para.17.

<sup>60</sup> Decree 1364 of 25 April 2008.

<sup>61</sup> Decree 1290 of 22 April 2008 regarding a program of administrative reparation.

<sup>62</sup> Regulatory Decree 3391 of Law 975 of 2005, September 2006.

<sup>63</sup> The National Commission on Reparation and Reconciliation (CNRR in Spanish) was created by Law 975 of 2005 (Article 51) and, among other functions, has the role of guaranteeing the participation and efficacy of the rights of victims in this process.

200 threatened as of July 2007<sup>64</sup>. On May 16, 2008, the Constitutional Court ruled on a *tutela* action that the Protection Program for Victims and Witnesses provided for in Law 975 is insufficient and ordered the reform of the Program to make it more effective and specific, particularly with regard to the protection of women<sup>65</sup>.

In the framework of the implementation of Law 975, the Prosecutor General's Office (*Fiscalía General*) has reported the existence of at least 4,000 graves, of which 1,289 have been found and from which 1,555 bodies have been exhumed. Of the bodies exhumed until December 2007, only 215 have been fully identified<sup>66</sup>, since, in the majority of cases, before the exhumation takes place, the Prosecutor General's Office (*Fiscalía*) does not establish who is the person it intends to find – in spite of the fact that this should be the procedure to follow in conformity with the international protocols on that matter and the National Plan for the Search of Disappeared Persons adopted in 2007 by the National Commission for the Search of Disappeared Persons, of which the Prosecutor General's Office (*Fiscalía*) is a member.

In May 2008, the Government extradited to the United States 15 paramilitary leaders for crimes related to drug trafficking, with the argument that they had continued to commit crimes after their “demobilization” and during the proceedings under Law 975. What should have been done under such circumstances, according to Law 975 itself, was to continue judging those paramilitaries within the ordinary justice system and without conceding benefits such as the reduction of sentences. By prioritizing their prosecution for drug trafficking in the United States, rather than the investigation and punishment of crimes against humanity, the Colombian State showed that it is unable or unwilling to pursue justice with regard to those crimes committed against victims in Colombia. Moreover, by these extraditions, the Government implicitly recognizes that no real demobilization has taken place, let alone an effective peace process.

## 6. Forced displacement and usurpation of lands and territories \_\_\_\_\_

The armed conflict and the permanent human rights violations have generated a serious humanitarian crisis, which positions Colombia as the country with the second greatest number of internally displaced persons in the world after Sudan. This situation led the Constitutional Court, in its judgment T-025 of 2004, to declare an “unconstitutional state of affairs.” However, the Government has not guaranteed the rights of the displaced population<sup>67</sup>, which means that this “unconstitutional state of affairs” has not been

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<sup>64</sup> *Nueva rebelión de los ex paras profundiza rezagos en reparación* (New rebellion of former paramilitaries deepens delays in reparations), *El Tiempo*, 25 July 2007.

<sup>65</sup> Constitutional Court, Judgment T-496 of 16 May 2008. Judge Rapporteur: Jaime Córdoba Triviño.

<sup>66</sup> <http://www.fiscalia.gov.co/justiciapaz/EXH/EXHUMACIONES.htm>.

<sup>67</sup> According to the results of a survey carried out by the Civil Society Commission for Monitoring Public Policy on Forced Displacement in November 2007, the situation of 74% of the displaced population is of extreme vulnerability, below the indigence line; 26% of children younger than 5 years are undernourished; at the same time, in cases of gestating mothers, during the year before the survey, 11% of the pregnancies failed or were interrupted.

overcome<sup>68</sup>. It is of concern that the number of displaced persons, over four million, continues to rise<sup>69</sup>. During the first quarter of 2008, 113,473 persons were forcibly displaced – an increase of 18% with regard to the same period the year before<sup>70</sup>. This means that, on average, 1,250 persons are being forcibly displaced daily. The Afro-Colombian and indigenous population groups are especially affected by this violation<sup>71</sup>.

The State has not complied with its obligation to protect the property of the displaced population, nor guaranteed the restitution of property usurped by paramilitary groups. Through various legislative initiatives promoted by the Government, the State has sought to legalize the illegal possession of lands and goods seized by the paramilitaries and to promote business activities on those lands<sup>72</sup>. In spite of what the Constitutional Court ordered, the paramilitaries prosecuted under Law 975 have not been forced to hand over the property illegally seized from the displaced population. According to *Acción Social*<sup>73</sup>, as of 2005 the land area abandoned was 6.8 million hectares. In December 2007, this same official body reported that the paramilitaries had turned over only five urban real estate properties and an extension of 4,762 hectares in rural real estate – that is, 0.007% of the total goods illegally seized<sup>74</sup>.

The Constitutional Court warned that no assistance policy exists with a specific focus on women and children<sup>75</sup>, to prevent the displacement of indigenous peoples and Afro-Colombian communities, or to meet the needs of those already displaced. Nor is there a policy of psycho-social support for the victims of displacement. The Government has

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<sup>68</sup> Given the non-compliance of the State with Judgment T-025, the Constitutional Court, in its Judgment T-821 of October 2007, reminded the State of its obligation to implement the Guiding Principles on Internal Displacements and the Principles on the restitution of housing and patrimony to refugees and displaced persons.

<sup>69</sup> According to CODHES (Consultoría para los Derechos Humanos y el Desplazamiento), the figure is 4,361,355 persons as of March 2008.

<sup>70</sup> Such an increase had not been observed since 1999. CODHES, *¿Cohesión o Fragmentación Social? Resumen del Informe sobre Desplazamiento Forzado, Conflicto Armado y Derechos Humanos Codhes, correspondiente al primer trimestre de 2008*. (Social Cohesion or Fragmentation? Summary of the CODHES Report on Forced Displacement, Armed Conflict, and Human Rights, corresponding to the first quarter of 2008). <http://www.codhes.org/>.

<sup>71</sup> According to CECOIN's database, the General Forest-Management Law (declared unconstitutional by the Constitutional Court), between June 2002 and December 2007, 31,230 indigenous persons were victims of forced displacement.

<sup>72</sup> Such initiatives are the National Development Plan, the General Forest-Management Law (Law 1021 of 2006), the Rural Development Statute, the Secure Agro-Income program, and the law regularizing property titles of real estate property.

<sup>73</sup> The Presidential Agency for Social Action and International Cooperation (<http://www.accionsocial.gov.co/portal/default.aspx>) is the instance created by the Government to channel all national and international resources for the execution of all social programs under the Presidency of the Republic and to assist vulnerable populations affected by poverty, violence, and drug trafficking.

<sup>74</sup> [www.accionsocial.gov.co/contenido/contenido.aspx?catID=1667](http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=1667).

<sup>75</sup> The Court has likewise pointed out the lack of programs for the care of displaced boys and girls and its concern about denunciations about the repeated crimes against them as well as their recruitment, trafficking, abuse, and sexual exploitation, all of them unpunished. Constitutional Court, Judicial Decree 167 of 2007. In: FUNDACIÓN DOS MUNDOS, *Niños, niñas y adolescentes en situación de desplazamiento: por un presente de oportunidades y un futuro de posibilidades* (Displaced Boys, Girls, and Adolescents: For a Present with Opportunities and a Future with Possibilities), May 2008.

ignored the right to consultation provided for in ILO Convention 169 concerning Indigenous and Tribal peoples, increasing the risk of displacement related to projects that exploit natural resources or infrastructure projects in collective territories and indigenous reserves. Recently approved norms<sup>76</sup>, affect the indigenous groups by prohibiting the enlargement and the legalization (*saneación*) of the reserves on the Pacific coast (thereby affecting the Wounáan, Embera, Eperara and Awá peoples) and forcing nomadic peoples to become sedentary in order to obtain title to their lands. The Government asserts that no more land will be given to indigenous peoples<sup>77</sup>, arguing that they are landowners already, disregarding the fact that only 7.68% of the reserves are in agricultural lands and that the reserves are inhabited by 64.18% of the indigenous population (885,000 persons) in an area of 1,290,000 hectares (an average of 1.46 hectares per person which represents less than one-thousandth of the average territory occupied by large landowners).

Another emblematic case is the case of the Afro-Colombian communities of Curvaradó and Jiguamiandó, victims of forced displacement and of the illegal seizure by the paramilitaries of 21,142 hectares of their collective territory that illegally passed into the hands of palm and cattle-ranching businesses. In June 2007, the ILO requested the Government, in conformity with Convention 169, to adopt measures so that these communities could “recover the lands unduly occupied by persons that are not part of the communities”<sup>78</sup>.

According to UNHCR, one of the main obstacles to the prevention of forced displacement is the impunity regarding this crime, given that investigations have been carried out in only 1% of the cases known by the State<sup>79</sup>.

## 7. Economic, social and cultural rights

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The Colombian State has disregarded its obligations arising from the International Covenant on Economic, Social and Cultural Rights<sup>80</sup>, and has not implemented the High Commissioner’s recommendation to “*develop a consistent policy to reduce the inequity*

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<sup>76</sup> It is worth noting the passing of Law 1021 of 2006 (better known as Forest-Management Law), later declared unconstitutional for violating the right to consultation of indigenous peoples and Afro-Colombian communities; Law 1152 (Rural Development Statute), a norm considered by indigenous, Afro-Colombian and peasant organizations as the most regressive in recent decades in terms of their rights; and Law 1151 of 2007 (National Development Plan).

<sup>77</sup> This announcement was launched by the Minister of Agriculture, Andrés Felipe Arias, in the Fifth Commission of the Chamber of Representatives, before several communications media and Congress members present in May 2006.

<sup>78</sup> ILO Experts’ Commission on the Application of Conventions and Recommendations, individual observation on the Convention of Indigenous and Tribal Peoples, Document N°062007COL169, date of publication: 2007.

<sup>79</sup> UNHCR/ACNUR, *Balance de la Política Pública para la Atención Integral al Desplazamiento Forzado en Colombia. Enero 2004-abril 2007* (Balance of Public Policy for the Comprehensive Attention to Forced Displacement in Colombia. January 2004-April 2007). Bogotá, August 2007, p.229.

<sup>80</sup> Committee on Economic, Social, and Cultural Rights, Final Observations, E/C.12/1/Add.74, 6 December 2001.

gap existing in the country and make sure that all necessary measures are taken to achieve a reduction in the rates of analphabetism and joblessness and an increase in access to health care, education, and housing”<sup>81</sup>.

Although significant levels of economic growth have been registered in the past few years<sup>82</sup>, this has not resulted in a reduction of inequity, poverty and unemployment. Colombia has the second highest rate of inequity in Latin America, with a Gini<sup>83</sup> coefficient of 0.576<sup>84</sup>. While 50% of the poorest population receives only 13.8% of income, the 10% richest have an income equivalent to 46.5%<sup>85</sup>. According to the 2005 census, average life expectancy for the general population is 76 years<sup>86</sup>. For Afro-Colombians, it is 66.7 years for women and 64.6 for men<sup>87</sup>. According to the latest official data (1993), indigenous women had a life expectancy 15 years less than the national average and men 9 years below average<sup>88</sup>.

Regressive measures have been adopted such as reducing the level of resources transferred to municipalities for investments related to health care, education, and sanitation. This means that during the period 2008-2016 they will receive between 66.2 and 76.6 billion Colombian Pesos less<sup>89</sup>.

Colombia is the only country in Latin America where primary education is not free<sup>90</sup>. The Government argues that progress is being made, particularly in terms of coverage. The

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<sup>81</sup> Annual Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia, E/CN.4/2003/13, 24 February 2003, para.176.

<sup>82</sup> During the year 2007, the Colombian economy grew by 7.52%, maintaining its upward growth trend which in average reflects a rhythm of 5% annually since 2001.

<sup>83</sup> The Gini index or coefficient is an indicator that permits measuring the degree of concentration and distribution of wealth or property. This index goes from 0 to 1, nearing 0 when it reflects an egalitarian distribution and nearing 1 when it reveals an unequal concentration (in principle, 0 suggests a situation where all involved have the same goods, and 1 indicates that one single agent possesses all the goods). A total index greater than 0.5 shows considerable inequality in the global context.

<sup>84</sup> Bonilla, Ricardo and González Jorge Iván (coord.), *Bienestar y macroeconomía 2002–2006: El crecimiento inequitativo no es sostenible* (Welfare and Macroeconomy 2002-2006: Inequitable growth is not sustainable), Bogotá: CID, Universidad Nacional de Colombia; Contraloría General de la República, 2006, p.23 and following.

<sup>85</sup> *Ibidem*.

<sup>86</sup> Figures of the National Statistics Department (DANE) based on the 2005 census. In: <http://www.consultorsalud.com/biblioteca/documentos/2007/censo%202005.pdf>.

<sup>87</sup> National Statistics Department (DANE), *Colombia una nación multicultural: su diversidad étnica* (Colombia, a multicultural nation: its ethnic diversity), [http://www.dane.gov.co/censo/files/presentaciones/grupos\\_eticos.pdf](http://www.dane.gov.co/censo/files/presentaciones/grupos_eticos.pdf).

<sup>88</sup> CECOIN, *Indígenas sin derechos* (Indigenous people without rights), Report 2007, Ediciones Antropos Ltda, Bogotá, 2007, p.165.

<sup>89</sup> Avellaneda, Luis Carlos, *Estimación de la Pérdida Total Periodo 2008-2016 ocasionada por la implementación del Acto Legislativo 04 de 2007* (Estimation of total loss for the period 2008-2016 caused by the implementation of Legislative Act 04 of 2007). Printed document, 2007, p.49; Ramírez, Gloria Inés, *Recorte de las Transferencias Constitucionales. Proyecto de Acto Legislativo 011/06 frente al régimen constitucional de 1991 (2008-2016)* (Cut in Constitutional Transfers: Legislative Bill 011/06 and 1991 Constitutional Regime). Document for debate in the Senate.

<sup>90</sup> Report of the United Nations Special Rapporteur for the right to education, Mission to Colombia. E/CN.4/2004/45/Add.2, February 2004 and Annual Report of the High Commissioner on the human rights situation in Colombia, E/CN.4/2004/13, February 2004.

Inspector General's Office (*Procuraduría General*), taking into consideration the actual school attendance rate (matriculated school population minus number of students who drop out or are held back) indicates that the educational deficit is greater than the rate declared by the Government<sup>91</sup>. According to official data, the rate of illiteracy among the Colombian population older than 15 is 7.9%. In the case of Afro-Colombians, it is 18.4% (women) and 16.9% (men)<sup>92</sup>, while among the indigenous population it is 13.1% (men) and 22% (women)<sup>93</sup>.

The employment situation is characterized by a reduction in the unemployment rate that is not the result of new jobs being generated, but rather an increase in the number of economically inactive persons and the creation of unstable jobs<sup>94</sup>. Although the Government reports a decrease in the unemployment rate (from 14.7% in 2001 to 11.1% in 2007), the employment rate increased only 0.2%, with persistent gender inequity reflected in the rate of male unemployment of 8.6% and of 14.7% among women<sup>95</sup>.

As a consequence of the application of Law 789 of 2002, during the past four years workers lost collectively 2.6 billion Colombian Pesos in income due to pay cuts of overtime hours, holidays, Sundays, and the reduction of hours considered night hours, affecting primarily women<sup>96</sup>. Despite recommendations of the UN Committee on Economic, Social and Cultural Rights on the need to regulate the labor conditions of “community mothers” (*madres comunitarias*) and to recognize them as workers so that they receive at least the minimum wage, they continue earning less<sup>97</sup>. The situation of the Afro-Colombian population, which earns an average income 20% lower than the rest of the population, is another source of concern<sup>98</sup>.

According to official figures<sup>99</sup>, 41% of the Colombian population does not enjoy food security: more than 20% of children under five years old suffer from some type of malnutrition, 45% of women are anemic, 86% of the population has a calcium deficit,

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<sup>91</sup> Inspector General's Office, *El derecho a la educación. La educación en la perspectiva de derechos humanos* (The Right to Education: Education from a Human Rights Perspective), Bogotá, 2006.

<sup>92</sup> National Statistics Department (DANE), 2005 Census.

<sup>93</sup> Inspector General's Office, 2006, p.154.

<sup>94</sup> Escuela Nacional Sindical (National School of Unions), “Con el sudor de tu frente” (With the Sweat of Your Brow). In: *Deshacer el embrujo. Alternativas a las políticas del gobierno de Álvaro Uribe Vélez* (Undoing the Spell: Alternatives to the Policies of the Government of Álvaro Uribe Vélez), Colombian Platform for Human Rights, Democracy, and Development, Bogotá, 2006, pages 136–138.

<sup>95</sup> Escuela Nacional Sindical, *Informe Nacional de Coyuntura Laboral y Sindical 2007* (National Report on the Labor and Union Situation 2007), June 2008.

<sup>96</sup> *La reforma laboral y las mujeres en Colombia. Más trabajo y menos calidad de vida* (Labor Reform and Women in Colombia: More Work and Less Quality of Life), available at [www.cactus.org.co/documentos/mas\\_trabajo\\_menos\\_calidad\\_vida.doc](http://www.cactus.org.co/documentos/mas_trabajo_menos_calidad_vida.doc).

<sup>97</sup> Committee on Economic, Social, and Cultural Rights, Concluding Observations, E/C.12/1/Add.74, 6 December 2001, para.7.

<sup>98</sup> Observatory on Racial Discrimination, “Análisis de Datos de la Encuesta Continua de Hogares de junio de 2004” (Data Analysis of the June 2004 Continuous Survey of Homes), Bogotá, 2008.

<sup>99</sup> ICBF, *Encuesta Nacional de la Situación Nutricional en Colombia – 2005* (National Survey of the Nutritional Situation – 2005), Bogotá, 2006.

and 64% presents a deficient calorie intake. In spite of this serious situation, the State has refused to adopt a public policy that guarantees the right to food<sup>100</sup>.

There is consensus among specialists regarding the deterioration in public health, which shows alarming indicators in maternal mortality, tuberculosis, malaria, and anemia, as well as a drop in levels of vaccination<sup>101</sup>. The Colombian health system is characterized by unequal levels of coverage and quality, and these depend basically on individuals' purchasing power. In 2005, the rate of covered families with the highest income was 85.7%, whereas that of the poorest population reached only 56.7%. At the global level, as of 2005, 31.9% of the population still had no access to any type of health insurance<sup>102</sup>. Another source of concern is the closing and privatization of the specialized network of public hospitals. As of October 2004, 79 health care centers were closed which had provided care to the most vulnerable population in 20 departments in the country<sup>103</sup>.

With regard to housing, the shortage reaches 2.3 million housing units, of which 1.5 million is the difference between the number of homes and housing units (quantitative deficit) and 800,000 is the number of those susceptible to improvement in terms of quality and services (qualitative deficit)<sup>104</sup>.

## 8. Denial of the right to defend human rights

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The Government has not complied with the great majority of international recommendations with respect to human rights and in several cases has acted against such recommendations. This attitude is reflected in the public stigmatization and permanent attacks on the dignity and legitimacy of the activities of human rights defenders by the President of the Republic and senior Government officials. These attacks have generated a climate of hostility leading to an increase in violence against human rights defenders and victims' representatives.

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<sup>100</sup> Colombian Platform for Human Rights, Democracy, and Development, *El derecho a la alimentación en Colombia: situación, contextos y vacíos* (The Right to Nourishment in Colombia: Situation, Contexts, and Voids), Sticker publicidad, Bogotá, 2008, p.85.

<sup>101</sup> Universidad del Rosario, Revista Universidad, Ciencia y Desarrollo, Tomo II, Fascículo 05. Pérdidas y ganancias de las reformas en salud (Losses and Profits of Health Reforms). *Política de vivienda: alcances y perspectivas* (Housing Policy: Scope and Perspectives), 2007, p.6 in: <http://www.urosario.edu.co/investigacion/tomo2/fasciculo11/documentos/fasciculo11.pdf>.

<sup>102</sup> Data on Surveys Demography and Health. See Carmen Elisa Flórez and Victoria Eugenia Soto (2007), "Evolución de la equidad en el acceso a los servicios y estado de salud de la población colombiana 1990-2005" (Evolution of Equity in Access to Services and State of Health of the Colombian Population 1990-2005) in *Avances y desafíos de la equidad en el sistema de salud colombiano* (Equity advances and challenges in the Colombian health system), Bogotá, DNP, Fundación Corona, Universidad de los Andes y Universidad del Rosario, Table 2.

<sup>103</sup> *El Nuevo Siglo*, 20 October 2004, p.4.

<sup>104</sup> Universidad del Rosario, Revista Universidad, Ciencia y Desarrollo, Tomo II, Fascículo 11. (Housing Policy: Scope and Perspectives), 2007, p.3 in: <http://www.urosario.edu.co/investigacion/tomo2/fasciculo11/documentos/fasciculo11.pdf>.

In rural areas, this climate of insecurity has even cost the lives of human rights defenders and social leaders. Between July 2002 and December 2007, 75 violations of the right to life of human rights defenders were registered. In addition, human rights defenders are victims of threats, arbitrary detentions, theft of information, raids, and unfounded legal proceedings<sup>105</sup>.

This lack of guarantees for human rights defenders has led in the last months to the suspension of the dialogue between the Government and civil society on a National Plan of Action on Human Rights and International Humanitarian Law. Indeed, the physical protection measures provided by the Government protection programs have not been sufficient to guarantee the integrity of human rights defenders in Colombia. Therefore, it is imperative that the Colombian State comply with its obligation to protect human rights defenders, stop its attacks against them and support their work publicly, by providing them with political guarantees to carry out their activities, and by adopting all appropriate measures to investigate violations against them, and prosecute and punish those responsible.

## 9. Attacks against the independence of the judiciary

The reelection of President Uribe, made possible through a constitutional reform carried out through illegal acts, such as the buying of votes of Congress members<sup>106</sup>, altered the balance of powers, given the President's power to nominate candidates for the election of judges of the Constitutional Court, the Prosecutor General (*Fiscal General*), members of the Disciplinary Jurisdictional Chamber of the Higher Council of the Judicature, the Inspector General (*Procurador General*), and the Ombudsman (*Defensor del Pueblo*).

The Government's attacks against judicial institutions, particularly against the Supreme Court, over whose election the President of the Republic has no decision-making power, are weakening the mechanisms to fight impunity and to guarantee victims' rights. Such attacks are related to the investigation carried out by the Supreme Court with regard to politicians close to the Government and with alleged links to paramilitaries, and to the buying of votes by the Government in order to achieve the constitutional reform making possible the presidential reelection. On 26 June 2008, the President accused the Supreme Court of "applying selective justice" and of "falling into the trap of the agonizing terrorism"<sup>107</sup>. In the context of such attacks against the independence of the judiciary, the president of the Court stated that "there is a strategy to call into question" the decisions of the High Tribunal<sup>108</sup>.

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<sup>105</sup> For more information about violations against human rights defenders in Colombia, see the joint document of de Human Rights First, Front Line, OMCT and FIDH submitted for the Universal Periodic Review.

<sup>106</sup> Supreme Court Judgment in the case of Yidis Medina Padilla, 26 June 2008.

[http://www.ramajudicial.gov.co/csj\\_portal/jsp/Frames/index.jsp?idseccion=21&idpagina=5734&idsitio=6](http://www.ramajudicial.gov.co/csj_portal/jsp/Frames/index.jsp?idseccion=21&idpagina=5734&idsitio=6).

<sup>107</sup> Press release of the President of the Republic, 26 June 2008.

<sup>108</sup> *Gobierno no está sugiriendo un tribunal para tumbar a la Corte Suprema, dice Uribe.* (The Government is not suggesting a tribunal to topple the Supreme Court, says Uribe.), *El Tiempo*, 23 April, 2008.

## 10. Violence against trade unionists and impunity

During the first half of 2008, 31 trade unionists were assassinated, an increase of 41% in comparison with the same period the year before<sup>109</sup>. On average, a trade unionist has been killed every three days for the past 22 years, which represents 2,674 assassinations between 1 January 1986 and 30 June 2008. Between 1 July 2002, and 30 June 2008, no less than 3,018 violations of the right to life, liberty and personal integrity were committed against trade unionists, of which 480 were killings (392 men and 88 women). Other violations were related to 62 attacks against trade unions' leaders and 31 cases of forced disappearance. At least 1,716 trade unionists have received death threats for their trade union-related activities and 246 have been forcibly displaced<sup>110</sup>.

In spite of the establishment – pursuant to a commitment with the ILO – of a sub-unit of the General Prosecutor's Office (*Fiscalía*) to investigate such cases and the appointment of three additional judges, impunity regarding these crimes remains critical. With respect to the 2,674 homicides registered in the past 22 years, only 105 judgments have been issued in connection with 86 victims, that is, a level of impunity of 96.8%. At the rate of 40 sentences per year, it would take the justice system 60 years to overcome impunity, if no further assassinations occur from today, and if the above-mentioned special judicial mechanisms are maintained.

In addition to the above, the few judgments issued show at least three serious flaws: (i) they show that the criminal investigations are not part of a comprehensive and criminal policy; (ii) in the majority of cases, only the direct perpetrators are convicted without establishing who ordered the crimes (*autor intelectual*); (iii) they do not establish the truth, since many of the sentences explain the ground for the violent acts using the justifications expressed by the perpetrators who single out trade unionists as belonging to, or collaborating with, armed groups without establishing the real reasons for the violence against trade unionists<sup>111</sup>.

Such a situation leads us to conclude that in Colombia trade unionists, as well as other human rights defenders, are not recognized by the authorities as carrying out a legitimate activity and neither are they beneficiaries of an effective protection policy.

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<sup>109</sup> A recent and very serious case is that of Guillermo Rivera, member of the workers' union of the Comptroller's Office, arbitrarily detained and disappeared on 22 April 2008, allegedly by the Bogotá city police. His body appeared with signs of torture on 15 July, 2007 in Ibagué (Tolima).

<sup>110</sup> Database of the Escuela Nacional Sindical, <http://www.ens.org.co/>.

<sup>111</sup> Report to the 97th International Labor Conference presented by the Colombian Union Federations and the Confederation of Retirees of Colombia (CUT, CGT, CTC y CPC), Bogotá, May 2008.

## Conclusions

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As this report demonstrates, the persistence of serious, massive, and systematic violations that mostly remain unpunished and the weakening of the rule of law indicate that in the past four years the Colombian State has not fulfilled its international obligations in the area of human rights. Nor has it effectively implemented the majority of the recommendations of the Office of the High Commissioner for Human Rights, of the treaty bodies, or of the special procedures that visited the country. We thus call for the full implementation of these recommendations in order to contribute to a substantial improvement of the human rights situation in the country. Likewise, we urge the Colombian State to cooperate with all special procedures of the Human Rights Council through the effective application of the standing invitation<sup>112</sup> to all those mechanisms, to allow for an *in situ* verification of the gravity of the violations.

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<sup>112</sup> The Colombian Government extended a standing invitation to all special procedures on 17 March 2003. In spite of this fact, there are at least three visits pending years after having been requested (Special Representative of the Secretary General on human Rights defenders, since 2005; Independent Expert on the question of minorities, since 2006; Working Group on the use of mercenaries, since 2006).