

**Submission by the United Nations High Commissioner for refugees (UNHCR)
for the Office of the High Commissioner for Human Rights' Compilation Report -**

Universal Periodic Review:

COLOMBIA

I. BACKGROUND INFORMATION AND CURRENT SITUATION

A. Refugee protection framework

Colombia is a State party to the *1951 Convention Relating to the Status of Refugees* (hereafter the *1951 Convention*) and its *1967 Protocol*, as well as a number of other regional and international Human Rights instruments, including the 1969 American Convention on Human Rights and the 1985 Convention against Torture (CAT). According to the National Constitution (1991), treaties take precedence over national laws. Certain international human rights instruments and treaties even have constitutional rank and must be interpreted as complementary to the rights and guarantees recognized in the Constitution.

Although Colombia signed the *1954 Convention relating to the Status of Stateless Persons* (hereafter the *1954 Convention*), it has not yet become a State Party to it, nor to *1961 Convention on the Reduction of Statelessness* (hereafter the *1961 Convention*). UNHCR welcomes Colombia's pledge at the 2011 Ministerial Meeting on Refugees and Stateless Persons (hereafter the *2011 Ministerial Meeting*) to accede to the *1961 Convention*. A bill to ratify the *1954 Convention* and accede to the *1961 Convention* was approved by the Senate and the relevant committee of the Chamber of Representatives. It has been presented to the plenary of the Chamber of Representatives, and is awaiting its inclusion in the agenda for a final debate and voting.

Decree 4503 of November 2009 provides for the implementation of national refugee law and enhances the previous legal and administrative framework for refugee protection in Colombia. Decree 4503 contains both the *1951 Convention* and the wider refugee definition contained in the 1984 Cartagena Declaration. The decree also incorporates Article 3 of the CAT providing safeguards against *refoulement* of a person to another State where he/she would be at risk of being subjected to torture. Moreover, Decree 4503 includes specific provisions addressing the needs of unaccompanied and separated children (UASCs), and other persons with specific protection needs, and calls for the prioritized treatment of cases in need of immediate attention. However, the Decree does not provide any procedure to do so. Access to asylum is generally respected.

Colombia has developed solid and comprehensive judicial and institutional frameworks to assist internally displaced persons (IDPs). Public institutions responsible for IDPs have made important efforts in coordinating their legal and institutional structures so as to ensure that IDPs' effectively enjoy their rights.

The Government of Colombia has taken an important step towards further enhancing the protection of IDPs' rights with the enactment of the Law on Victims and Land Restitution (hereafter the Victims Law). This law concerns the integral reparation of the victims of the conflict through economic compensation and the restitution of the land they lost as a result of their forced displacement. It focuses on durable solutions through individual and collective administrative reparations. This law is instrumental in the process of reconciliation, and sets a fertile ground to overcome some of the effects of the violence in Colombia.

Despite these significant efforts, the actual implementation of the Victims Law remains a major challenge, especially in terms of ensuring the inclusion of international and constitutional standards for the protection of IDPs.¹ Due to institutional changes made in 2012, Colombia lacks an official registration system for IDPs. This hampers the provision of assistance to IDPs, and makes current displacements invisible. The Unit of Victims has stated that this situation will be dealt with before the end of 2012.

B. Population of concern to UNHCR

There are approximately 450,000 Colombian refugees, asylum-seekers, and persons in refugee-like situations outside the country. As of July 2012, Colombia hosts 222 refugees and 87 asylum-seekers. Most of the refugees and asylum-seekers in Colombia originate from Cuba, Nicaragua, Venezuela, Ethiopia, Peru and Somalia, and they mostly live in urban settings.

Although forced internal displacement in Colombia has decreased since 2002 (about 465,710 IDPs at the time), it continues to be a matter of serious concern at present day. In 2011, for instance, 143,116 persons were displaced. Of particular concern today is the increase of the forced displacement of entire groups (10 families or 50 persons, or more). According to the official registry, between January and August 2011, 69 large group displacements took place.

¹ In 2007, the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, expressed his concern about "the clear gap between the policies decided in the capital Bogotá and what is effectively implemented at the departmental and municipal level. He was struck by what seem[ed] to be a disconnection between the policy formulation at a national level and the operational implementation at the local level. He conclude[d] that their lack of consistent and coherent implementation affects the capacities of IDPs to effectively exercise their rights." See, UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Colombia*, 24 January 2007, A/HRC/4/38/Add.3, para. 72, available at: <http://www.unhcr.org/refworld/docid/461e3f5a2.html>

II. ACHIEVEMENTS AND BEST PRACTICES

1. The Law on Victims and Land Restitution

UNHCR welcomes the pledge made by the Government of Colombia at the 2011 Ministerial Meeting to implement the Victims Law with adequate protection measures and the search for the solutions of return, rural settlement and local integration for the displaced population.

The Victims Law is an important instrument for the recognition of victims' rights, including IDPs, and for ensuring equality and non-discrimination amongst them. While the implementing regulations are still being discussed, they are based on programs including both individual reparations (through financial help or a subsidy system), and a collective reparation strategy, related to returned, resettled or locally integrated communities.

One of the main accomplishments of the Law is the inclusion of land restitution measures to victims, mainly IDPs, who have been forced to abandon their land. The land restitution mechanism involves both administrative and judicial procedures. Although the Land Restitution Unit has made progress in the first stages of implementation, the complexity of the process has hindered its effectiveness, as procedures include verification of land boundaries, notifications to all concerned parties and referral to special judges.

2. The development of national and local policies for the prevention of Sexual and Gender Based Violence (SGBV) and protection of SGBV victims

In December 2011, the National Government issued four Regulatory Decrees of Law 1257 of 2008, which relates to women's right to a life free of violence. The Justice Decree regulates all protection measures for SGBV victims; the Health Decree regulates the right of the victims to health, food and shelter; the Labour Decree regulates new work opportunities for victims; and the Education Decree regulates the right of SGBV victims to access education without being discriminated against.

UNHCR also appreciates the pledge made by the Government of Colombia at the 2011 Ministerial Meeting "to promote actions and policies to combat gender-based violence, through the formulation of public policies that protect women and girls from all forms of violence and discrimination." This is particularly welcome, also in light of the observations made by the UN Committee on the Elimination of Discrimination against Women on Colombia, noting that "internally displaced women and children [...], especially female heads of household, continue to be disadvantaged and vulnerable in regard to access to health, education, social services, employment and other economic opportunities, as well as at risk of all forms of violence."²

The National Development Plan (2010-2014) ordered the design of a national policy on the promotion of women's rights. In collaboration with UN Women, UNFPA and UNHCR, the Government of Colombia and various women's rights NGOs conducted participatory assessments to design a national public policy on "Gender Equality for Women." This policy was launched in September 2012 at the presence of the Executive Director of UN Women. It

² UN Committee on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Colombia*, 2 February 2007, CEDAW/C/COL/CO/6, para. 12, available at: <http://www.unhcr.org/refworld/docid/45f90e912.html>.

focuses on the prevention of SGBV and the assistance for SGBV victims. Comprehensive plans of action concerning displaced women and SGBV victims are also included in this policy.³

Law 1542 of 2012 also guarantees protection of and assistance during criminal investigation procedures for women victims of SGBV. For instance, women who lodge a complaint cannot withdraw their cases. This measure is grounded on the premises that violence is not negotiable with perpetrators and authorities have to investigate any denounced case of violence. A bill that proposes investigation and sentencing for SGBV in armed conflicts is now being debated in the Congress.

3. Child Protection

The National Institution for Family Welfare is currently revising the country's child protection strategies. Initiatives such as "Generación de ingresos con bienestar", "Desde cero hasta siempre", and "Centros de Desarrollo Integral", and the strengthening of the Unit for emergency protection in cases of forced recruitment, are important initiatives, which should be continued and enhanced.

The protection and reparation of child victims, including displaced and unaccompanied and separated children, is a priority for the Government within the framework of the Victims Law. The best interest of the child and the prevalence of their rights are at the heart of this law.

4. Ethnic Groups

The Government has taken important steps to engage in consultations with indigenous and afro-Colombian communities. These communities have been involved in the formulation of legislative and administrative initiatives. Human and financial resources have been allocated to these processes, including the consultations related to the Victims Law. Such consultations have resulted in the enactment of decrees providing that communities and organizations can determine the content for individual and collective reparation.

A draft bill on the right to prior consultation with indigenous communities is currently under discussion between the Government and representatives of the indigenous communities on the terms of the methodology of these participatory processes. One of the most important aspects of this proposed law is the discussion on the development of mega economic projects, such as mining and infrastructure, on indigenous territories.

³ This is consistent with the recommendation made by the CEDAW on its review of Colombia in February 2007, and the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, in his report on the Mission to Colombia in January the same year. See respectively, UN Committee on the Elimination of Discrimination Against Women (CEDAW), *UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Colombia*, 2 February 2007, CEDAW/C/COL/CO/6, para. 13, available at: <http://www.unhcr.org/refworld/docid/45f90e912.html>; UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Colombia*, 24 January 2007, A/HRC/4/38/Add.3, para. 82, available at: <http://www.unhcr.org/refworld/docid/461e3f5a2.html>.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Definition of victim under Art. 3 of the Victims Law

The definition of a victim is included in Article 3 of the Victims Law, and is more restrictive than the definition of who is an IDP established in Article 1 of Law 387/97, thus de facto limiting the criteria for recognition of internal forced displacement. This modification has generated a protection and assistance gap for those people who used to be assisted under the legal framework of Law 387/97.⁴ This may be contrary to the equality and non-discrimination principles established by the Colombian Constitution and the Guiding Principles on Internal Displacement.

The difference in these definitions will imply that not all IDPs would fall under the purview of the Victims Law. In particular, it is important to acknowledge that persons who are forced to displace as a result of threats emanating from criminal groups that arose in the context of the demobilization processes (e.g. Rastrojos, Urabeños) face similar life threatening conditions experienced by the victims of the conflict, and they have the same protection and assistance needs. Therefore, the State should accord the same treatment to non-conflict related victims. A recommendation related to a non-restrictive definition of an IDP was also made by the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, in his 2007 report on Colombia.⁵

Recommendation: UNHCR welcomes the introduction of the Victims Law and recommends the use of the IDP definition included in Law 387/97 and in the Guiding Principles on Internal Displacement. This would not only include victims within the framework of the armed conflict, but also victims arising from situations of generalized violence.

Issue 2: Strengthening the protection of children and adolescents

Between 1997 and 2010, at least 2,019,561 children and adolescents between the ages of 0 and 18 years have been displaced. Notwithstanding these alarming numbers, the specific impact of the armed conflict on children and adolescents has been insufficiently studied, particularly as it regards the causes of displacement and continuing risks in reception areas: 1) homicide, torture, forced disappearance; 2) forced recruitment; 3) Anti-personnel mines (APM) and unexploded ordnance (UXO) in schools or areas near schools; 4) involvement in criminal activities; 5) SGBV and; 6) social control by illegal armed groups, among others.

⁴ The Law on Victims and Land restitution define as victims “persons who have suffered harm as a consequence of acts that occurred after 1 January 1985 and as a result of breaches of international humanitarian law or of serious and gross violations to international human rights principles, which occurred during the armed conflict”. Law 387 define a displaced person as “any person who has been forced to migrate within the national territory, abandoning his place of residence or customary economic activities, because his life, physical integrity, personal freedom or safety have been violated or are directly threatened as a result of any of the following situations: internal armed conflict, civil tension and disturbances, general violence, massive Human Rights violations, infringement of International Humanitarian Law, or other circumstances arising from the foregoing situations that drastically disturb or could drastically disturb the public order.”

⁵ UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Colombia*, 24 January 2007, A/HRC/4/38/Add.3, para. 77 (a), available at: <http://www.unhcr.org/refworld/docid/461e3f5a2.html>.

It is difficult to establish the magnitude and frequency of forced recruitment in Colombia. Various sources have reported the existence of the practice in both rural and urban areas, with a higher incidence rate in the latter.⁶ According to the Ombudsman's Office, in 2011, 29 out of the 32 departments of the country had situations of forced recruitment. In both urban and rural contexts, the lack or ineffectiveness of protective environments increases the vulnerability of children. Schools have ceased to be effective protective environments, as military checkpoints have been established in peripheral zones, schools have been used by armed groups, and armed confrontations are indiscriminately carried out in neighbourhoods and around educational institutions.

Recommendations: UNHCR recognises the actions of the Government towards the protection of children and adolescents. In this context, it would like to recommend to:

- Strengthen the role of the ICBF (Colombian Institute for Family Welfare) as coordinators of the child protection system, mainly at the local level.
- Develop an integrated strategy for the prevention of forced recruitment and economic exploitation linked to the conflict and non-conflict related violence.⁷
- Establish local mechanisms for the protection of children, specifying institutional responsibilities and budgets.

Issue 3: Enhancing the prevention of human rights violations

The dynamics of the conflict and the intensity of violence in Colombia have varied during the last few years, along with its impact on forced displacement. The number of armed groups has increased, mainly due to the activities of former paramilitaries who were demobilized. In areas where these groups are present, there is an increased use of: a) land mines by illegal armed groups, b) the use of the civilian population as a shield and c) measures restricting the freedom of movement. Between 1990 and today, according to the Presidential Program against Landmines, 31 out of the 32 departments had landmine casualties (the most affected departments were Antioquia, Meta, Caquetá, Norte de Santander and Nariño). The most important mechanism to prevent Human Rights violations is the Early Warning System run by the Ombudsman's Office. Between 2008 and 2011, the system issued early warnings related to 220 municipalities. However, the Ombudsman's recommendations have had a low level of implementation.

Recommendations: In order to strengthen the existing preventive mechanisms UNHCR recommends to:

- Implement formulated policies and legal tools taking into account the specific context, and the distinctive risks of different demographic groups.⁸

⁶ See, for instance, UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations: Colombia*, 21 June 2010, CRC/C/OPAC/COL/CO/1, para. 26, available at: <http://www2.ohchr.org/english/bodies/crc/crcs54.htm>

⁷ This is consistent with the recommendation made by the CRC on its 2010 Concluding Observations on Colombia's implementation of the *Optional Protocol on the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*. The Committee recommended that "In the light of article 4 of the Protocol, the State party take all feasible measures to eliminate the root causes and prevent recruitment and use of persons below the age of 18 years by armed groups that are distinct from the armed forces of the State." See, UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations: Colombia*, 21 June 2010, CRC/C/OPAC/COL/CO/1, para. 27, available at: <http://www2.ohchr.org/english/bodies/crc/crcs54.htm>

⁸ This recommendation was also made by the CERD on its concluding observations on Colombia during its 37th session. See, UN Committee on the Elimination of Racial Discrimination (CERD), *Consideration of reports*

- Strengthen the Early Warning System and pay due attention to the reports of the Ombudsman's Office and its recommendations when designing protection mechanisms.⁹
- Strengthen the Human Rights Observatory of the Vice Presidency, which provides important information about specific risks for the population in the areas most affected by the armed conflict.

Issue 4: Protection and collective measures

Recently, the Colombian State has strengthened the IDP protection system through the newly created National Protection Unit. This unit assesses the risks that persons are facing. Based on the results of this assessment, the National Protection Unit designs a protection strategy, which may include the provision of bodyguards, mobile phones, cars, protection to organizations' headquarters, etc. to high profile individuals. The implementation of this programme has been difficult when it comes to not only protecting individuals, but entire communities and organizations. Hence, the Unit's main challenge is to improve its mechanism of collective protection in remote, rural or semi-urban areas, where institutional capacities are limited and the presence if weak.

According to the report presented by the Government to the Constitutional Court in July 2010, the crosscheck between the 2007-2010 figures contained in the IDP information system and the data collected by the National Institute of Forensic Medicine for the same period, leads to the conclusion that 1,499 IDPs were murdered in this triennium. Most of the IDPs murdered had not benefitted from protection programmes. More worryingly, notwithstanding the risks they were exposed to, they did not fit the profile to be included in such a protection programme.

Recommendations: UNHCR welcomes the creation of the National Protection Unit, which will contribute to implement a more comprehensive protection system and recommends to:

- Take into account all specific aspects of protection risks that IDPs face, including but not only related to AGDM, protection of persons and communities in rural areas, issues related to land restitution, etc.;
- Use the information gathered by the National Prosecutor's Office to improve protection programs, e.g.: by gathering some random samples of the current investigations to clarify the murders of IDPs, to ensure a fuller analysis about the causes of forced displacement in order to improve the protection system through collaboration between the National Prosecutor's Office and the Executive.

*submitted by States parties under article 9 of the Convention : concluding observations of the Committee on the Elimination of Racial Discrimination : Colombia, 28 August 2009, CERD/C/COL/CO/14, para 16, available at: <http://www.unhcr.org/refworld/docid/4aeafdc72.html>. See also, UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Colombia*, 24 January 2007, A/HRC/4/38/Add.3, paras. 78, 83, 84, available at: <http://www.unhcr.org/refworld/docid/461e3f5a2.html>.*

⁹This recommendation has also been made by Walter Kälin, the Secretary-General on the Human Rights of Internally Displaced Persons. See, UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Colombia*, 24 January 2007, A/HRC/4/38/Add.3, para. 74, available at: <http://www.unhcr.org/refworld/docid/461e3f5a2.html>.

Issue 5: Durable Solutions

The framework for a durable solutions strategy has changed with the enactment of the Victims Law. Despite the benefits of this Law, gaps still remain in certain aspects. These gaps relate, for instance, to the development of specific measures to facilitate the local integration of victims (especially in urban contexts) and mechanisms for the restitution of abandoned housing. The overall concern still relates to security in urban settlements and the restitution and return processes.

Return

There are several institutional strategies to assist return processes, and significant financial resources have been allocated for them. However, there is a lack of specific information about the sustainability and effectiveness of these return processes.

Local Integration

IDPs arriving to the large cities, usually find shelter in the most dangerous and unsuitable places of marginalized neighbourhoods, where they are exposed to further risks due to the presence of illegal armed groups. They are also exposed to common delinquency, drug abuse, prostitution, SGBV and forced recruitment, which triggers further displacement within or amongst cities. Consequently, the patterns of vulnerability of IDPs are perpetuated over time, thus hindering IDPs livelihoods prospects in their place of residence. In terms of institutional responses, even though the Government is aware of the lack of a specific policy addressing the local integration of IDPs, there are no consistent figures in this regard. Current efforts to enhance the local integration of IDPs focus on income generation and employment programs at the individual and family levels. So far, such efforts have had limited impact. Concerning housing, the Government continues to rely on a subsidization scheme focusing on individual assistance. This scheme has proven to be unsustainable and inappropriate in relation to the needs and vulnerabilities of IDPs. There is an urgent need to shift to longer-term development solutions and policies, and to promote the integration of IDPs in their host communities, so that they are fully recognized and treated as community members.

Restitution

One of the main expectations in relation to the Victims Law has to do with the restitution of land itself. IDPs represent 80% of the victims covered by the Law, and their lands represent the largest percentage of abandoned and usurped land in the country.

The restitution process established by the Victims Law is extremely complex. Its implementation is envisaged in multiple stages, where several institutions and individuals are involved, including judges specifically trained in land restitution. According to the Land Restitution Unit, restitution processes take at least 8 months. The main concern regarding land restitution relates to its effective sustainability in the context of the ongoing armed conflict. The continued presence of armed groups raises questions about the security of those who benefit from restitution. Moreover, entire communities comprised by restitution beneficiaries increasingly have to deal with third parties claiming interest in restituted lands, either in good faith or illegally.

The Government has been allocating resources for the promotion of durable solutions for IDPs, including funds for housing, subsidies, income generation activities, restitution and rural development amongst others. Approximately USD 430 million have been allocated to these issues for 2012.

Recommendations: UNHCR, while acknowledging the advances made in finding durable solutions, recommends to:

- Implement a comprehensive and integrated durable solutions policy that not only focuses on subsidy mechanisms (housing, lands) and incentives to return (Families in their Land Program), but also considers the social and political environment related to the integration process. This would require the commitment of both national and local authorities, and substantive understanding of the dynamics of local integration.¹⁰
- Undertake a thorough risk analysis, focusing on the different interests in land up for restitution, as well as a prioritization of land protection mechanisms, in order to improve the security of the affected communities.

Issue 6: The inclusion of Colombian refugees under the Victims Law

UNHCR has shared its concerns with the Government and the Victims Unit about the application to refugees of the new Law on Victims and Land Restitution, which requires the victims who are outside the Colombian territory to register with a Colombian Consulate, in order to benefit from some of the compensations. In view of their international protection needs and the principle of confidentiality, refugees should not be required to present themselves at the diplomatic missions representing their countries of origin.

Recommendations: UNHCR welcomes the inclusion of persons outside the Colombian national territory, including asylum-seekers and refugees, among the beneficiaries of the Victims Law. In this context, UNHCR recommends to:

- Establish confidential mechanisms alternative to registration in consulates, where refugees can register as victims abroad and their declarations can be properly taken.
- Automatically include recognized refugees in the Registry of Victims.
- Provide refugees the opportunity to submit their claims for reparation at the time of their repatriation, waiving the time limits to register as victims.

Issue 7: Access to fair asylum procedures

Decree 4000 of 2004 establishes a 36-hour limit for the deportation/expulsion of persons who are inadmissible or intercepted with irregular migratory status. Even though this timeframe is intended to protect persons from protracted and/or arbitrary detention, in some cases, it may indeed act to the detriment of the people it intends to protect. A 36-hour timeframe may prove insufficient for the submission of asylum claims in the case of asylum-seekers coming from outside Latin-America who are detained in remote areas of the country. These persons often do not speak Spanish and may therefore face great difficulty when preparing and submitting their applications, even if provided with an interpreter.

Another factor potentially limiting access to asylum procedures is the 60-day time limit for the submission of asylum applications as provided in Decree 4503 of 2009. However, this

¹⁰ This is also in line with a recommendation made by Walter Kälin, the Secretary-General on the Human Rights of Internally Displaced Persons. See, UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Colombia*, 24 January 2007, A/HRC/4/38/Add.3, para. 79, available at: <http://www.unhcr.org/refworld/docid/461e3f5a2.html>.

decree includes an accelerated procedure applicable to manifestly unfounded or abusive claims, and establishes a procedure whereby asylum-seekers denied asylum in the first instance can request the Minister of Foreign Affairs to reconsider the decision of their claim (“*recurso de reposición*”). If the negative decision is upheld, the asylum-seeker has the right to seek recourse through the judiciary (“*tutela*”) if a fundamental right was violated.

Recommendations: UNHCR recognizes that Colombia established a fair and efficient asylum system for refugee protection, strengthened with the adoption of Decree 4503 of 2009, and reaffirms its commitment to continue working with the Government to:

- Improve access to asylum procedures by harmonizing Decree 4000 of 2004 and Decree 4503 of 2009.
- Explicitly define the exceptions to the 60-day time limit for the submission of asylum applications.

Human Rights Liaison Unit
Division of International Protection
UNHCR
October 2012

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

COLOMBIA

We would like to bring your attention to the following excerpts, taken directly from Treaty Body Concluding Observations and Special Procedures reports relating to issues of interest and concern to UNHCR with regards to Colombia.

1. Treaty Body Concluding Observations and Recommendations

Human Rights Committee

CCPR/C/COL/CO/6, 99th Session

4 August 2010

Principal subjects of concern and recommendations

12. The Committee expresses its grave concern at the persistence of serious violations of human rights, including extrajudicial executions, forced disappearances, torture, rape and recruitment of children for use in the armed conflict. The Committee emphasizes the serious lack of statistics and concise information on the number of cases of torture and related investigations. The Committee notes the particular vulnerability of certain groups, such as women, children, ethnic minorities, displaced persons, the prison population, and lesbian, gay, bisexual and transgender (LGBT) persons. The Committee is concerned at the lack of criminal investigations and the slow progress of existing investigations, since many of them are still at the pre-investigation stage, thus contributing to continued impunity for serious human rights violations (arts. 2, 3, 6, 7, 24 and 26).

The State party should ensure that prompt and impartial investigations are conducted by the competent authorities and that human rights violations are punished with sentences appropriate to their seriousness. The State should provide the Human Rights and International Humanitarian Law Unit with additional resources in order to speed up its work. The Committee underlines the importance of the cases concerned being assigned to that Unit. The State must also strengthen security measures for justice operators and for all witnesses and victims. The State party should establish a centralized system making it possible to identify all serious human rights violations and to properly monitor their investigation.

23. The Committee is concerned at the very high incidence of forced displacement (over 3.3 million persons by the end of 2009 according to the State party) and at the lack of effective measures for prevention and care. The Committee notes with concern that attention to the needs of the displaced population remains inadequate and is marked by an insufficient

allocation of resources and the lack of comprehensive measures for providing differentiated care for women, children, Afro-Colombians and indigenous people (arts. 12, 24, 26 and 27). **The State party should ensure the development and implementation of a comprehensive policy for the displaced population that should provide for differentiated care, with the emphasis on women, children, Afro-Colombians and indigenous people. The State party should strengthen mechanisms for ensuring that the land of displaced persons can be restituted. The State should evaluate the progress being made on a regular basis in consultation with the beneficiary population. The State party must also implement the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons following his visit to Colombia in 2006 (A/HRC/4/38/Add.3).**

Committee on the Rights of the Child: Optional Protocol on the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
CRC/C/OPAC/COL/CO/1, 54th Session
21 June 2010

Positive Aspects

6. The Committee notes as positive the extensive references to international human rights standards in the jurisprudence of the Colombian Constitutional Court, including the judgment T-025 of 2004 and the subsequent orders, in particular Auto 251 of 2008, which is devoted to guarantee the protection of internally displaced children.

Recruitment by non-State armed groups

26. The Committee abhors the continued extensive recruitment and use of children by illegal armed groups. The Committee deeply regrets that despite having made commitments not to recruit children under the age of 15 years, both the FARC-EP and the ELN continue such practices, which constitute serious war crimes. The Committee is gravely concerned that children who refuse to be recruited are killed or forcibly displaced and that Afro Colombian and indigenous children are particularly vulnerable as their communities often are affected by the armed conflict. The Committee is furthermore concerned over reports that new illegal armed groups have emerged following the demobilization of paramilitary organizations and that these organizations recruit and use children in violation of article 4 of the Protocol.

27. The Committee recommends that:

(a) In the light of article 4 of the Protocol, the State party take all feasible measures to eliminate the root causes and prevent recruitment and use of persons below the age of 18 years by armed groups that are distinct from the armed forces of the State. Particular attention should be paid to preventing recruitment and use of Afro-Colombian and indigenous children and that such measures should be developed in consultation with the affected communities;

(b) The State party ensure that special and adequate attention is paid to children who have been recruited or used in hostilities when entering into negotiation and talks with illegal armed groups;

(c) During ceasefire and peace negotiations all parties be made aware of their obligations under the Optional Protocol, which should form an integral part of any peace agreements and their subsequent implementation;

(d) The State party ensure the effective enforcement of existing penal provisions on child recruitment.

Committee on the Rights of the Child: Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography
CRC/C/OPSC/COL/CO/1, 54th Session
17 June 2010

General measures of implementation

Dissemination

12. The Committee is concerned that public awareness of the provisions of the Optional Protocol is insufficient, especially among children themselves and in particular among vulnerable groups of children, such as those living in poverty, children who have been affected by the armed conflict, displaced children and Afro-Colombian and indigenous children.

Prevention of the sale of children, child prostitution and child pornography (art. 9, paras. 1 and 2)

Measures adopted to prevent offences referred to in the Optional Protocol

18. *The Committee notes as positive certain preventive initiatives, such as codes of conduct for the tourism industry. The Committee however notes that prevention efforts are inadequate, in particular given the large number of victims and the lack of targeted measures for vulnerable groups of child victims, including those living in poverty, children who have been affected by the armed conflict, displaced children and Afro-Colombian and indigenous children.*

Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)

Recovery and reintegration

29. The Committee notes efforts by ICBF and the Family Defenders, however it is concerned that social reintegration and physical and psychosocial recovery measures for child victims are insufficient and that victims face difficulties in accessing compensation. In particular, the Committee is concerned over the lack of recovery and reintegration measures for vulnerable groups of child victims, including those living in poverty, children who have been affected by the armed conflict, displaced children and Afro-Colombian and indigenous children.

30. The Committee recommends that the State party:

(a) Ensure that resources be earmarked in order to provide adequate social reintegration and physical and psychosocial recovery measures, in accordance with article 9, paragraph 3, of the Optional Protocol, in particular by providing interdisciplinary assistance for child victims, both girls and boys, while paying particular attention to vulnerable groups of child victims, including those living in poverty, children who have been affected by the armed conflict, displaced children and Afro-Colombian and indigenous children.

Committee Against Torture
CAT/C/COL/CO/4, 43rd Session
4 May 2010

Principal subjects of concern and recommendations

Complaints of torture and impunity

11. While there has been an overall reduction in the number of complaints of torture since the last periodic review in 2004, the Committee is concerned that the incidence of torture in the State party remains high and shows specific patterns that point to widespread practice. The Committee notes that, while illegal armed groups are to a large extent responsible for such violence, there are persistent complaints about the participation or acquiescence of agents of the State in these acts. The Committee is particularly concerned at reports indicating an increased number of cases in which direct involvement by agents of the State is alleged. It also expresses grave concern at the persistence of serious violations linked to torture, such as extrajudicial execution, forced disappearance, forced displacement, sexual violation and the recruitment of children in the context of armed conflict, and at the vulnerable situation of certain groups such as women, children, ethnic minorities, displaced persons, the prison population and LGBT persons (art. 2 of the Convention).

Restitution

26. The Committee is concerned about the threats against victims of forced displacement who have asked for the return of their land. It notes that those mainly affected are peasants, Afro-Colombians and indigenous people. The Committee is concerned that land belonging to displaced persons has been seized by illegal armed groups and in some cases sold to third parties for monocultivation and exploitation of natural resources (art. 14 of the Convention). **The Committee urges the State party to adopt effective measures to ensure the return of land to victims of displacement and to respect the land ownership of peasants, Afro-Colombians and indigenous people.**

Non-refoulement

30. The Committee notes that Decree No. 2450 of 2002 “which lays down procedures for establishing refugee status” contains provisions that do not fully comply with the obligations laid down in article 3 of the Convention and in the 1951 Convention relating to the Status of Refugees. The Committee nevertheless takes note that approval of a new decree on this matter, which includes the principle of non-refoulement, is pending (art. 3 of the Convention). **The State party should expedite the adoption of new legislation that includes the principle of non-refoulement. In order to ensure that the guarantee of non-refoulement is implemented in practice, training on this obligation should be given to immigration officials and the police.**

Committee on the Elimination of Racial Discrimination

CERD/C/COL/CO/14, 37th Session

28 August 2009

Concerns and recommendations

16. The Committee is concerned over information provided by the State party indicating continued large numbers of massive and individual displacements and the disproportionately high and increasing numbers of Afro-Colombians and indigenous peoples among the displaced and over reports that assistance may be denied due to restrictive interpretations of the applicable standards. The Committee is especially concerned that humanitarian assistance and protection measures for the displaced remain inadequate and that compliance with the

Constitutional Court decision T-025 of 2004 has been insufficient and unduly delayed. The Committee is concerned that women and children of Afro-Colombian and indigenous communities are particularly vulnerable among the displaced population and lack effective and differentiated assistance and protection.

The Committee recommends that the State party, as a matter of priority, allocate additional human and financial resources in order to comply with the Constitutional Court decision T-025 of 2004 and the follow-up orders (*Auto 092 of 2008, Autos 004 and 005 of 2009*). While recognizing efforts by the State party, such as the adoption of a National Plan of Assistance for the Displaced (*Decreto 250 de 2005*) with differentiated assistance measures, the Committee recommends that the State party intensify these efforts to ensure the practical implementation of the Plan, and that it pay particular attention to the rights of Afro-Colombian and indigenous women and children. The Committee recommends that the State party focus on ensuring that national policies are sufficiently funded and carried out at departmental and municipal level and that safe return for the displaced to their original lands is facilitated.

19. While noting as positive that the State party recognizes collective land ownership for Afro-Colombian and indigenous communities, the Committee is concerned over the significant obstacles they face in exercising their rights to land, including violence against their leaders and forced displacement. The Committee furthermore notes that the formal process for claiming collective land titles is unduly bureaucratic and that numerous cases are still pending a final decision. The Committee is concerned over reports indicating the fraudulent acquisition by other persons and the occupation of their territories by armed groups with lucrative interests to cultivate illicit crops and monocultures, in particular palm plantations, which damage the soil and threaten the food security of the affected communities. The Committee is concerned that the case of the Curvaradó and Jiguamiandó communities is paradigmatic in this regard and regrets that the State party has not complied with the related decisions of the Inter-American Court of Human Rights and the recommendations of the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization (CEACR). **The Committee recommends that the State party ensure that collective land ownership of Afro-Colombian communities and indigenous peoples is recognised, respected and can be exercised in practice by reducing bureaucratic claims procedures and by taking effective measures to protect communities from violation when attempting to exercise their rights. The State party is also recommended to pay particular attention to the restitution of land titles to displaced Afro-Colombian and indigenous communities and urged to comply with the decisions of the Inter-American Court of Human Rights and the recommendations of the CEACR of the ILO in relation to the communities of Curvaradó and Jiguamiandó and ensure non-repetition of similar cases.**

Committee on the Protection of the Rights of all Migrant Workers and Members of their Families

**CMW/C/COL/CO/1, 10th Session
22 May 2009**

Main subjects of concern, suggestions and recommendations

Human rights of all migrant workers and members of their families (arts. 8-35)

29. The Committee notes with concern that, even though the children of all migrant workers, including those without documentation, may be registered with the Civil Registry, only children having at least one parent domiciled in Colombia are eligible for Colombian nationality. The Committee is particularly concerned about children who may become stateless. In this connection, the Committee welcomes the fact that the State party is in the process of acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**30. The Committee recommends that the State party, in accordance with article 29 of the Convention, should ensure, both in law and in practice, the right of all children to have a name, to registration of their birth and to a nationality. The Committee urges the State party to complete as soon as possible the process of accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Committee on the Elimination of Discrimination Against Women
CEDAW/C/COL/CO/6, 37th Session
2 February 2007

Positive aspects

8. The Committee commends the important progress made by the State party to create and strengthen policy frameworks and institutional mechanisms to address the pervasive violence in the country, including all forms of violence against women, and to provide increased attention to internally displaced persons, especially women and children. The Committee also congratulates the State party on its efforts, nationally and internationally, to enhance implementation of Security Council resolution 1325 (2000) on women, peace and security.

Principal areas of concern and recommendations

12. While noting the State party's efforts to support internally displaced women and children, it is concerned that these population groups, especially female heads of household, continue to be disadvantaged and vulnerable in regard to access to health, education, social services, employment and other economic opportunities, as well as at risk of all forms of violence. The Committee is also concerned about the effects of conflict and displacement on family life.**13. The Committee urges the State party to increase its efforts to meet the specific needs of internally displaced women and children and to ensure their equal access to health, education, social services and employment and other economic opportunities, as well as security and protection from all forms of violence, including domestic violence.**

2. Special Procedures' Reports

Informe de la Relatora Especial sobre la independencia los magistrados y abogados,
Sra. Gabriela Carina Knaul de Albuquerque e Silva

Adición: Misión a Colombia

Consejo de Derechos Humanos, 14o Período de Sesiones

A/HRC/14/26/Add.2

16 de abril de 2010

(Only Spanish and Russian versions available)

Las Altas Cortes de Justicia

6. La Corte Constitucional ha emitido sentencias que han sido de importancia para el desarrollo constitucional de Colombia, particularmente en los casos de los pueblos indígenas y de los desplazados internos. Ha declarado la inconstitucionalidad de estados de emergencia; de varias leyes aprobadas por el Congreso y ha dado instrucciones precisas de enmienda de la legislación para que sea concordante con la Constitución. Tanto el poder ejecutivo como el legislativo respetan sus fallos. Los integrantes de la Corte Constitucional suelen viajar por el país para hacer conocer al gran público cómo ejercer sus derechos constitucionales y difundir su jurisprudencia. Sus decisiones constituyeron un paso importante para un diferenciado tratamiento de los desplazados internos.

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,

Philip Alston

Addendum: Mission to Colombia
Human Rights Council, 14th Session
A/HRC/14/24/Add.2
31 March 2010

Legal framework

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 Defense 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.

Especially vulnerable groups

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.

Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya

Addendum: The situation of indigenous peoples in Colombia: follow-up to the recommendations made by the previous Special Rapporteur

Conclusions and recommendations

Forced displacement and confinement

68. The Special Rapporteur notes the Government's efforts to prepare the "ethnic safeguards plans" called for by the Constitutional Court in Judgement T-025 of 2004 and Decision 004 of 2009. He urges that those plans be prepared and implemented exactly as stipulated by the Constitutional Court, with full participation of the organizations and authorities of the indigenous peoples at each stage. Also, he stresses the need to develop similar plans for other vulnerable indigenous communities at risk of extinction. It should be ensured that all human and financial resources necessary for the effective implementation of those plans are available.

69. On the basis of special guarantees, the Government should protect the land of indigenous peoples that have been forcibly displaced, so as to prevent seizures of the land in the absence of the indigenous peoples and enable them to return to it. Also, the Government should ensure that displaced indigenous communities can return safely, of their own free will, with dignity and without fear of forced displacement in the future.

70. The Special Rapporteur considers it important that a distinction be made between the different forms of displacement of indigenous peoples – displacement within the same reserve, displacement between reserves and displacement across the national border (Wayuu, Awa, Sikuni and Embera peoples); with the third form of displacement, the binational character or the refugee status of the peoples in question should be recognized and respected.

71. It must be ensured that, when it is impossible for displaced indigenous communities to return to their land, they are able to live in dignity, with full access to basic social services.

72. The Special Rapporteur is particularly concerned about the situation of indigenous children and women affected by the armed conflict, and he urges the Government to strengthen its programmes for responding effectively and with targeted assistance to their needs. He urges the State to comply fully with Decision 092 and Decision 237 of 2008 issued by the Constitutional Court and to respond in a differentiated manner to the situation of indigenous women and children in rural and urban areas, particularly women and children who have been displaced.

Economic, social and cultural rights

82. There is an urgent need for progress in applying, on an agreed basis, the special education system for indigenous peoples in compliance with Decision 207 of 2007. Accordingly, the State should provide the indigenous peoples with the power, and budgetary resources required by them in order to independently implement the bilingual and intercultural education programme in indigenous areas and ensure that vulnerable indigenous groups — particularly ones that have been displaced — have access to education.

Informe del Grupo de Trabajo sobre la Detención Arbitraria

Adición: Misión a Colombia

Observaciones del Grupo de Trabajo

La diferencia observada entre la Constitución, el derecho y la realidad

45. El Grupo de Trabajo recibió alegaciones de una práctica de judicialización para reprimir a determinadas categorías de trabajadores sociales; dirigentes municipales; representantes de desplazados internos; sindicalistas y periodistas quienes son acusados de la comisión de delitos de injuria y calumnia. Se expresó particular preocupación por los indígenas, los menores, las mujeres embarazadas, las mujeres cabeza de familia, los inmigrantes, los indigentes. Se habrían constituido redes de informantes de la fuerza pública, quienes recibirían dinero por sus informaciones, y redes de cooperantes, quienes no serían pagados. Se recibieron alertas por el uso de una política de recompensas a quienes proporcionan información. Los guerrilleros reinsertados estarían obligados a brindar información, y muchas veces ésta da lugar a detenciones.

Detención de migrantes

91. La función migratoria está encomendada al DAS, el cual controla la llegada y salida de extranjeros al país en los puertos, aeropuertos y fronteras terrestres; concede autorizaciones de prórroga de permanencia en el país; emite cédulas de extranjería, salvoconductos y certificados judiciales para extranjeros y colabora con la Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR) en la determinación del estatuto de refugiado[14].

Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin

Addendum: Mission to Colombia

Human Rights Council, Fourth Session
A/HRC/4/38/Add.3
24 January 2007

Conclusions and Recommendations

71. As noted in the introduction, the Representative commends the Government of Colombia for having a far-reaching legislation and policy on IDPs, as well as the efforts that have gone into responding to the humanitarian needs of the IDPs. This legislation, as well as the institutional architecture put into place, combined with the tradition of checks and balances in the form of the Constitutional Court, the *Defensoría*, the *Procuraduría* and the *Fiscalía*, and a vibrant and articulate civil society are very good bases for the attention and protection of IDPs. However, the dynamics of the conflicts in Colombia and the scale of displacement show that these mechanisms in and of themselves are not sufficient to address the problem of the IDPs. The rate of internal displacement has been declining in recent years. However with the accumulation, the number of internally displaced continues to rise. The Government faces an increasing dual challenge of continued new needs, and a growing amount of people who will need sustainable solutions, once they can be envisaged.

72. The Representative remains perturbed by the clear gap between the policies decided in the capital Bogotá and what is effectively implemented at the departmental and municipal level. He was struck by what seems to be a disconnection between the policy formulation at a national level and the operational implementation at the local level. He concludes that their lack of consistent and coherent implementation affects the capacities of IDPs to effectively exercise their rights.

73. Concerning the implementation of the policy on IDPs, the Representative recommends:
(a) Continuing to build on the excellent Law No. 387 and, at the same time, adopt the measures recommended below;

(b) Developing, as requested by Constitutional Court decision T 025/04 and subsequent Court orders 176, 177 and 178 of August 2005, and reaffirmed in Auto 218 of August 2006, qualitative benchmarks and indicators for that would give civil servants at the regional and municipal levels the impetus to operationalize the State's IDP policy;

(c) To provide the necessary means for the implementation of the policy and to make, as a matter of priority, additional budget allocations, especially to strengthen the support to the mechanisms entrusted with protecting the human rights of internally displaced persons.

74. Concerning the gap between the policy level in Bogotá and the operationalization and implementation at departmental and municipal levels, the Representative recommends:

(a) Streamlining of the existing structures and procedures;

(b) Providing the local authorities with higher degree of decentralization and with the economic and administrative resources to take decisions and to implement national policies more expediently and effectively; and giving clearer guidance on how to implement the national directives;

(c) Better oversight from national level headquarters regarding attitudes and behaviour, at the level of execution, towards the beneficiaries and rights-holders, as well as monitoring the implementation of the benchmarks;

(d) Enhanced training for the municipal authorities on how to implement the national IDP policy at their level, as well as giving them the necessary tools to do so.

75. Concerning the prevention of displacement, the Representative recommends to:

(a) Include a broader notion of the "protection of civilians" or "protection of communities at risk" as a criterion when assessing the risk potential of a situation;

(b) Include the *Defensoría*, as main author of the risk assessment reports, in the CIAT deliberations on early warning recommendations, in accordance with its constitutional mandate;

(c) Better graduate responses to the early warning reports, that would allow for action (and the release of resources), without requiring a full-fledged early alert action;

(d) Use a participatory approach which would allow for consultations with the populations concerned on what they perceive as the best means of protection for them.

76. Concerning the persistent, multiple causes of displacement, the Representative recommends:

(a) To all armed actors,

(i) Respect for all their obligations under international humanitarian law; in particular the inherent military neutrality of the civilians and to refrain from pressuring them;

- (ii) Not to unnecessarily jeopardize the security of the civilians by violating the principle of distinction and by using civilian installations for military purposes;
- (iii) Respect for the wishes and policies adopted by communities who want to remain neutral in the armed conflict, as a means of protecting themselves against violence;

(b) To the Government,

- (i) A participatory approach, taking into account the best interests of the populations affected, when deciding on the means to use when combating illicit cultivations;
- (ii) The inclusion of displacement caused by natural disasters in order to avoid differing humanitarian and structural responses.

77. Concerning access and registration to the unified registration system (SUR), the Representative recommends:

- (a) Within the broad framework allowed for in article 1 of Law No. 387, the inclusion of actions causing forced displacement by any armed actor for whatever reason as a factor for eligibility of IDP status;
- (b) The inclusion of cases of multiple displacement within the same urban area or *corregimiento*, or within the same reservation or collective land in the case of indigenous populations or Afro-Colombian communities;
- (c) The inclusion of displacement due to natural disasters in order to avoid different humanitarian and structural responses depending on the source of displacement;
- (d) A clear directive to the departmental and local levels of administration that internally displaced should be given the benefit of doubt in cases where such doubt exists;
- (e) Clear directives to the civil servants and information to the people who have been forced to be displaced repeatedly, that they are allowed to re-register in SUR and to receive humanitarian assistance again if their circumstances so require;
- (f) Clear information made available, through brochures or other means, on what the registration in SUR entails as well as its benefits and what other options exist for indigent people, should they not be recognized as internally displaced.

78. Concerning the delivery of humanitarian assistance, the Representative recommends:

- (a) To find means to speed up the registration process or to provide some form of interim assistance in cases that are not manifestly ill-founded, as well as to take measures such as provisions and contingency planning instead of reactive actions, in order to shorten time until State assistance can be delivered;
- (b) A participatory approach with IDPs themselves to determine what they consider as their most pressing needs;
- (c) A differentiated approach to assistance provided to persons and communities with specific needs such as large families, the elderly, and indigenous and Afro-Colombian communities;
- (d) Granting of renewed assistance to victims of inter- and intra-urban displacement even if they have already received assistance after their original displacement.

79. Regarding measures to consolidate and stabilize the socio-economic conditions of IDPs, the Representative recommends:

- (a) Examining ways to combine humanitarian assistance with quasi-simultaneous development oriented approach to find medium- and longer term solutions;

- (b) Working with municipal authorities to grant security of tenure for IDPs and basic infrastructure, and giving IDPs access to building materials;
- (c) Microprojects or microcredits to allow for retrained IDPs to make use of their newly gained skills;
- (d) Expanding already existing flexible microcredit programmes and devising new loans systems with the State as guarantor;
- (e) Foreseeing the means that IDPs are not crippled by debt through back-taxes or utility bills accrued during their displacement;
- (f) Ensuring that returnees receive specific support to rebuild as well as the means to carry them over until they become productive again.

80. Concerning the land issues, the Representative recommends that:

- (a) The question of the registration of land titles be declared a priority and that the outstanding registration of land entitlements, both for IDPs and for communities at risk, be undertaken without further delay;
- (b) Measures be adopted to facilitate the regularization of land titles, taking into account that a great number of the internally displaced were subsistence farmers who either never had land titles, having built their farms from scratch, or while having legal documents of sale, never registered their property titles formally; such measures should contemplate the cancellation of debts due to outstanding tax payments accrued during displacement;
- (c) The property preservation efforts undertaken by *Acción social* be expanded together with the necessary resources. In this context, local authorities, both at departmental and municipal levels, should be required to cooperate and to help with the identification of the properties that have been abandoned by forcibly displaced owners;
- (d) As regards collective land titles of the indigenous and Afro-Colombian communities, the authorities declare invalid the titles issued for parts of collective land sold by individuals out of collective property;
- (e) All land titles acquired under duress be declared invalid and that the authorities ensure that the provisions barring these lands from transactions are enforced;
- (f) The *Fiscalia* dictate provisional measures based on the cross-referencing of the reports of the internally displaced, the confessions of land seizure by the people hoping to benefit from the Justice and Peace Law;
- (g) The necessary legislative measure (Presidential decree) be taken to allow for direct restitution of properties to the victims of forced displacement, instead of going through a General Reparation Fund linked to the National Commission on Reparation and Restitution, and that legal titles be established, while acknowledging that the titles in and of themselves are not sufficient, since the owners need to be in a condition to return and have the effective usufruct of their land;
- (h) To compel with the recent Constitutional Court Decision on the Law on Justice and Peace, people who want to benefit from it disclose the whole truth, also about the displacements they have enforced and the lands and properties they seized during their activities, and the persons to whom they passed them on if they did not acquire them for themselves.

81. Concerning the prosecution of the crime of forced displacement under Colombian law, the Representative recommends to:

- (a) The Fiscal general to draw up a full inventory of the criminal proceedings that exist to date for the crime of forced displacement; and to prosecute this crime independently of other

possible crimes and human rights violations, instead of considering it as an accessory fact or a simple consequence of armed conflict;

(b) The Government to ensure that the right to full reparation of IDPs is not linked to their registration in SUR.

82. Concerning the particular situation of women, the Representative recommends:

(a) The systematic study and analysis of sexual and gender-based violence issues for internally displaced women and girl-children in order to render them visible;

(b) The implementation of a comprehensive policy for IDP women, taking into account their heightened state of vulnerability, as regards domestic and other forms of sexual or gender-based violence.

83. Concerning elderly people, the Representative recommends the adoption of special measures to take into account the particular health and assistance needs of elderly persons, including those who have to take care of children left with them by their parents.

84. Concerning indigenous, Afro-Colombian communities and other groups with heightened vulnerability, the Representative recommends:

(a) The implementation of the existing 2003 policy for assistance to indigenous persons and communities, as well as the institutionalized consultation of the National Commission for the Human Rights of Indigenous Persons and Communities as regards policies and measures for displaced indigenous persons or communities at risk;

(b) The implementation of a comprehensive policy for differentiated assistance to indigenous and Afro-Colombian communities and individuals that takes into account the cultural traditions, the leadership structures and collective character of such communities;

(c) The adoption and full implementation of effective measures to stop encroachments on or to ensure restitution of their land; as well as the increasing use of indigenous reservations for military and other purposes;

(d) The creation of channels and mechanisms to engage these groups of people with heightened vulnerability in consultations and have them participate in determining solutions and assistance for their needs.

85. Concerning the existing checks and balances in Colombia, the Representative recommends to the Government of Colombia:

(a) To keep and to strengthen the possibility for IDPs to submit *tutela* actions to the Constitutional Court, and to fully implement the decisions of the Court in this regard;

(b) To support the *Defensoria* in its work for IDPs and, in particular, to maintain, to expand and to strengthen the system of community defenders (*defensores comunitarios*) and to finance them, to the extent possible, through the national budget in recognition of the State's duty to protect the human rights of everyone and in particular of communities at risk;

(c) To fully respect, to adhere to and to implement the precautionary and preliminary measures issued by the Inter-American human rights system;

(d) To publicly support human rights and IDP defenders as an acknowledgement of their important contribution to a democratic and pluralistic society.