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## Conseil des droits de l'homme

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**Promotion et protection de tous les droits de l'homme, civils, politiques, économiques, sociaux et culturels, y compris le droit au développement**

## **Rapport de la Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme, Margaret Sekaggya**

Additif

### **Mission en Colombie\* \*\* (7-18 septembre 2009)**

#### *Résumé*

La Rapporteuse spéciale sur la situation des défenseurs des droits de l'homme a effectué du 7 au 18 septembre 2009 une visite en Colombie, afin d'y évaluer la situation actuelle des défenseurs des droits de l'homme. À cette occasion, elle s'est entretenue avec de hauts responsables gouvernementaux et des défenseurs des droits de l'homme.

Après un chapitre introductif, la Rapporteuse spéciale présente brièvement, au chapitre II, le contexte général dans lequel s'inscrit l'action des défenseurs des droits de l'homme.

Dans le chapitre III, la Rapporteuse spéciale expose en détail les défis actuels auxquels doivent faire face les défenseurs des droits de l'homme en Colombie dans le cadre de leurs activités légitimes. Elle appelle l'attention sur l'insécurité persistante dans laquelle vivent plusieurs catégories de défenseurs, leur stigmatisation par des agents de la fonction publique et des acteurs non étatiques, la surveillance illégale à laquelle les soumettent les services de renseignement de l'État, les arrestations et détentions arbitraires et le harcèlement judiciaire dont ils sont victimes, ainsi que les attaques menées contre les locaux d'organisations non gouvernementales (ONG) et le vol d'information.

\* Soumission tardive.

\*\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, joint en annexe au résumé, est distribué en anglais et en espagnol.

Au chapitre IV, la Rapporteuse spéciale examine la réaction de l'État à la situation précaire des défenseurs. Elle traite des questions suivantes: les difficultés qu'éprouve le Gouvernement à adopter un plan d'action national relatif aux droits de l'homme en raison de la rupture du dialogue avec la société civile, les récentes déclarations encourageantes des plus hautes instances du pays reconnaissant le caractère légitime de l'action des défenseurs, l'insuffisance des mesures prises par le Gouvernement pour protéger les défenseurs des droits de l'homme, les défaillances du système d'alerte précoce, l'insuffisance des mesures prises pour lutter contre l'impunité et les premières dispositions prises contre les activités illégales de renseignement.

Enfin, au chapitre V, la Rapporteuse spéciale fait part de ses conclusions et recommandations, qui seront soumises pour examen à toutes les parties prenantes.

## Annexe

### **Report of the Special Rapporteur on the situation of human rights defenders on her visit to Colombia (7-18 September 2009)**

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## I. Introduction

1. Pursuant to General Assembly resolution 60/251 and Human Rights Council resolution 7/8, the Special Rapporteur on the situation of human rights defenders conducted an official visit to Colombia from 7 to 18 September 2009, at the invitation of the Government of Colombia, in the framework of its commitment made during the universal periodic review.<sup>1</sup>

2. The Special Rapporteur would like to thank the Government of Colombia for extending an invitation to her and for its exemplary cooperation throughout the mission. The Special Rapporteur also expresses her appreciation to the Office of the High Commissioner for Human Rights (OHCHR) in Colombia for its invaluable support in preparation of and during the mission.

3. The purpose of the visit was to assess the current situation of human rights defenders in Colombia, taking into account the observations and recommendations made by the then Special Representative of the Secretary-General on the situation of human rights defenders in the report following her visit to Colombia in October 2001.<sup>2</sup> The report further takes into account the observations made by the Special Representative during her two-day follow-up visit to the country in 2004.<sup>3</sup>

4. The Special Rapporteur traveled to Bogotá, Barranquilla, Medellín, Cali and Arauca. The Special Rapporteur had the opportunity to meet with the President, the Vice-President and other senior officials from the executive; judges from the Supreme Court of Justice and the Constitutional Court, and the Attorney-General's Office; the Office of the National Procurator-General (PGN); national, regional and municipal ombudspersons, and congressmen. She further met the heads of the police, the military and the Department of National Security (DAS). She also held meetings with local Government officials in the four regions she visited. She also met with members of the diplomatic community and United Nations agencies in the capital. Finally, throughout her mission, she met many diverse representatives of Colombian civil society.

## II. General context in which human rights defenders operate

5. In August 2002, the Government of President Uribe was formed following his election. The Government adopted the Defence and Democratic Security Policy, a long-term State policy aiming at reinforcing and guaranteeing the rule of law throughout the national territory, by strengthening democratic authority: the free exercise of institutional power, the supremacy of law, and the active participation of citizens in matters of public interest.<sup>4</sup> The implementation of the policy has significantly improved the overall security situation in the country. According to the Government, between 2002 and 2008, the number of homicides decreased by 44 per cent (from 28,837 to 16,140), the number of collective homicides by 68 per cent (from 115 to 37), and the number of kidnappings by guerilla groups FARC-EP (Revolutionary Armed Forces of Colombia) and ELN (National Liberation Army) by 88 per cent (1,708 to 197). However, this policy has many detractors, who believe that such a policy has impacted negatively on human rights and the rule of law by involving civilians in maintaining security, notably through the establishment of a

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<sup>1</sup> See A/HRC/10/82, para. 87.

<sup>2</sup> See E/CN.4/2002/106/Add.2.

<sup>3</sup> See E/CN.4/2005/101/Add.1, paras. 203-216.

<sup>4</sup> The Spanish text is available from [www.presidencia.gov.co/seguridad\\_democratica.pdf](http://www.presidencia.gov.co/seguridad_democratica.pdf).

network of paid informers, and has led to the stigmatization of human rights defenders, journalists, magistrates and opposition leaders.

6. In 2003, the Government started a process of collective demobilization of paramilitary groups, which led to the adoption of Act No. 975 of 2005, commonly referred to as the Justice and Peace Act, under which thousands of members of paramilitary groups were reportedly demobilized. According to the Government, all paramilitary groups have been dismantled. However, according to NGOs, paramilitary groups continue to operate in the country; the Special Rapporteur on extrajudicial executions concluded at the end of his visit to Colombia on 18 June 2009 that “although senior paramilitary leaders have been arrested, the economic, command and control structures of paramilitaries do not appear to have been fully and effectively dismantled”.<sup>5</sup>

7. In 2006, on the basis of the testimonies of demobilized paramilitaries, the Penal Cassation Chamber of the Supreme Court of Justice initiated various legal proceedings against congressmen, local politicians and State officials for their links with paramilitaries. All of the defendants, many of whom have pleaded guilty, are supporters of the Government’s policies. The so-called “para-politics” process has generated considerable tension between the executive and judiciary branches, the Government having harshly criticized these proceedings.

8. In 2007, the mandate of OHCHR in Colombia was renewed by the Government of Colombia, in its entirety, until 30 October 2010.

9. In summary, with respect to the overall human rights situation in the country, OHCHR has stated that, “Colombia continues to be involved in a complex and multifaceted internal armed conflict, which represents a persistent human rights challenge for the State and for its population.”<sup>6</sup>

### **III. Situation of human rights defenders**

#### **A. Overview of civil society in Colombia**

10. In the course of her visit, the Special Rapporteur held meetings in Bogotá, Barranquilla, Medellín, Cali and Arauca with a broad cross-section of civil society and human rights defenders actively engaged in advocating civil, political, economic, social and cultural rights. Like her predecessor, she was particularly struck by the vibrancy and the maturity of this community, in particular its high level of sophistication and coordination throughout the country.

11. The Special Rapporteur salutes, in particular, the work of the four NGO platforms in Colombia: the Alliance of Social and Like-Minded Organizations, the Permanent Civil Society Assembly for Peace, the coalition Colombia-Europe-United States Coordination Group and the Colombian Platform for Human Rights, Democracy and Development. The four platforms, organized according to their area of expertise, are composed of more than 1,000 organizations present throughout the country. She further salutes the work of human

<sup>5</sup> Statement by Philip Alston, Special Rapporteur on summary, extrajudicial or arbitrary executions, concluding his visit to Colombia from 8 to 18 June 2009. Available from <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/C6390E2F247BF1A7C12575D9007732FD?openDocument>. Annual report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, (A/HRC/10/32), para. 48.

<sup>6</sup> A/HRC/10/32, para. 6.

rights defenders operating in the regions, who are particularly exposed to threats and attacks.

## **B. Persistent insecurity faced by human rights defenders**

12. From 1 January 2002 to 10 December 2009, the mandate sent 39 communications to the Government of Colombia on killings or enforced disappearances of defenders or their relatives, and 119 communications on threats or murder attempts against defenders or their relatives. On 30 April 2008, the then Special Representative, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers, issued a joint press release, expressing their deep concern about “recent developments in Colombia indicating the deteriorating situation of human rights defenders in recent months, in particular the killings, harassment and intimidation of civil society activists, trade-union leaders and lawyers representing victims”.<sup>7</sup>

13. Some of the human rights violations against human rights defenders are allegedly to be attributed to guerillas, new illegal armed groups and paramilitary groups which human rights defenders say have not been dismantled; the Government bears the responsibility to denounce and thoroughly investigate these violations and prosecute the perpetrators. However, according to several sources, law enforcement authorities have also committed violations against defenders or shown complaisance with regard to violations committed by private actors against defenders.

14. The Special Rapporteur is deeply concerned about the widespread phenomenon of threats being made against human rights defenders and their families, often through pamphlets, obituaries, emails, phone calls and text messages sent to them. She received numerous accounts of threats in all places she visited in the country. This phenomenon has reportedly worsened since the beginning of 2009, as corroborated by the Head of the National Police. In Bogotá, numerous human rights organizations have been targeted by such pamphlets, including: the Colombian Commission of Jurists, the Confederation of Colombian Workers, the Corporación Reiniciar, the Intercongregational Commission of Justice and Peace, the Advisory Office for Human Rights and Displacement (CODHES), the Regional Human Rights Commission (CREDHOS), the Colectivo de Abogados “José Alvear Restrepo” and the National Movement of Victims of State Crimes (MOVICE). Defenders throughout the country have received similar threats.

15. Such threats generate a climate of terror within the human rights defenders’ community, and impede their legitimate work in defence of human rights. The Special Rapporteur was notably very disturbed to learn that, in Barranquilla, just a few hours prior to the meeting she held with local defenders, threats were reportedly sent to the organizers of the meeting. Several authorities have further accused defenders of sending threats to themselves. The Special Rapporteur considers these accusations as highly disrespectful of the work of defenders, and believes they should end.

16. Each category of civil society continues to be affected by violations of the right to life and physical integrity, in particular the most targeted and vulnerable groups identified by the then Special Representative in 2002. The following list of cases is by no means exhaustive.

<sup>7</sup> Press release, “‘End violence against defenders in Colombia’, the call of UN experts”, 30 April 2008. Available from <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/3594FDD2EB3D23FFC125743B00576A22?opendocument>.

### 1. Trade unionists

17. The Special Rapporteur is gravely concerned for the plight of trade unionists in Colombia. According to the Government, between 2002 and 2009, 423 trade unionists were killed and 236 rulings passed.<sup>8</sup> According to the Confederation of Colombian Workers, between August 2002 and August 2009, 505 trade unionists were reportedly murdered. While the number of victims has significantly decreased between 2002 and 2009,<sup>9</sup> the total figure remains extremely worrying. According to the International Trade Union Confederation, 49 trade unionists were killed in 2008, meaning more than half of the assassinations of trade unionists in the world occurred in Colombia.<sup>10</sup> The departments of Antioquia, Santander and Valle del Cauca are worst affected by these killings.

18. The Special Rapporteur is particularly troubled by the case of enforced disappearance, torture and summary execution of Guillermo Rivera Fúneque, President of the Trade Union of the Public Services of the Office of the District Comptroller. On 22 April 2008, Mr. Rivera Fúneque disappeared, and his corpse was found on 15 July 2008, bearing clear marks of torture. The last time Rivera Fúneque had been seen was reportedly entering a police car.

### 2. Indigenous leaders

19. Indigenous leaders have become the most vulnerable group of defenders because the internal conflict has moved to their areas. At the end of his visit to Colombia in July 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people stated that “the situation of indigenous people in Colombia is grave, critical and very worrying”.<sup>11</sup>

20. On 19 September 2008, Gilberto Alpala Tarapues and Segundo Oswaldo Tapie, members of indigenous guardia, were reportedly killed in error by the military in the indigenous reserve of the Gran Cumbal, commune of La Boyera, sector Cuaspud el Rejo.

21. On 16 December 2008, José Edwin Legarda, husband of Aída Quilcué, Chief Council of the Indigenous Regional Council of Cauca, was shot dead in his car a few days after Ms. Quilcué had denounced the human rights violations suffered by indigenous peoples during the universal periodic review of Colombia.

22. On 2 August 2009, Edilberto Imbachi Mutumbajoy, an indigenous leader of the Rosario community in Putumayo, was killed in his home in Puerto Guzmán by four armed men.

### 3. Afro-Colombian leaders

23. Afro-Colombian leaders are in a similar situation of vulnerability to the indigenous peoples.

24. On 24 October 2005, the corpse of Orlando Valencia, defender of the biodiversity and rights of his Afro-Colombian community, was found in the river León, near

<sup>8</sup> Information from the Ministry of Social Protection, 20 December 2009.

<sup>9</sup> By 82 per cent according to the Government and by 50 per cent according to the Confederation of Colombian Workers.

<sup>10</sup> “2009 ICTU Annual Survey of violations of trade union rights: Colombia”. Available from <http://survey09.ituc-csi.org/survey.php?IDContinent=2&IDCountry=COL&Lang=EN>.

<sup>11</sup> See his press release of 27 July 2009. Available from <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/075AAAC613A31B0CC12576010039DA28?op=endocument>.

Chirigorodó, in the department of Antioquia. He had been shot in the head, and his hands were tied.

25. In March 2009, Isabelino Valencia, an Afro-Colombian leader and legal representative of the Community Council of the Naya River Basin, received death threats.

26. The Special Rapporteur welcomes the forthcoming visit of the independent expert on minority issues to Colombia in 2010.

#### **4. Activists on internally displaced persons and land issues**

27. Leaders and activists working on behalf of internally displaced persons and peasants defending their land are also subject to persecution.

28. On 15 April 2009, Ana Isabel Gómez Pérez, a leader for internally displaced persons who works in Córdoba and member of the board of the Comité de Familiares Víctimas de la Violencia en Córdoba, was killed in Los Córdoba.

29. Jose Tacu, President of the peasant organization *Apartado*, was killed near Medellín. His organization was demonstrating against crop-spraying and big hydroelectric projects.

30. In the department of Choco, Froilan Zapata was also targeted. His community has fought for their land taken by coffee-growers. His name was reportedly listed in a threatening pamphlet and, in 2005, his name appeared in a military intelligence report. His house was burnt down.

#### **5. Women human rights defenders**

31. As in any country, women human rights defenders are most at risk of harassment and persecution. Throughout her visit, the Special Rapporteur met with particularly brave women defenders active in advocating for women's rights, land rights and many other human rights. The sexual and gender-based dimension of the attacks, threats, insults and humiliating practices suffered by women defenders in Colombia should be emphasized. Because of their family responsibilities, women defenders face greater difficulties in relocating to safer places.

32. Yolanda Izquierdo, a peasant leader and displaced person, was killed at her house in February 2007 by two unidentified armed men. Ms. Izquierdo was seeking the truth about the killing in El Tomate of 16 peasants in 1988, allegedly committed by paramilitary groups.

33. On 14 September 2009, Orfilia Moreno Ruiz, the leader of the Restrepo Association of Displaced Families, belonging to the Collective of Displaced Mothers in Valle del Cauca, was found dead. Ms. Moreno Ruiz had reportedly been tortured and raped.

34. The Special Rapporteur was troubled to learn of several other cases of killings of women defenders, including Osiris Jacqueline Amaya Beltran, Carmen Cecilia Santana Romaña and Judith Vergara Correa.

35. In Barranquilla, Ingrid Vergara from MOVICE, working in Sucre, received several threats, including an obituary inviting her to her own funeral with the date, time and location. Members of MOVICE and guerrillas were also invited to this funeral. Ms. Vergara was forced to leave Sucre.

#### **6. Journalists**

36. Journalists in Colombia are particularly vulnerable to threats and other acts of intimidation.



37. Claudia Duque, journalist documenting human rights violations, has received numerous threats, including rape threats, over the past years. Some of these threats also targeted her daughter. In December 2009, the Technical Investigation Body of the PGN mentioned in a report the existence of a confidential DAS memorandum, in which specific instructions were given to DAS agents to threaten Duque and her daughter over the phone.

38. Following a public accusation by the President of Colombia, Hollman Morris, a journalist, together with his wife and two children, immediately received a series of death threats, notably through obituaries. Mr. Morris and his family had to leave the country. They were granted interim measures from the Inter-American Commission on Human Rights (IACHR), and later came back to Colombia. They continue receiving threats, and fear for their lives.

39. Gonzalo Guillen, who is working on three sensitive cases of “false positives”, was reportedly threatened by DAS agents who allegedly said that they could make it look like he belongs to FARC.

## **7. Lawyers**

40. On 1 April 2004, Carlos Bernal, lawyer and member of the Permanent Committee for the Defence of Human Rights, was shot dead in Cúcuta by an unidentified person.

41. On 25 May 2007, lawyers from the Corporación Jurídica Libertad (CJL), found an anonymous note on the door of the CJL premises, warning them that the NGO had become a military target and urging them to stop pursuing their human rights activities. Two months previously, the CJL had denounced alleged summary executions of 110 persons by members of the military.

42. On 1 May 2008, Ana María Sánchez, assistant to the Director of the Colombian Commission of Jurists, received an email, allegedly signed by the paramilitary group the Black Eagles, which stated that they would “clean the streets of the communist, Jew and unnatural scum”.

## **8. Students and youth activists**

43. The Special Rapporteur received several testimonies of murders of and threats against students and youth activists. Such threats have often ruined their career prospects.

44. On 25 October 2006, Dreiber Javier Melo, a law student at the University of Atlantico, was killed on the university campus, allegedly by paramilitaries.

45. Similarly, on 14 January 2008, Martin Hernández Gaviria, a political science student at the National University of Colombia at Medellin, was killed, allegedly by paramilitaries.

46. On 25 August 2009, Héctor Enrique Pacheco Marmolejo, a member of the Communal Council of district No. 13 in Medellin actively involved in the cultural life of his community, working especially with young persons, was killed allegedly by members of a paramilitary group active in Medellin.

47. Between 2008 and 2009, the Federation of University Students received 12 threats from three paramilitary groups, which considered them a military target.

## **9. Church workers**

48. Church workers involved in human rights activities, and in particular those assisting internally displaced persons to claim their lands, have been repeatedly harassed. The Special Rapporteur received several testimonies concerning church workers being attacked and threatened by unknown persons, notably in Barranquilla. As a result, church workers are scared to speak about human rights issues.

**10. Lesbian, gay, bisexual and transgender and HIV/AIDS activists**

49. The Special Rapporteur met with lesbian, gay, bisexual and transgender (LGBT) groups which apprised her of the precarious situation of LGBT defenders. She is very concerned about their plight due to their lack of acceptance of society.

50. An emblematic case is the killing of Alvaro Miguel Rivera Linares, an LGBT and HIV/AIDS activist who was found dead in his flat on 6 March 2009. His body bore marks of torture. Prior to his murder, Mr. Rivera Linares had denounced the general violence against the LGBT population in Cali, including alleged abuses and arbitrary detention by police officers. In 2001, he received threats because he denounced the practice of guerilla members of testing the population for HIV/AIDS and ostracizing people who were tested positive.

51. The Special Rapporteur notes the concern expressed by local authorities in Cali for the situation of LGBT activists, and urges them to make every effort to fully protect them.

**11. Magistrates**

52. The Special Rapporteur is particularly disturbed by threats sent to the highest judicial authorities in the country.

53. The President and the Vice-President of the Supreme Court of Justice have received death threats through obituaries. According to them, the threats started when the “para-politics” case began.

54. Judge María del Rosario González of the Supreme Court of Justice was also targeted through a bomb scare at the school of her daughter immediately after the “para-politics” trial started. The police reportedly never found those responsible for the bomb scare. On 30 January 2009, the brakes of the brand new car of Judge Rosario were reportedly sabotaged.

55. Four judges of the Supreme Court of Justice, including Judge Rosario, Judge Iván Velásquez and Judge Julio Valencia Copete (former President of the Court), applied for interim protective measures before the IACHR: three of them have been granted such measures, and the process is under way for the fourth judge.

**12. Regional and municipal ombudspersons**

56. Regional and municipal ombudspersons have been continuously targeted.

57. In October 2008, Jairo Luis Alvarez Ruiz, regional Ombudsperson in Medellín, was shot in the head by unidentified men when leaving his home. Two days before his murder, Mr. Alvarez Ruiz had denounced the corruption of some State officials (some of whom were subsequently removed) and the resurgence of paramilitary groups. His son was kidnapped for a short period of time and then released.

58. Since 2004, Jorge Ceballos, municipal ombudsperson in Medellín, has received numerous threats because of his denouncing of “false positives”. His family has also been threatened on several occasions. Mr. Ceballos applied for interim protective measures from the IACHR. He was granted an armored car, but did not receive any money for petrol. Mr. Ceballos led a standing human rights unit within his office until he was forced by his management to resign on 15 September 2009. Mr. Ceballos fears this unit will no longer be able to undertake its work because of the threats received.

59. According to the head of the municipal ombudsperson office in Medellín, 116 municipal ombudspersons have been threatened. The husband of the ombudsperson in Atlantico was threatened. In 2004, the Director of the Early Warning System (SAT) in Barranquilla was under surveillance. In Valle del Cauca, the car of the ombudsperson was shot at on 28 June 2009. In Putumayo, one regional ombudsperson was threatened and had

to resign. In Nariño, a regional ombudsperson received threats allegedly from FARC. In Cafetero, threats were sent to staff of the Regional Ombudsperson's Office working on an early warning system.

### **C. Stigmatization of human rights defenders by public officials and non-State actors**

60. A prime reason for the above-mentioned insecurity faced by human rights defenders in Colombia lies in the systematic stigmatization and branding of defenders by Government officials and non-State actors, as previously highlighted by the then Special Representative.<sup>12</sup>

61. The Special Rapporteur was shown video footage of public statements made by the President of Colombia in which human rights defenders were portrayed as colluding with terrorists or guerilla members. In addition, in early 2008, a presidential advisor, José Obdulio Gaviria, publicly accused human rights defenders who were taking part in a peaceful demonstration of supporting FARC. The judicial police, the army and regional units of the Attorney-General's Office reportedly made similar statements. The Special Rapporteur finds all these statements extremely worrying. Echoing the statement of the Special Rapporteur on extrajudicial executions at the end of his visit to Colombia on 18 June 2009, these declarations have put human rights defenders and their families at great risk of threats and reprisals by armed groups, such as in the aforementioned case of Mr. Morris. She stresses that these statements are in clear contradiction with Presidential Directive No. 7 of 1999 and Defence Ministerial Directive No. 9 of 2003, which instruct public officials to respect human rights defenders and their work.

62. In addition, in some instances, when human rights defenders went abroad to raise concerns about their situation, such as before the IACHR, newspapers and public officials reportedly stated that these defenders tarnished the reputation of the "motherland", weakened the democratic process and stripped the Government of its prestige. In fact, stigmatization sometimes prevents defenders from travelling abroad and reporting to international human rights mechanisms. In 2003, Jahel Quiroga, a member of Corporación Reiniciar, was reportedly denied a visa by the United States of America authorities to attend a session of the IACHR in Washington D.C. because Colombian authorities had reportedly informed the United States that Ms. Quiroga was a guerilla supporter.

63. Finally, non-demobilized paramilitary groups and new illegal armed groups have also conducted defamation campaigns against human rights defenders, hampering their work in a similar fashion. In Arauca, defenders have reportedly been branded by a large petrol company as belonging to FARC.

### **D. Illegal surveillance of human rights defenders by State intelligence services**

64. Numerous reports of widespread illegal surveillance of human rights defenders by civil and military intelligence services, over many years, were gathered during the visit.

65. The Special Rapporteur was deeply troubled to learn about the illegal activities of the now defunct Special Strategic Intelligence Group "G3" within DAS, which operated from 2003 and 2005. The Technical Investigation Body of the PGN, in charge of shedding

<sup>12</sup> E/CN.4/2002/106/Add.2, paras. 80 and 89.

light on these activities and sanctioning those responsible, delivered a preliminary report on these illegal activities, on the basis of 104 DAS files. From this report, it transpired that G3 was involved in: phone wiretapping, interception and recording of e-mails of trade unions, national and international NGOs; phone wiretapping and surveillance of movements of prominent human rights defenders and their families; and surveillance of the movements of Susana Villarán, the Special Rapporteur for Colombia of the IACHR during her visit to the country in 2005.<sup>13</sup>

66. According to various sources, including the testimony of a former DAS senior official, DAS further undertook “activities of verification” during the 2005 country visit to Colombia of Rodolfo Stavenhagen, the former United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. This allegation is extremely grave and, if confirmed, would violate privileges and immunities of United Nations representatives.

67. In 2009, some magistrates of the Supreme Court of Justice were reportedly put under surveillance by DAS.

68. Even children of human rights defenders have been put under surveillance. In one instance, a 5-year-old girl’s movements were monitored by intelligence services while going to school. This experience proved to be traumatic for the mother who decided to relocate her family to another region.

69. According to a newspaper, DAS developed a “manual designed for monitoring and harassing persons considered being members of the political opposition”.<sup>14</sup> The Special Rapporteur would like the authorities to fully apprise her of the existence of any such manual, if such an allegation is proved to be correct.

70. Finally, military intelligence services have reportedly continued to be engaged in the illegal surveillance of human rights defenders, although the Minister of Defence denied such claims. For instance, a report was reportedly prepared by a regional military intelligence office, in which nearly 100 human rights defenders and members of the civil society were accused of supporting FARC. Among other elements, the identities, contact details and photographs of several defenders were contained in this report. Many reports were allegedly prepared by regional military intelligence offices, treating defenders as enemies of the State of Colombia.

## **E. Arbitrary arrest and detention of defenders and their judicial harassment**

### **1. Arbitrary arrest and detention**

71. According to OHCHR<sup>15</sup> and several other sources, human rights defenders have been arrested on several occasions in the absence of a valid arrest warrant. For instance, Juan Carlos Celis Gonzalez, a member of the Movement for Life in Bogotá, was reportedly arrested in December 2002 without a valid warrant. He was charged a year later with rebellion. Carmelo Agamez, Secretary-General of the Sucre section of MOVICE, was

<sup>13</sup> The IACHR condemned this intelligence operation in a press release dated 13 August 2009. Available from <http://www.cidh.oas.org/Comunicados/English/2009/59-09eng.htm>.

<sup>14</sup> “Un ‘manual’ para seguir y acosar a personas calificadas como opositores tenía el DAS”, *El Tiempo*, 14 June 2009.

<sup>15</sup> See A/HRC/10/32, paras. 16-17.

arrested in November 2008 at his house by a group of plain-clothed policemen who reportedly did not produce any arrest warrant.

72. These arrests have sometimes been carried out on a massive scale, as reported by the Working Group on Arbitrary Detention during its visit to Colombia in October 2008.<sup>16</sup> In November 2008, Martin Sandoval, President of the Permanent Committee of Human Rights in Arauca, together with a group of 15 defenders, was arrested and detained after he raised concerns about human rights violations taking place in Arauca. He was released, with 12 defenders, in May 2009, after a Court ruled they were innocent. In January 2008, Mercedes Tatiana Blanco Garzón, Municipal Ombudsperson in Arauca, was arrested when enquiring about the situation of a group of persons who had been arrested earlier by security forces in the urban area of Arauquita. Ms. Blanco was detained for 36 months and is now under house arrest.

73. Defenders have also been held in preventive detention for months, even years, in violation of the principles of necessity and proportionality enshrined in the Colombian Procedural Code.<sup>17</sup> For instance, Celis Gonzalez was reportedly held in preventive detention for more than two years.

## 2. Unfounded criminal proceedings

74. The Special Rapporteur was repeatedly informed during her visit of unfounded criminal proceedings brought against human rights defenders, for crimes against the constitutional order (“rebellion”) and public security (“terrorism”), on the basis of military and civil intelligence reports and unreliable witness testimonies. The Special Rapporteur is extremely worried by this pattern, which is very harmful to the work of defenders.

### (a) Intelligence information

75. Both the old and new Colombian Criminal Procedural Codes<sup>18</sup> prohibit the use of intelligence reports as evidence for opening judicial proceedings. Yet, judicial officials of the Attorney-General’s Office (AGO) have reportedly relied on military and civil intelligence reports to prosecute human rights defenders, despite contrary claims by the AGO.

76. Teresa de Jesús Cedeño Galindez, former President of the Permanent Committee of Human Rights in Arauca, was arrested in June 2003 and charged by Prosecutor No. 287 in Bogota with fraud and bribery, on the basis of military intelligence. The charges were later dropped. Victor Julio Laguado Boada, a peasant leader in Arauca, was charged with rebellion by the National Anti-Terrorism Unit in October 2006, reportedly on the basis of two intelligence reports from the national police in Arauca.

77. Teofilo Acuña, the President of the Federation of Agro-Mining Unions in South Bolivar, who denounced the alleged human rights violations of a military battalion in the region, was arrested in April 2007 and was reportedly accused of rebellion on the basis of a report prepared by the very same military battalion which was the subject of Mr. Acuña’s accusations. He was released after 10 days of detention.

78. Similar practice by the seventy-fourth sectional delegate of the AGO attached to the Army’s Fourth Brigade in Medellin has been reported. On 3 April 2009, criminal

<sup>16</sup> A/HRC/10/21/Add.3, paras. 60-61.

<sup>17</sup> Colombian Procedural Code, arts. 3 and 356.

<sup>18</sup> A new Criminal Procedural Code was adopted in 2004, establishing an accusatory oral criminal justice system (Sistema Penal Oral Acusatorio). This new code reportedly offers better guarantees of due process.

proceedings, which involved various members of civil society, were reopened on the basis of intelligence reports prepared by Regional Military Intelligence Office No. 7.

(b) *Unreliable witness testimonies*

79. Despite a ruling of the Constitutional Court that testimonies from reintegrated witnesses cannot be used as evidence for opening judicial proceedings, human rights defenders have also been prosecuted on the basis of unreliable witness testimonies from demobilized individuals or informants in exchange for legal and/or pecuniary benefits. Such practices were documented by the Working Group on Arbitrary Detention during its visit to Colombia in October 2008.<sup>19</sup>

80. Alejandro Quiceno, a member of the Sumapaz Human Rights Foundation in Medellin, was arrested in March 2005 and charged with rebellion by the Fifth Specialized Prosecutor in Medellin. In September 2005, Prosecutor No. 153 of Medellin decided that Mr. Quiceno's detention was unjustified because the testimonies of the reintegrated witnesses used in the first place were motivated by the search for benefits from the Government.

81. In November 2006, Elkin de Jesús Ramirez, lawyer and professor at the University of Antioquia in Medellin, was charged with rebellion by Prosecutor No. 74 in Antioquia. In January 2008, the case was reviewed and dismissed by a prosecutor who questioned the veracity of the testimonies of the reintegrated witnesses, who might have sought economic benefits from the Government.

82. In addition, testimonies obtained under coercion were used to charge defenders. Principe Gabriel Gonzalez, a member of the Committee on Solidarity with Political Prisoners, was arrested and detained in Bucaramanga from January 2006 to April 2007 on the charge of rebellion. He was acquitted in March 2007 by the Eighth Criminal Circuit in Bucaramanga which found, among other irregularities, that one of the two testimonies used to charge Mr. Gonzalez was obtained under coercion from members of the police and the AGO.

**3. Slander and libel**

83. As reported by the High Commissioner for Human Rights, freedom of expression has in several instances been curtailed through the prosecution of human rights defenders for criminal slander and libel under articles 220–228 of the Colombian Criminal Code, in addition to threats against them which also have a chilling effect on defenders.<sup>20</sup>

84. Iván Cepeda, MOVICE spokesperson, was charged with criminal slander and libel following a complaint brought by a congressman from Sucre. In November 2006, Mr. Cepeda had publicly denounced the alleged link between the congressman and paramilitaries.

85. Claudia Duque was similarly charged with criminal slander and libel following a complaint brought by Emiro Rojas, a former DAS Director in Antioquia. Ms. Duque had accused Mr. Rojas of irregularities in the investigation of the murder of the journalist Jaime Garzón.

86. Alfredo Molano, journalist for the *Espectador* newspaper, was charged with slander and libel after publishing a column in the newspaper in which he denounced the alleged political influence of the Araujo de Valledupar family.

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<sup>19</sup> A/HRC/10/21/Add.3, paras. 62–65.

<sup>20</sup> See A/HRC/10/32, para. 88.

## **F. Raids of NGO premises and thefts of materials**

87. Instances of raids and searches of NGO premises, and thefts of materials containing sensitive or confidential information, were systematically brought to the attention of the Special Rapporteur. Such violations are particularly detrimental to the work of defenders, as they put them and the people they assist, support or represent, in an extremely vulnerable situation.

88. In October 2002, some 80 police and military officers reportedly raided the office of the NGO coalition Assembly for Peace by breaking the window, and without producing any warrant. Several files were taken. The authorities later acknowledged that it was a mistake, but reportedly no sanction was taken against the perpetrators. Four more raids followed in 2004 and in 2006, with files taken in a similar fashion.

89. In June 2007, the office of the NGO Corporación Jurídica Yira Castro was raided by unidentified persons: computers, hard disks, flash drives and files were seized.

90. In July 2009, the computer of the Medellín Youth Network was stolen by a group of men reportedly linked to a paramilitary group operating in town.

91. In Arauca, the files of an NGO providing assistance to internally displaced persons were seized. These documents contained the names of all beneficiaries of the NGO.

92. According to several sources, regional ombudspersons were also victims of several thefts by unknown individuals: their computers, which contained information on human rights violations committed by law enforcement authorities and paramilitary groups, were stolen. Such thefts occurred, for instance, in Bucaramanga, Cartagena and Montería.

## **IV. Institutional response**

### **A. Overview of Government policy on human rights and international humanitarian law**

93. The Special Rapporteur met with the Vice-President, the Head of the Human Rights and International Humanitarian Law (HRIHL) Unit of the Vice-Presidency and the Minister of Interior and Justice, who are in charge of designing HRIHL policies. According to them, since 2002, the Government has fully committed itself to a culture of promoting and protecting human rights.

94. The Government has adopted a decentralization project for the implementation of public policy on HRIHL, which aims at strengthening the institutional capacity of local authorities to design and implement public policies in this area. In this respect, 32 departments have been assisted with the formulation of a Departmental Plan of Action on HRIHL.

95. The Ministry of Defence adopted, in early 2008, a comprehensive policy on HRIHL, which seeks to fully integrate HRIHL principles into the planning and conduct of military operations. This policy also provides an educational framework for law enforcement authorities in the conduct of their duties, notably by delivering training on HRIHL, adapted to the everyday needs of law enforcement authorities. Between January 2008 and April 2009, a total of 97,097 members of security forces were trained on the work of human rights defenders.

96. The Special Adviser to the President on women's issues is in charge of designing policies pertaining to women rights and mainstreaming the gender issue within the Government. The Special Adviser has reportedly worked with more than 200,000 women

(indigenous, Afro-Colombian, social leader, business sector, etc.). Among the main activities undertaken by the Special Adviser, the Special Rapporteur welcomes the creation of an observatory on women's rights. However, the Special Adviser acknowledged the poor representation of her Office in the regions and the need for additional resources and staff.

97. The Special Rapporteur welcomes these initiatives which aim at raising awareness on HRIHL standards. She further welcomes the fact that the Government is up to date with its reporting obligations before treaty bodies,<sup>21</sup> and praises the Government for its openness to international scrutiny in having received 11 special procedures mandate holders since 2002. Finally, the Special Rapporteur notes the commitments made by the Government under the universal periodic review: 15 out of the 65 recommendations which enjoy the support of the Government of Colombia pertain to the situation of human rights defenders.<sup>22</sup>

## **B. National human rights action plan and dialogue with defenders**

98. The Special Rapporteur was briefed on the efforts of the Government to elaborate a national human rights action plan, in conformity with the provisions of the 1993 Vienna Declaration and Programme of Action.

99. Following recommendations by OHCHR, efforts were made by the Government to pursue the process with the consensus of the civil society. The consultation phase started in 2004 and a coordinating body was established in 2006 composed of public officials and members of civil society, with the support of OHCHR, the United Nations Development Programme and the diplomatic missions of Spain and Sweden. The main tasks of the coordinating body are to define the methodology for the elaboration of the action plan, together with civil society and, most of all, to build consensus among State authorities and representatives of civil society.

100. Nevertheless, the activities of the coordinating body have been conducted in a very tense climate and, following a series of public accusations made by State authorities against human rights NGOs and subsequent threats, civil society decided to stop the dialogue in April 2008, which resumed in 2009, thanks to the good offices of OHCHR and the embassies of Spain and Sweden.

101. Between April and May 2009, the Government, 4 human rights and peace coalitions and 16 social sectors agreed to a procedure to discuss the guarantees that should be offered to human rights defenders in the fulfilment of their activities. The National Guarantee Round Table was established, along with regional round tables in 14 departments. The objectives of the round table include: (1) establishing a dialogue on the need to provide guarantees for social and human rights organizations, with the purpose of adopting pertinent decisions at the national and regional levels; (2) increasing levels of trust between civil society and State authorities; and (3) monitoring the commitments made on guarantees at the national and regional levels.

102. The following main agreements have been reached by the Government and civil society at the national and regional levels: to end stigmatization of human rights defenders by public officials; to adopt political measures which support the work of defenders; to investigate threats and attacks against defenders; and to grant effective protective measures to defenders.

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<sup>21</sup> Ten reports submitted by Colombia to nine treaty bodies.

<sup>22</sup> A/HRC/10/82, para. 87.



103. However, several human rights defenders who attended these round tables have reportedly been threatened subsequently. For instance, in Quindio, defenders received threats from the Black Eagles. In Sucre, two defenders were forced to leave the region following threats. In Barranquilla, a defender who complained about the activities of a police officer later received anonymous threatening phone calls and escaped an abduction attempt by two unidentified men. It is reported that the protection that he was granted, upon order from the IACHR, had been withdrawn two days prior to the incident.

104. The Special Rapporteur finds it remarkable that the Government and civil society, given the current polarization, have reached a number of agreements through these round tables. However, the current threats against defenders who participated in these round tables derail the dialogue with NGOs. She notes the number of forums at the national and regional levels where protection issues have been discussed, notably with the most targeted and vulnerable groups of defenders, such as the Inter-Institutional Commission for the Human Rights of Workers; the National Human Rights Commission for Indigenous Communities; the Permanent Dialogue Round Table with Indigenous Peoples; the Intersectoral Commission for the Promotion of Afro-Colombian Groups; and the National Council for the Integrated Care of Displaced People. The Special Rapporteur welcomes these initiatives, but remains seriously concerned about the current disruption of dialogue on basic guarantees for defenders in fulfilling their activities.

## **C. Security of human rights defenders**

### **1. Stigmatization of human rights defenders**

105. Stigmatization of human rights defenders is a crucial issue in Colombia. The Office of the National Procurator-General (PGN) reportedly instructed regional inspectors to fully enforce Presidential Directive No. 7 and Ministerial Directive No. 9, and, according to the PGN, a number of investigations have been opened at the local level.

106. The Special Rapporteur notes with satisfaction the encouraging statements made by the highest Government authorities during her visit to Colombia. On 9 September 2009, the Vice-President of Colombia publicly declared that the work of human rights defenders was fundamental to the Colombian democracy. On 17 September 2009, on the eve of the Special Rapporteur's press conference concluding the visit and immediately after meeting her, President Uribe publicly stated that "the defence of human rights is a necessary and legitimate action for democracy in a country like Colombia which is proud to be completely open to international scrutiny in this field".<sup>23</sup>

### **2. Strategies to prevent attacks against defenders**

#### *(a) Protection*

107. The Special Rapporteur was apprised by the Minister of Interior and Justice of the main achievements of the National Protection Programme for Human Rights Defenders, which has been in place since 1997. Between 1 January and September 2009, 3,052 human rights defenders reportedly benefited from protection measures: 1,402 trade unionists, 950 social or community leaders, 550 members of human rights NGOs and 150 journalists.

108. The Special Rapporteur notes that the IACHR in its 2005, 2006, 2007 and 2008 reports emphasized the "efforts of the Government in continuing its Protection Programme

<sup>23</sup> Presidential statement made in Bogotá on 17 September 2009. Available from <http://web.presidencia.gov.co/sp/2009/septiembre/17/17172009.html>.

for Human Rights Defenders”. She welcomes the significant increase of funds dedicated to this programme (from \$13 million in 2002 to \$58 million in 2009).

109. The Special Rapporteur acknowledges the efforts made by the Government in offering an ambitious protection programme to defenders, which should continue. However, her attention was drawn by various stakeholders to a series of flaws within this programme.

110. Several defenders complained that the application process for protective measures has proved to be slow. In some instances, it may take up to three months from submission of a request for protection before protection is actually granted.

111. In addition, the outcome of the risk studies undertaken by the Regulatory and Risk Evaluation Committee, which decides on the protective measures to be adopted according to levels of risk determined by studies conducted by the national police and the DAS, has reportedly failed to match, in several instances, the real situation of vulnerability faced by the person requesting protection. Furthermore, protective measures taken have, on some occasions, failed to address the specificities of the profile of defenders pertaining to gender, ethnic affiliation, leadership position and place of residence, for example.<sup>24</sup> Finally, State agents defending human rights, including magistrates and staff members of the national, regional and municipal ombudsperson’s offices, who are not beneficiaries of the Protection Programme, have requested to be included in the programme.

112. It further transpired from the DAS scandal that bodyguards assigned by DAS for the protection of defenders have reportedly spied on them and transmitted information to the intelligence agency. In the case of Mr. Morris, his bodyguards spied on his whole family, notably taking pictures of his children. Such incidents have seriously damaged the trust of a number of defenders in the programme.

113. Human rights defenders also repeatedly raised concerns about the privatization of the protection measures offered under the programme, which would allow members of private security companies to provide protection to them. Defenders fear former paramilitaries could be employed, and could similarly spy on them and transmit information to intelligence services, in pursuit of economic benefits.

114. In addition to the Protection Programme, the Ministry of Interior and Justice has set up an International Affairs Section tasked with responding strategically to requests for protection from defenders who benefit from protective measures adopted by the IACHR and interim measures ordered by the Inter-American Court of Human Rights. This section is reportedly dealing with 130 requests. Furthermore, the Protection Programme for Victims and Witnesses of the Armed Conflict, headed by the AGO, was established in 2005, with a reportedly gender perspective. Since its establishment until June 2009, 235 victims and witnesses were granted protective measures in Medellin, Barranquilla and Bogota. Finally, since 2004, the Government has implemented the Preventive Security Project which reportedly aims at strengthening the capacity of people to adopt self-protection measures. A total of 85 training sessions have been delivered to 3,256 people, including trade unionists, social or community leaders, peasants, indigenous people, Afro-Colombians and journalists. The Special Rapporteur notes with satisfaction the existence of this project, but believes it should only be seen as a complement to direct State responsibility to protect defenders.

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<sup>24</sup> In July 2009, the Government initiated a process of revision of the protection strategies for indigenous peoples.

115. The Special Rapporteur acknowledges the abovementioned efforts of the Government to protect human rights defenders. Nevertheless, as previously stressed by the then Special Representative,<sup>25</sup> the ongoing killings and disappearances of human rights defenders, some of whom were under the Protection Programme, such as in the case of Ualberto Hoyos,<sup>26</sup> demonstrate the limits of the programme and other protective measures in preventing attacks against defenders. The Special Rapporteur shares the views of her predecessor, and OHCHR Colombia, that real protection of human rights defenders will only be possible when stigmatization of defenders has fully ended.<sup>27</sup> Ending impunity is another condition sine qua non for ensuring the security of defenders.

(b) *Early warning*

116. Throughout her visit, the Special Rapporteur met with national and regional staff members of the Ombudsperson's Office who administer the Early Warning System (SAT), identify communities at risk, and make sure that the authorities adopt pre-emptive measures. She was impressed by the dedication and courage of these persons, who, as mentioned, have also been threatened in the course of their activities.

117. The Special Rapporteur commends the work of the Ombudsperson's Office, in particular for the issuance of early warnings. Since 2004, the Ombudsperson's Office reportedly issued 295 risk reports and 201 follow-up notes. She welcomes the increase of funds by the Government to SAT, from US\$ 169,323 in 2006 to US\$ 351,883 in 2009.

118. However, according to many sources, the Inter-Institutional Committee on Early Warning (CIAT), composed of members of the Vice-Presidency, the Ministry of Interior and Justice, the Ministry of Defence and DAS, which was established to react in a timely manner to SAT warnings, has reportedly ignored SAT warnings on several occasions. According to the Ombudsperson, between January and September 2008, 62 early warnings produced by the SAT led to only 28 CIAT actions.<sup>28</sup>

119. In addition, local authorities have shown hostility towards the work of the Ombudsperson's Office. According to the regional ombudsperson in Barranquilla, local authorities in Atlantico do not respect her recommendations and the early warnings issued. She was reportedly called "a seed for terrorism" by the Chief of Police. Authorities in Medellin further told regional ombudspersons that they do now want them to speak about human rights. In Arauca, there is reportedly a resistance from local authorities to SAT reports, which are perceived as obstacles to their work.

## D. Impunity

120. Impunity for violations committed against human rights defenders also contributes significantly to their insecurity. According to several sources, the vast majority of attacks and threats against defenders are left uninvestigated.

121. As of 20 December 2009, the National Human Rights Unit within the AGO reportedly had 34 assigned cases for violations committed against 67 defenders: 22 cases of homicides; 8 cases of threats, 3 cases of enforced disappearances and 1 case of kidnapping. Between 2002 and 2009, the AGO pronounced 10 sentences in relation to violations against

<sup>25</sup> See E/CN.4/2005/101/Add.1, para. 216.

<sup>26</sup> Mr. Hoyos was killed in 2008. The Government disputes that Mr. Hoyos was killed because of ineffective protection measures.

<sup>27</sup> See E/CN.4/2005/101/Add.1, para. 216.

<sup>28</sup> A/HRC/10/32, para. 87.

defenders, condemning 18 persons. Within the framework of the Justice and Peace Act, 21 cases of violations against NGO members, 13 cases of violations against defenders and 220 cases of violations against trade unionists have been handled. With regard to investigations of threats and attacks against defenders by what the Government calls “emerging criminal gangs”, up to April 2009, 38 cases have been allocated to the unit, 75 charges were brought and 41 persons were convicted.

122. In December 2008, the humanitarian affairs units were created within the AGO, in different sectional directorates. These units have been specifically tasked with investigating threats and attacks against human rights defenders. Investigation of threats sent to magistrates through obituaries have notably started, but according to the AGO, there has been no result owing to the difficulty in identifying the authors of these threats. The Special Rapporteur stresses that threats against judges of the Supreme Court of Justice weaken the justice system as a whole, fuel impunity and, through this, impact negatively on the work of defenders. She hopes that concrete results will soon be achieved by these units.

123. In 2006, a sub-unit was created, within the National Human Rights Unit of the AGO, to deal exclusively with murders and murder attempts against trade unionists. As of June 2009, the sub-unit had been assigned 1,304 cases, for which 610 investigations were opened and 179 persons convicted. The Special Rapporteur supports the work of this sub-unit, but believes achievements by this sub-unit are too slow.

124. Guidelines for prosecutors on investigation of attacks and threats of defenders were designed, with emphasis reportedly made on identifying regional patterns, the presence of illegal armed groups, the activity of the victims and the profile of the possible perpetrators. These guidelines reportedly aim at promoting a culture of immediate investigation and accelerating the treatment of cases.

125. In 2008, a guide was prepared for creating a unified database for monitoring investigations into violations against defenders. In February 2009, a process of cleaning, verifying and coordinating existing data started, in order to identify inconsistencies and outdated information.

126. Finally, legal technical committees were established in 2008 within the AGO, the objective of which is reportedly to consolidate a space for dialogue between prosecutors and enable them to work together on the investigation of cases involving human rights violations.

127. While the Special Rapporteur acknowledges the aforementioned positive developments, she believes this is not enough given the magnitude of violations suffered by human rights defenders in Colombia throughout the years. She calls on the AGO to do more to thoroughly investigate attacks and threats against human rights defenders and prosecute those responsible.

128. In August 2009, a differential methodology was reportedly designed for the investigation of cases in which human rights defenders are indicted, in response to the recommendations made by Human Rights First in its publication entitled *Baseless Prosecutions of Human Rights Defenders in Colombia: In the Dock and Under the Gun*,<sup>29</sup> which are hailed as “valuable” by the Ministry of Foreign Affairs. The Special Rapporteur would like to be fully apprised of this methodology.

129. Another issue of concern is that some prosecutors operate on military premises. As stated earlier, a number of them have prosecuted human rights defenders on the basis of

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<sup>29</sup> Human Rights First, 2009, New York. Available from <http://www.humanrightsfirst.org/defenders/reports/index.aspx>.

information gathered illegally by military intelligence services. This proximity between the AGO and the military has a detrimental effect on the independence of the judiciary in Colombia.

130. The Special Rapporteur notes with satisfaction that a number of prosecutors and judges have reviewed cases of criminal investigation of defenders and closed them where found baseless.

131. It is also of the utmost importance that the police take these threats seriously by conducting systematic investigations and bringing their authors to justice. The Special Rapporteur notes the establishment, just a few days before the beginning of her visit, of a special investigation unit within the police and under the authority of the AGO, in charge of investigating threats against defenders.

132. According to the PGN, between 2002 and 2009, 64 disciplinary measures were taken against public officials who committed violations against human rights defenders, including killing, threats, torture and ill-treatment, arbitrary arrest and detention, and illegal surveillance. The Special Rapporteur notes these measures, and calls on the PGN to redouble its efforts.

## **E. Illegal intelligence activities**

133. The Special Rapporteur stressed to DAS and other State officials the gravity of the DAS scandal and the embarrassment it had caused within the international community. She urged them to take urgent “damage-control” measures and ultimately to drastically restructure DAS to ensure that it functions as a democratic and transparent institution.

134. She was informed that, in February 2009, the AGO, the PGN and the Comptroller-General of the Republic were asked to set up an elite group to move forward the investigations on the case. A directive was issued to all DAS staff members instructing them to fully collaborate with this group. Other directives were issued to reinforce the protocols for handling and using the tactical mobile equipment of phone tapping. Finally, DAS and the National Police instructed their personnel assigned to the protection of defenders not to undertake illegal surveillance.

135. The Special Rapporteur welcomes the current prosecution by the AGO of at least 40 DAS civil servants, including four former directors. She was notably disturbed to learn that some information illegally obtained by DAS had been transmitted to paramilitary groups in the form of a hit list of defenders, which had led to the killing of four human rights defenders. She further welcomes, in addition to the disciplinary investigations undertaken by the PGN, a series of internal disciplinary measure taken to determine accountability within DAS. She hopes to be fully apprised of the final outcome of all these investigations and prosecutions. Finally, she notes the President’s announcement that DAS will actually close down and a new intelligence agency established. She would like to be further fully apprised on the structure and functioning of this new agency once it has been established. The Special Rapporteur remains preoccupied, however, about the possibility of ongoing surveillance.

136. The Special Rapporteur stresses the need to effectively purge civil and military intelligence archives on defenders, their families and their organizations. She welcomes the adoption of Act No. 1288 of 5 March 2009 on Intelligence and Counterintelligence, which notably provides for such a purging, and its implementing Decree No. 3600 of 2009. She notes the PGN was asked to take the leadership in this process, and that the Government started to look into international experiences about the purging of intelligence files.

137. It is equally important to set up a system of democratic control of intelligence activities. Act No. 1288 of 5 March 2009 provides for the establishment of such control and prohibits the gathering of intelligence on defenders solely based on their human rights work, and the use of intelligence information as evidence during trials. The Special Rapporteur hopes Act No. 1288 will soon be fully and effectively implemented.

## **V. Conclusions and recommendations**

### **A. Conclusions**

138. The Special Rapporteur can conclude that patterns of harassment and persecution against human rights defenders, and often their families, continue to exist in Colombia.

139. The Special Rapporteur acknowledges the positive efforts of the Government to improve the situation of human rights defenders, notably through the implementation of the Protection Programme and a series of human rights policies. However, much remains to be done to ensure a safe and conducive environment for defenders.

140. Putting an end to the stigmatization of human rights defenders by all State officials is an absolute priority. The recent public statements of the President and the Vice-President, recognizing the legitimate work of defenders, are important pronouncements for the human rights community. Similarly, impunity for violations committed against human rights defenders by State and non-State actors must urgently be ended.

141. The Special Rapporteur notes the willingness of the Government of Colombia to hold a frank dialogue with human rights defenders, who are key players in the democratization process in the country. However, given the current derailment of constructive dialogue with defenders, it is of the utmost importance that the Government takes prompt and practical measures to allow genuine and sustainable dialogue.

142. The Special Rapporteur looks forward to a continued positive dialogue with the Government of Colombia on the situation of human rights defenders. She calls on OHCHR, United Nations agencies and other international actors to continue assisting the Government of Colombia in fulfilling its human rights obligations, with a view to ensuring a better environment for human rights defenders.

### **B. Recommendations**

#### **Recommendations for the consideration of the Government**

143. In order to resume constructive dialogue with the human rights defenders community, the agreements reached with defenders on guarantees for their work, in the framework of the National Guarantee Round Table, should be promptly implemented, and investigations on threats received by defenders who participated in the round tables on guarantees for human rights defenders should be prioritized.

144. In order to give full force to the important aforementioned statements made by the President and Vice-President of Colombia on 17 and 9 September 2009 respectively, a new presidential decree giving recognition to the legitimate work of human rights defenders should be promulgated, and widely disseminated within the State apparatus. This new decree should recall previous Presidential Directive No. 7 of

1999 and Defense Ministerial Directive No. 9 of 2003, and order all State authorities to fully respect the legitimate work of human rights defenders, in particular women defenders.

145. High-level national and regional authorities should publicly restate the important statement of the President dated 17 September 2009, qualifying the work of human rights defenders as “a necessary and legitimate action for democracy”.

146. The Office of the National Procurator-General should systematically take disciplinary measures against all State officials whose declarations presently violate Presidential Directive No. 7 of 1999, and Defense Ministerial Directive No. 9 of 2003.

147. The Attorney-General’s Office should adopt an effective methodology for thoroughly investigating all threats and attacks against human rights defenders, and prosecuting the perpetrators; in addition, the Government should increase the human and financial capacity of the Attorney-General’s Office to face the large number of cases of attacks and threats against defenders.

148. The Special Investigation Unit within the police and under the authority of the Attorney-General’s Office, in charge of investigating threats against defenders, should be properly empowered in order to have a quick impact on the situation of defenders.

149. The Attorney-General’s Office should review all criminal investigations against human rights defenders, close immediately all cases found to be baseless, and prosecute State officials, including prosecutors, who maliciously investigated defenders.

150. Similarly, the Office of the National Procurator-General should take disciplinary measures against State officials who maliciously investigated defenders.

151. Prosecutors should cease operating from military premises.

152. The Criminal Code should be amended in order to decriminalize slander and libel.

153. The process for applying for protective measures provided by the Protection Programme should be simplified and faster, and immediate protection should be granted while the risk situation of the person is being assessed.

154. When assessing the risk situation of a person, the Regulatory and Risk Evaluation Committee should systematically take into account the specificities of the profile of defenders pertaining to gender, ethnic affiliation, leadership position, place of residence, among others; it should further take into account reports by SAT, OHCHR, IACHR and NGOs.

155. State agents defending human rights should be included in the Programme.

156. Protection measures offered under the Protection Programme should not be privatized.

157. The Government should fully guarantee that personnel assigned to the protection of human rights defenders do not gather information for intelligence purposes.

158. Ombudsperson’s early warning reports should be made public and be taken into account much more often by State authorities, in particular the Inter-Institutional Committee on Early Warning.

159. Any ongoing illegal intelligence activities targeting human rights defenders should stop immediately.

160. A mechanism for purging all intelligence archives on human rights defenders, their families and their organizations should be established, under the leadership of the Office of the National Procurator-General and in compliance with international standards.

161. The establishment of a purging mechanism should be accompanied with a redefinition by the State apparatus of the objectives of its intelligence activities.

162. Human rights defenders should be granted full access to intelligence information that concerns them.

163. The Intelligence and Counterintelligence Act should be fully and effectively implemented as soon as possible.

164. The Attorney-General's Office should investigate all illegal intelligence activities, and prosecute their authors, from those who carried out such activities to those who ordered them.

165. Defenders who would have been found victims of State arbitrariness should have their good name and reputation restored, and should be compensated.

#### **Recommendations for the consideration of human rights defenders**

166. Defenders should resume constructive dialogue with the Government, as the Government begins to implement the agreements reached on guarantees for the work of defenders, in the framework of the National Guarantee Round Table.

167. Defenders should continue making full use of United Nations special procedures and other international human rights mechanisms, when reporting on human rights violations and breaches of international humanitarian law by all parties.

#### **Recommendations for the consideration of OHCHR Colombia**

168. OHCHR Colombia should continue supporting the work of human rights defenders, in particular the most targeted and vulnerable ones, and facilitating dialogue between the Government and defenders.

#### **Recommendations for the consideration of the international community**

169. The international community should continue monitoring the situation of human rights defenders, in particular the most targeted and vulnerable ones, and expressing support for their work through, inter alia, interventions before international and regional human rights mechanisms (and for European Union diplomatic missions, actions envisaged in the European Union Guidelines on Human Rights Defenders).

170. The international community should continue supporting the valuable work of OHCHR Colombia.

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