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on the Elimination of All
Forms of Racial
Discrimination**

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**REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH
ARTICLE 9 OF THE CONVENTION**

Fourteenth periodic report of States parties due in 2008

Addendum

COLOMBIA^{*},^{}**

[29 February 2008]

* This document contains the 10th, 11th, 12th, 13th and 14th periodic reports of Colombia, due on 2 October 2000, 2002, 2004, 2006 and 2008, respectively. For the 8th and 9th periodic reports of Colombia (consolidated document) and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/332/Add.1 and CERD/C/SR.1356, 1357 and 1362.

** In accordance with the information transmitted to the States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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I. BASIC INFORMATION ABOUT COLOMBIA

1. Colombia is a social State, governed by the law and organized as a unitary, democratic, participatory and pluralistic republic, decentralized with autonomous territorial units. It is founded upon respect for human dignity, the work and solidarity of the individuals constituting it and the primacy of the general interest.

A. Political organization

2. The 1991 Political Constitution establishes three branches of public power: the executive, the legislature and the judiciary. The President of the Republic is Head of State and Head of Government and is elected for a term of four years by popular vote. In accordance with Legislative Act No. 02 of 2004, amending the Political Constitution, the President may be re-elected for a further term. After four years of government (2002-2006). Dr. Álvaro Uribe Vélez was re-elected President of the Colombians in May 2006 for a further presidential term which will end in 2010.

3. Ministers and heads of administrative departments direct and control the public administration; their number and their titles are determined by law. The departmental governors and municipal mayors are elected by popular vote. Public institutions, supervisory bodies and State-owned and mixed and commercial enterprises also form part of the executive branch.

4. The legislative branch consists of the bicameral Congress of the Republic, which amends the Constitution, adopts legislation and exercises political control over the Government and the administration. The upper House, or Senate, comprises 100 senators who are elected by national constituency and two more who are elected in special constituencies for indigenous peoples. The lower House or House of Representatives is made up of 241 representatives elected by regional and special constituencies. Legislators are elected for a period of four years.

5. The judicial authorities render independent and autonomous decisions. They consist of the Constitutional Court, which is responsible for maintaining the supremacy and integrity of the Constitution; the Supreme Court of Justice, which is the highest court of ordinary jurisdiction (with criminal, civil and labour divisions); the Council of State (the highest court for administrative disputes, and the Division of Consultation and the Civil Service); the Higher Council of the Judiciary (the highest administrative and disciplinary organ of the judiciary); the Office of the Public Prosecutor of the Nation (the Prosecutor-General and deputy prosecutors) as the investigating body; the judicial district higher courts (usually located in departmental capitals and presided over by circuit or municipal court judges); and the Military Criminal Court, responsible for judging crimes committed by members of the forces of law and order on active service and connected with that service.

6. The public supervisory bodies are made up of the Office of the Controller-General of the Republic and the Public Prosecutor's Office. The latter is the responsibility of the Attorney-General of the Nation, who is elected by the Senate; its function is to ensure compliance with the Constitution, laws, judicial rulings and administrative decisions, protect human rights and defend the collective interests of society and the environment and oversee the official behaviour of persons in public positions, including those held through popular vote, act

as the preferred holder of disciplinary authority, and perform the required investigations and impose the appropriate sanctions.

7. The People's Advocate, under the direction of the Public Prosecutor's Office, ensures the promotion, exercise, dissemination and defence of human rights, and is elected by the House of Representatives.

B. Territory

8. Colombia is a country of considerable geographical, ethnic and cultural diversity. It covers an area of 1,141,748 km² and is divided into the following territorial units: departments, districts, municipalities and indigenous territories. The municipality is the basic unit of the State's political and administrative structure. There are currently 32 departments, 4 districts and 1.098 municipalities.

C. Culture and religion

9. The people of Colombia are predominantly of mixed race. There are four main ethnic and social groups that stand apart from the majority of the population both geographically and culturally: the Afro-Colombian communities and the native islanders (Raizales) – accounting for 10.62 per cent of the population, the indigenous peoples – accounting for 3.3 per cent of the population – and the Roma or Gypsies.

10. Spanish is recognized as the national language, although it has marked dialectal and regional characteristics. There is also great linguistic wealth among the country's indigenous communities; 64 languages, from 22 families of indigenous language, have been identified. The Raizales of San Andrés and Providencia form part of the Afro-West Indian culture: they use English as their official language and San Andrés Creole in the home. In the Caribbean area of mainland Colombia, the inhabitants of San Basilio de Palenque speak Palenquero (the other Afro-Colombian Creole language). The Roma or Gypsy groups. Of Eastern European origin, speak their own language, Romany. Article 10 of the Political Constitution recognizes the languages and dialects of ethnic groups as official in their territories and stipulates that the education provided in communities with their own linguistic traditions will be bilingual.

11. The 1991 Political Constitution established freedom of worship; thus everyone has the right to profess their religion freely and to disseminate it individually or collectively. According to the Register of Religious Groups, there are at present nearly 1,000 such groups in Colombia; however, the predominant form of worship is Christianity and the majority denomination is Roman Catholicism.

D. Sociodemographic context

1. Population

12. According to the latest general census (2005), the country has 42,090,502 permanent inhabitants, making it the third most populated country in Latin America after Brazil and Mexico, and the twenty-eighth in the world. Of the total population, 51.2 per cent is female and 48.8 per cent male; 75 per cent lives in urban areas and a mere 25 per cent in rural areas.

2. Fertility

13. The demographic pattern of the Colombian population shows a drop in its fertility rates. This can be seen in a reduction of 4.2 children per woman in the fertility rates of the past 50 years. This is a consequence of Colombia's participation in a growing trend towards the ability to exercise sexual and reproductive rights. In effect, the country belongs to the group of Latin American countries with the lowest unsatisfied demand for planning (approximately 6 per cent).

3. Life expectancy

14. Life expectancy at birth has increased owing to the population's improved health conditions, which has led to a reduction in both overall and infant mortality rates: the former has fallen by 68 per cent in the past 50 years while the latter has dropped by 80 per cent. The fall in the infant mortality rate resulted from the reduction in the number of deaths from infectious, parasitic and respiratory diseases, which led to longer life expectancy at birth, an indicator that rose from 50.6 to 72.2 years between 1950 and 2005 and contributed to the demographic transition process.

15. There has been an evident demographic trend of ageing of the population. The findings of the census (2005) show an increase in the middle-aged population. In point of fact, the population projections of the National Administrative Department for Statistics (DANE) show that by 2050 this pyramid will be transformed into a rectangle and the middle-aged and elderly population will be of the same size as that of children.

4. Quality of life

16. The National Government, as part of its social policy, has studied ways of reducing the vulnerability of population groups historically affected by conditions of inequality. This, together with the economic growth experienced between 2002 and 2005, produced significant progress where poverty and indigence are concerned, posting the lowest levels since comparative statistics were introduced.

5. Poverty

17. During the period 2002-2005 the poverty rate fell by 7.8 percentage points to 49.2 per cent, equivalent to a reduction of 2.3 million in the number of poor as a result of growth in per capita income and improved income distribution.

18. By the same token, the indigence rate fell from 20.7 per cent to 14.7 per cent, which means that 2.2 million Colombians escaped from indigence. The number of persons living in indigence dropped from 8.8 million to 6.6 million between 2002 and 2005.

19. The indicators continued to improve during 2006. The policy for eradicating poverty and inequality (MERD), to which we shall refer later, showed that the reduction of poverty at the national level was evident in urban and rural areas alike. In the former Colombia moved from 50.4 per cent in 2002 to 39.1 per cent in June 2006, while the indicator fell from 70.1 per cent to 62.1 per cent in rural areas.

20. As regards extreme poverty, estimates show that the national aggregate fell by 10 points from 22 per cent in 2002 to 12 per cent in the second quarter of 2006. The reduction in rural areas was of the order of 13 points, falling from 34.7 per cent to 21.5 per cent, while the drop in urban areas was 8 points, moving from 16.7 per cent to 8.7 per cent.

21. This positive step notwithstanding, a review of poverty and indigence rates in the long term demonstrate scant progress in the past few years, given that the backward step recorded at the end of the 1990s, when Colombia's gross domestic product (GDP) contracted for the first time in 30 years, had a marked influence on the results achieved.

22. Sex-disaggregated data on poverty and indigence show that there are no significant differences at the national and urban levels. However, in rural areas there has been a sustained divide regarding poverty and indigence, with a higher of percentage of women experiencing both phenomena. The divide has been maintained at between three and four percentage points, a trend that continued in 2006.

23. The results obtained during the period 2002-2006 reveal a Colombia with a growth rate of 6.8 per cent in 2006 and an average growth rate of 5 per cent for the period 2003-2006, far higher than the figure for the period 1996-2001 and in the decade of the 1990s. This growth went hand in hand with a reduction in inflation to levels to below five per cent. Income inequality also fell by four points during the same period.

E. Economic context

24. During the period 1996-2001 the Colombian economy barely grew at a rate of one per cent per annum, and 1999 witnessed the first decrease, of 4.3 per cent, in almost a century. The confidence of Colombians and private investment and consumption steadily declined during those years, reaching historically low levels in 2000. The social impact of the crisis was enormous: urban unemployment of over 20 per cent and drops in household incomes, especially among the poorest of the poor.

25. As of 2002 the greater confidence generated by the achievements in security, accompanied by a policy for boosting economic development and a favourable international market environment, consolidated economic growth. The sustained increase in GDP as of 2002 led to annual growth in excess of five per cent in 2005, the highest in the past 10 years, a trend that was maintained in 2006. This enhanced outlook was reflected in the *spreads*, indicators of foreign investors' perception of the Colombian market. Having reached a level of 1,096 basis points in September 2002, the last four years witnessed a considerable drop to 197 points on 7 August 2006. This reduction has generated greater confidence on the part of investors in relation to the other countries of Latin America.

26. Progress relating to confidence, growth, better perception of the markets, together with increased liquidity and relatively low interest rates served as an engine of increased investment. Between 2002 and 2006 private investment increased by 8.5 percentage points of GDP from 8.6 per cent to 17.1 per cent. Public investment increased by 1.3 percentage points. At the same time total exports posted an average annual growth of 15.2 per cent between 2002 and 2005 and attained the historic figure of US\$ 21.185 billion in 2005, representing an overall growth of 76.9 per cent as against the US\$ 11.975 billion recorded in 2002. Between January and

July 2006 total exports reached the US\$ 13.65 billion mark, an increase of 15.2 per cent over the same period in 2005. Although this growth was mainly driven by traditional exports, which have grown by 95.2 per cent since 2002, it is important to underscore the growth of non-traditional exports, which grew by 62.3 per cent from US\$ 6.666 billion in 2002 to US\$ 10.819 billion in 2005.

F. Armed Violence

27. Unlawfully organized armed groups represent a threat to the stability of Colombian society, consisting as they do of agents that generate violence, owing to the structure of a war economy, based on abductions, extortion and drug production and trafficking. This situation has generated huge social, economic and political costs for the nation.
28. In point of fact, the persistence of unlawful acts during 2006 reveals practices alien or contrary to recognition of and respect for the principles and values that are the basis of the guarantee and exercise of human rights, as well as a lack of any concrete commitment on the subject, especially on the part of the Revolutionary Armed Forces of Colombia - People's Army (FARC-EP).
29. In effect, according to data from the DIJIN-PONAL (Criminal Investigation Office of the Colombian National Police), during 2006 the FARC-EP were responsible for 16.2 per cent of cases of massacres, 62.9 per cent of accidents caused by anti-personnel mines, 27 per cent of kidnappings with extortion and 72.4 per cent of terrorist attacks. In addition, 16 cases of attacks against villages in 2006 were attributed to this insurgent group.
30. The National Liberation Army (ELN), for its part, entered a period of military weakening which has diminished its capacity to carry out violent assaults against the civilian population. However, it continues to infringe international humanitarian law; according to the National Fund for the Protection of Personal Freedom (Fondelibertad) and the Anti-Personnel Mines Observatory, in 2006 they were responsible for 15.6 per cent of abductions for purposes of extortion and 3.9 per cent of accidents involving anti-personnel mines.
31. In addition, the Farsi and ELN continued with a campaign of forced displacement, generating in the period 2002-2006, according to the National Registry of Displaced Population (RUPD), a total of 1,245,378 persons in a situation of forced displacement, equivalent to an average of 682 persons per day.
32. Civilians, particularly from ethnic groups, were affected by the practice of restrictions on the transport of food, medicines and people, sexual violence against women and girls, and recruitment of children. Lack of respect for medical missions became a recurrent practice in order to guarantee territorial control of strategic corridors and zones of influence.
33. This situation poses an unequivocal challenge for the Colombian State and requires the provision of both human and economic resources for effectively confronting these illegal groups with a view to achieving peace and all citizens' full enjoyment of rights. As evidence of the administration's commitment to the subject of human rights, as part of State policy, 55 per cent of the resources allocated between 2002 and 2006 went on generating conditions of peace and development in depressed areas and among victims of violence, on the protection and promotion

of human rights and international humanitarian law, on building up the machinery of justice and on strengthening coexistence and values and the executing agencies pursuing those objectives.

34. Regarding the self-defence units, 2006 saw the culmination of the collective demobilization process, which involved the handover of weapons by 31,671 members of these organizations. This process entailed depriving the leaders of their liberty, prosecuting their collaborators and enforcing the Justice and Peace Act (Act 975 of 2005) as a framework for guaranteeing progress in the quest for truth, justice and reparation.

35. Lastly, it should be pointed out that new criminal organizations or groups have been springing up in demobilized areas, in the form of gangs with completely criminal aims, and that links have been established with some ringleaders, middle ranks and demobilized members, in order to reinforce this new criminal apparatus that seeks to finance and fund itself exclusively from criminal acts.

36. The emerging groups, a small proportion of whose members are demobilized members of self-defence units, have become an energizing force for organized crime, comprising as they do bodies devoted mainly to the cultivation, production, sale and distribution stages of drug trafficking; their cultivation zones are located in border areas in order to facilitate the transfer of drugs abroad. In 2006 the public security forces detained over 900 demobilized persons who had resumed criminal activities.

G. Legal framework for the protection of human rights

37. The Political Constitution of Colombia (CP) provides for a broad range of fundamental rights (Title II). In addition to first-generation civil and political rights, the Constitution also provides other economic, social, cultural and environmental rights, which have been especially developed through the laws of the Republic and other statutory norms and interpreted through the serious and important case law of the Constitutional Court.

38. Implementation of these rights depends, in the first instance, on legal mechanisms approved by the legislature so that they can be developed by the executive branch through plans and programmes designed for their implementation at the national, regional and local levels.

39. From the point of view of their binding force, the Constitution (CP, chap. 4, Title II) and the laws have established measures of various types whereby a citizen may have recourse to the judicial and administrative authorities in order to give effect to his or her rights.

40. **Remedy of protection (*tutela*).** Article 86 of the Constitution establishes that every person has the right to bring an action of *tutela* before a judge, at any time or place, through a preferential and summary proceeding, himself/herself or through any person acting in his/her name, for the immediate protection of his/her fundamental constitutional rights when that person fears the latter may be violated by the action or omission of any public authority.

41. **Procedure of mandamus.** The Political Constitution provides for the so-called procedure of mandamus (art. 87). Under this article any person may appear before the legal authority to demand the application of a law or fulfilment of an administrative act. In case of a successful action, the judicial ruling will order the delinquent authority to perform its mandated duty.

42. However, attention should be drawn to the provisions of Act No. 393 of 1997, which governs the procedure of *mandamus*, to the effect that it is invalid: (a) when it is used to seek protection of rights that may be guaranteed under the *tutela* procedure (in which case the Court shall deal with the request under that procedure), and (b) in the event that the question is one of implementation of laws establishing costs.

43. **Popular actions.** Provided for in the Political Constitution (art. 88), they enable citizens to seek the protection of collective rights and interests related to the homeland, space, public safety and health, administrative morality, the environment, free economic competition, and other matters of a similar nature defined by law (Act No. 472 of 1998).

44. **Right of petition.** The right of petition (art. 23) is another constitutional mechanism which citizens may use in order to present petitions to the authorities for the general or private interest and to obtain a prompt response.

45. **Petitions for unconstitutionality and invalidation on grounds of unconstitutionality.** Any citizen may file such a petition before the competent judicial authority for the purpose of deciding on the executory force of laws and administrative acts, in relation to both their material content and procedural irregularities.

II. INFORMATION CONCERNING ARTICLE 2 OF THE CONVENTION

A. General information on ethnicity in Colombia

46. This section of the report will deal with Colombia's specific ethnic characteristics. It includes information on the population's ethnic characteristics and the problems relating thereto, on the legal framework for protecting ethnicity in the country, on the national policy enshrined in national development plans and on special situations of women and children belonging to ethnic minorities. This is followed by an explanation of specific measures taken by the Colombian State under articles 2 to 7 of the Convention.

1. Ethnic characteristics of the population

47. According to the latest general census (2005), the country has 42,090,502 permanent inhabitants. Of the total population, 51.2 per cent is female and 48.8 per cent male. Children and adolescents make up 40.22 per cent of the total population. Elderly men – aged 65 and over – number 1,187,165 and women in the same age group number 1,432,554, representing 6.31 per cent of the total population. Seventy-five per cent of the population lives in urban areas and a mere 25 per cent in rural areas, while some 14 per cent of individuals consider themselves to belong to one of the ethnic minorities (indigenous, Afro-Colombian and Roma).

48. The census revealed the following results regarding ethnicity:

“Indigenous:

The country has 84 ethnic or indigenous groups accounting for a population of 1,378,884 inhabitants and representing 3.3 per cent of the national population. Most of the indigenous population lives in rural areas (78 per cent).

Indigenous populations are found in the country's 32 departments; in 25 of them there is a clear presence of indigenous communities that live for the most part in *resguardos* (707) in 214 municipalities and in 12 departmental jurisdictions. The indigenous population is concentrated mainly in the departments of La Guajira, Cauca, Nariño and Córdoba; these account for 60 per cent of Colombia's indigenous inhabitants. The departments in which indigenous inhabitants account for a high percentage of the total population are Guainía, (61.5 per cent), Vaupés (58.1 per cent), La Guajira (42.4 per cent), Amazonas (39.8 per cent) and Vichada (39.6 per cent). Data relating to the indigenous population broken down by department may be found in diagram 7.1 and table 7.1.

These peoples possess different cultural traits regarding their linguistic characteristics, social and political organization, economic and productive relations, and management of and interaction with the environment. The indigenous communities speak 64 different languages belonging to 14 linguistic families; there are diverse forms of social organization based on kinship and community relations, with a multiplicity of structures that determine specific conditions such as the nature of alliances, residence, descent and filiation; varied forms of government with traditional ancestral authorities, and others adapted to the processes of interaction with national society: methods of production, family and

community labour, predominantly devoted to subsistence crops or small-scale trade with generally balanced transactions regarding the use and appropriation of natural resources.”

“Afro-Colombians

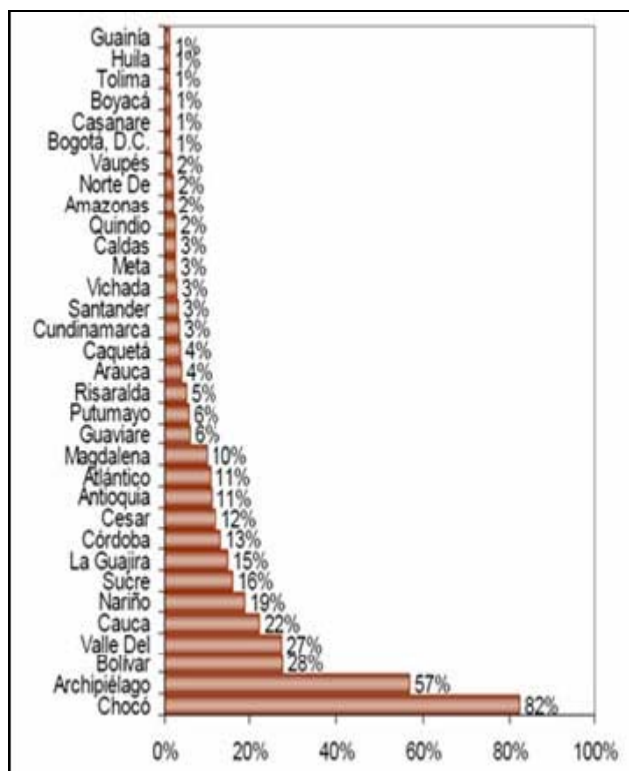
According to the 2005 census, the proportion of the population that considered itself to be Black or Afro-Colombian, including the Palenquero and Raizal population, is 4,261,996, equivalent to 10.6 per cent of the country’s total population. It should be pointed out that this figure refers to the population that considers itself to be Afro-Colombian.

The Afro-Colombian population has a presence throughout the country. However, there are certain regions where it is in the majority or extremely numerous. Thus, 26 per cent of the country’s total Afro-Colombian population is concentrated in the municipalities of Cali, Cartagena and Buenaventura (13 per cent, 7 per cent and 6 per cent respectively). In the other municipalities their presence accounts for less than 3 per cent. It should be noted that 72 per cent of the total Afro-Colombian population is located in municipal capitals.

At the same time, 76 of the country’s municipalities have a majority Afro-Colombian population (over 50 per cent). Of these, 92 per cent form part of the Pacific and Caribbean regions (64 per cent and 28 per cent respectively). The remainder are to be found in the departments of Caldas, Boyacá and Santander.

Chocó is the department with a majority Afro-Colombian population. In actual fact, 74 per cent (286, 289) of its 388,476 inhabitants consider themselves to be Afro-Colombian. This department’s Afro-Colombian population, together with that of Cauca, Nariño and Valle, accounts for 1,905,263 inhabitants.

Diagram 1: Percentage of Afro-Colombian population by Department



Source: DANE, Census 2005 “Colombia una nación multicultural, su diversidad étnica”.

The country’s largest concentration of Afro-Colombian inhabitants is to be found in the Pacific region (departments of Chocó, Valle del Cauca, Cauca and Nariño) and accounts for 44.7 per cent of the Afro-Colombian population in the national territory.

The Caribbean region, which includes the departments of Atlántico, Bolívar, Córdoba, La Guajira, Magdalena and Sucre, is home to an Afro-Colombian population of 1,194,077, representing 28 per cent of the country’s total Black community.

The 1991 Constitution and Act No. 70 of 1993 established collective titling of the traditional lands of the Black communities living in the Pacific Basin. In this context it set itself the task of collectively titling 5.6 million hectares for the Black communities. This policy was intended to recognize and protect those communities’ ethnic and cultural diversity, strengthen organizational processes and guarantee participation and autonomy over traditional territories, as well as to ensure environmental protection of existing natural resources and stimulate the development of alternative production in an effort to improve these communities’ living conditions.

To date this target has been achieved to the tune of 91.5 per cent, through the award of 149 collective titles and the allocation of 5,128,830 hectares, benefiting 60,418 families.

In order to meet the target, the Colombian Rural Development Institute (INCODER) has been processing 27 applications for collective titling, comprising an area of approximately 454,152 hectares, that will benefit 14,316 families.

The lands handed over to the Black communities and those being processed for titling together make up a total of 5,670,000 hectares, equivalent to 5 per cent of the national territory.”

“Raizales

The Raizal ethnic group has as its ancestral habitat the Archipelago of San Andrés, Providencia and Santa Catalina. Its customs, religious practices and Creole language are characteristics peculiar to this ethnic group. Rulings concerning this group handed down by the Constitutional Court (454/99 and 530/99) recognize and protect its special cultural characteristics and ensure that its rights are guaranteed.

According to data from the 2005 census, a total of 30,377 inhabitants nationwide consider themselves to be Raizales; 77 per cent of them live on the Archipelago (19,256 on the island of San Andrés and 3,364 on Providencia). A high percentage of Raizales who have migrated from the island to the mainland are located in Bogotá and the departments of Bolívar, Atlántico, Antioquia, Santander and Córdoba.

In addition, the inhabitants of the Archipelago who consider themselves to be Raizales make up 39.5 per cent of the population of the department.”

“Roma or Gypsies

The Roma or Gypsies who live in Colombia represent an age-old culture currently existing in many parts of the world. According to information produced by the 2005 census, the Roma population is 4,832 (0.012 per cent of the population). Gypsies congregate in small communities known as Kumpanias, without centralized chiefs, in which endogamy prevails, with mechanisms for internal dispute settlement based on their customary law known as Kriss. The Roma population is mainly concentrated in the cities of Barranquilla (40.5 per cent), Cartagena (18.8 per cent), Cali (14.6 per cent) and Bogotá (10.8 per cent), accounting for 85 per cent; 244 live in Cúcuta and Girón and account for 5.35 per cent.”

2. Recognition of the race problem in Colombia

49. Before embarking on a description of the various normative measures Colombia has taken in an attempt to prevent any form of discrimination in the country and to develop the content of public policy measures that seek to make effective headway with the process, it must be recognized that the Afro-Colombian and indigenous communities are still victims of various forms of racial discrimination in the country. As we shall show, the problem is not one of discriminatory acts permitted by law or deliberately perpetrated by the State institutions. It is, rather, a complex cultural problem with its roots in the history of Colombia and Latin America, which has engendered a scenario in which the indigenous and Afro-Colombian communities have been traditionally subject to marginalization, poverty and vulnerability to violence.

Accordingly, Colombia's poverty and violence problems tend to affect more particularly these communities or the areas and regions in which they live.

50. Colombia has manifestly stepped up its fight against poverty, especially where it is most latent, and has also succeeded in promoting better scenarios of participation, equality and preferential treatment of its minority communities in recent years. This report will therefore deal with the development of each of the measures the State has taken in its attempt to confront the challenges left over from our country's colonial past and which still appear in the form of various discriminatory practices, especially against indigenous and Afro-Colombian communities.

3. General legal structure to fight discrimination

51. Colombia takes great pride in its ethnic, linguistic and cultural diversity, comprising Mestizos, indigenous peoples, Whites, Blacks and Mulattoes. That diversity brings together traditions of the American, European and African peoples. It is a rich and diverse country of mixtures and reciprocal influences that give it its multiethnic and multicultural character.

52. While Colombia has a predominantly Mestizo population, four main ethnic groups can be identified as standing out from the bulk of the Mestizo population, owing to both their geographical location and their cultures: (a) the Afro-Colombian communities; (b) the indigenous communities; (c) the Raizal communities of the Archipelago of San Andrés, Providencia and Santa Catalina; and (d) the Roma or Gypsy people.

53. The Colombian State's decades-long efforts to recognize the rights of the various ethnic groups living in the country basically gave birth to the 1991 Political Constitution of Colombia.

54. Laws on the subject already existed prior to the 1991 Constitution. These laws, far from being abrogated, are still in force and have today been supplemented by a number of constitutional provisions. For example, in addition to the provisions of the 1989 Convention (No. 169) of the International Labour Organization (ILO) on indigenous and tribal peoples in independent countries, other pre-Constitution laws and decrees are still in force, some of them dating back to the nineteenth century. The most significant is Act No. 89 of 1890, under which the indigenous sectors still enjoy the special status in force for indigenous peoples during the colonial era, reintroduced by the law, which envisages, inter alia, the right of self-determination, as well as exemption from military service and the payment of taxes. In addition to this statute law, mention should be made of customary indigenous law, tribal law and the customs and traditions of indigenous peoples.

55. Discussion of the Constitution has pointed up the needs of ethnic groups and opened the way for self-recognition of a multiethnic and multicultural Colombian nation. This new Charter also generated significant progress on the legal front by calling for regulations that are in line with its spirit and define a framework of action for the State in favour of minorities.

(a) Constitutional framework

Constitutional framework relating to the right to equality and to the prohibition of discrimination

56. The Political Constitution adopts a multidimensional approach to equality, since while it places emphasis on formal equality it also calls for the attainment of material equality, embodies the concept of equality of opportunities, incorporates the principle of equity, includes the criterion of difference and calls for affirmative action to be taken in favour of groups that are discriminated against or marginalized and for special protection for persons in circumstances of manifest weakness.

57. For example, the Constitutional Court, in its important ruling C-345 of 1996, established the following six components of the right to equality in the Colombian Constitution: (a) a general principle whereby all persons are born free and equal before the law and shall be given equal protection and treatment by the authorities; (b) prohibition of discrimination; (c) the duty of the State to promote conditions for ensuring that equality is real and effective for all persons; (d) the possibility of according advantages and prerogatives to groups that are discriminated against or marginalized; (e) special protection of individuals who, on account of their economic, physical or mental condition, find themselves in patently vulnerable circumstances; and (f) sanction of any abuse or ill-treatment perpetrated against such persons.

58. The following is a list of the constitutional articles concerning the right to equality and non-discrimination in Colombia; mention of all the articles concerned with rights of Colombian minorities will be made further on.

59. Article 5 of the Constitution begins by affirming that the State recognizes, “without any discrimination, the primacy of the inalienable rights of persons (...)”.

60. Article 7 provides that the State “recognizes and protects the ethnic and cultural diversity of the Colombian Nation”, which implies the simultaneous presence of many groups as an essential value of our nationality, a fact that was ignored and wrongfully swept under the carpet virtually throughout our republican history.

61. Article 13 constitutes the fulcrum upon which the rights, duties and obligations of all persons regarding equality are based. This article declares that “all persons are born free and equal before the law, shall be given equal protection and treatment by the authorities, and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy.”

62. The second paragraph establishes that the State must promote the conditions that make equality “real and effective” and “shall adopt measures in support of groups that are discriminated against or marginalized”.

63. The third paragraph declares that the State “shall especially protect those individuals who, on account of their economic, physical or mental condition, find themselves in patently vulnerable circumstances (...) and shall sanction any abuse or ill-treatment perpetrated against them”. It has turned out to be extremely difficult to develop this basic postulate owing to the

complexity of recognizing that equality also involves the possibility of unequal treatment of those who find themselves in equally diverse situations. In accordance with the foregoing, equality as a basic principle will lead to its application as a general rule unless a person who attempts to mete out differential treatment can prove that such treatment is necessary, reasonable or advisable. In order to determine whether differential treatment can be justified in specific cases, the Constitutional Court has been applying the “reasonability test” methodology in order to assess whether differentiated treatment is acceptable in the light of the provisions of the Constitution, by putting the following questions:

- (a) The existence of an objective pursued through the establishment of unequal treatment;
- (b) The validity of that objective in the light of the Constitution;
- (c) The reasonability of unequal treatment; in other words, the relation of proportionality between such treatment and the aim pursued.

64. Another provision that explicitly enshrines the principle of equality is article 43, which establishes equal rights and opportunities of men and women and affirms that women “may not be subjected to any type of discrimination”.

65. Article 68 declares that in State education establishments “no person may be obliged to receive religious instruction. The members of ethnic groups shall have the right to education which respects and develops their cultural identity. The eradication of illiteracy, and the education of persons with physical or mental disabilities or the specially gifted are special obligations of the State.” This same article also provides the right to education that respects traditions. “The members of ethnic groups have the right to education which respects and develops their cultural integrity”.

66. Article 70 affirms that “The State has the obligation to promote and foster access by all Colombians to their culture with equality of opportunity by means of permanent education and instruction (...)”. Access to culture is also a means towards reciprocal recognition in the midst of the diversities that make up the Colombian nation. This recognition is necessary for fostering attitudes that promote solidarity, tolerance and mutual respect with a view to attaining an inclusive and just society.

Constitutional framework relating to ethnic rights as a whole

67. In addition to the regulatory development of the right to equality, the Colombian Constitution contains several articles that make specific reference to the rights of the country’s ethnic minorities. See the table below:

Political Constitution	RIGHT PROTECTED	CONTENT
Articles 1 and 2	Fundamental rights	Definition and essential purposes of the Colombian State
Article 7	Ethnic and cultural diversity	Obliges the State to recognize and protect the ethnic and cultural diversity of the Colombian nation
Article 10	Indigenous languages	Establishes that the languages and dialects of ethnic groups are official in their territories
Article 8	Natural resources	Obligation of the State and of individuals to protect the nation's assets
Article 11	Right to life	Guarantees the right to life
Article 12	Right to ethnic integrity	Guarantees the right against forced disappearance, torture, and cruel, degrading or inhuman treatment or punishment
Article 13	Equality	Guarantees the right to equality
Article 17	Fundamental rights	Prohibition of slavery
Article 18	Freedom of conscience	Guarantees the right to freedom of conscience
Article 19	Freedom of worship	Guarantees the right to freedom of worship
Article 37	Right of assembly and freedom of expression	Guarantees the right of assembly and public and peaceful demonstration
Article 38	Free assembly	Guarantees the right of free assembly
Article 40	Civic participation	Guarantees the right to civic participation in the control of political power
Article 43	Equality	Guarantees the right to equality for women
Article 53	International labour conventions	Form part of domestic legislation
Article 63	Protection of collective property	Protects the communal lands of ethnic groups and <i>resguardos</i> , declaring them inalienable, imprescriptible and immune from distraint
Article 64	Agrarian workers	Promotes progressive access to land ownership for agrarian workers, both individually and in association, and to education, health, housing, social security and other services in order to improve peasants' income and quality of life
Article 65	Food	Obligation of the State to provide special protection for food production
Article 67	Education	Guarantees the right to education as a social duty
Article 68	Education and culture	Guarantees the right to receive the type of education that respects and ensures cultural identity

Political Constitution	RIGHT PROTECTED	CONTENT
Article 70	Education and culture	Guarantees access to culture as the basis of national identity
Article 72	Rights on archaeological riches	Guarantees the regulation of special rights of ethnic groups located in territories containing archaeological riches
Article 93	International human rights conventions	Primacy of international human rights treaties in domestic legislation
Article 94	Innominate rights	Inherent in the individual
Article 96	Nationality	Right of the indigenous people to Colombian nationality
Article 171	Political participation	Special constituency for indigenous senators
Article 214	States of exception	Human rights and fundamental freedoms may not be suspended
Article 176	Political participation	Special constituency for House of Representatives
Article 246	Justice	Special indigenous jurisdiction
Article 247	Justice	District judges
Article 286	Territorial autonomy	Territorial entities of the Nation
Article 287	Territorial autonomy	Rights of the territorial entities
Article 329	Indigenous territorial entities	Establishment in accordance with the law and with indigenous participation
Article 330	Administrative autonomy	Self-government in the indigenous territories: in accordance with their customs and traditions
Article 330 (Paragraph)	Participatory democracy – prior consultation	Right to participate in all areas of individual, family, social and community life
Article 357	Participation in the current revenues of the Nation	Participation in the current revenues of the Nation

Source: Ministry of National Defence, Human Rights Group, “*Situación de derechos humanos de las comunidades indígenas en Colombia*”. First report, January-April 2002, and 1991 Political Constitution of Colombia.

International instruments ratified by Colombia – Constitutional Bloc

68. The 1991 Constitution endows international human rights instruments with domestic judicial force. Uprimny (2001) showed that four constitutional provisions play an outstanding role: firstly, article 53, whereby “duly ratified international labour agreements shall form part of domestic legislation”. Secondly, article 93, which establishes that international human rights regulations “have primacy in domestic law” and that all rights and duties enshrined in the Constitution “must be interpreted in conformity with international treaties on human rights ratified by Colombia.” Thirdly, article 94, which includes the clause on innominate rights,

establishes that “the enunciation of the rights and guarantees contained in the Constitution and in international agreements in force shall not be construed as negating other rights inherent to the human person which are not expressly referred to therein.” Lastly, article 214, which regulates states of exception, indicates that even in times of crisis “human rights and fundamental freedoms must never be suspended” and that, in any event, “the rules of international humanitarian law shall be respected”. In the light of the foregoing, in Colombia international anti-discrimination instruments form part of the “constitutional bloc”, which means that their provisions are binding, even at the constitutional level, so that no national law or provision may conflict with them. It is therefore important to review the international anti-discrimination instruments ratified by the Colombian State.

- (a) The International Convention on the Elimination of All Forms of Racial Discrimination (ratified by Act No. 22 of 1981 in Colombia);
- (b) ILO Convention No. 169 (ratified by Act No. 21 of 1991 in Colombia).

69. Also worthy of note are the following instruments:

- (a) Article 27 of the International Covenant on Civil and Political Rights concerning ethnic, religious and linguistic minorities and their right to their own cultural life, to profess and practise their own religion and to use their own language (Act No. 74 of 1968 in Colombia);
- (b) Article 1 of the American Convention on Human Rights (ratified by Colombia on 28 May 1973) establishes the obligation to respect rights, stating that “I. The States parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, *without any discrimination* for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.” Article 2 establishes the duty to adopt provisions in domestic law: “Where the exercise of any of the rights and freedoms referred to in Article 1 is not yet ensured by legislative or other provisions, the States parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.” Lastly, article 24 of the same international treaty enshrines equality before the law.

70. In short, it is worth repeating that the aforementioned international rules and treaties, seen in a context of international human rights instruments duly ratified by Colombia, form part of the constitutional legal regulations under the aforementioned *constitutional bloc*.

(b) Legislative framework relating to ethnic groups

71. The main instruments for the protection of rights of minority groups are as follows:

72. **Act No. 43 of 1993** establishes the criteria and principles that grant nationality to indigenous border communities.

73. **Act No. 48 of 1993** establishes that members of indigenous communities are not required to do military service.

74. **Act No. 60 of 1993** establishes the jurisdiction and the allocation of resources for indigenous *resguardos*.

75. **Act No. 70 of 1993** is intended to establish the mechanisms for the award of uncultivated lands to the Afro-Colombian communities, in addition to protecting their cultural identities and their economic and social development. This instrument includes the following obligation incumbent on the State: “The State shall penalize and prevent any act of intimidation, segregation, discrimination or racism committed against the Black Communities in the course of social relations, in the public administration at the top decision-making level, and especially in the mass media and in the educational system, and shall ensure implementation of the principles of equality and respect for ethnic and cultural diversity” (Act No. 70 of 1993, article 33). The Act also seeks to provide resources and guarantees for the Afro-Colombian population for participation in planning, discussion and decision-making and in the country’s regulatory procedures for recognizing collective property. Finally, the Act seeks to establish procedures designed to guarantee incentives and benefits for access to education in conditions of equality for the Afro-Colombian community.

76. Act No. 70 has been regulated by the following decrees: Decree No. 1332 of 1992, Decree No. 2313 of 1993, Decree No. 2374 of 1993, Decree No. 1374 of 1994, Decree 2314 of 1994, Decree No. 1745 of 1995, Decree No. 2248 of 1995, Decree 2249 of 1995, Decree No. 2344 of 1996, Decree No. 1320 of 1998, Decree No. 1627 of 1996 and Decree No. 1122 of 1998.

77. **Act No. 141 of 1994** establishes the mechanism for the award of royalties for the exploitation of natural resources located in indigenous territories.

78. **Act No. 145 of 1994** ratifies the Agreement establishing the Fund for the Development of the Indigenous Peoples of Latin America.

79. **Act No. 270 of 1996** is the statutory Act on Administration of Justice, which, inter alia, regulates the special indigenous jurisdiction and the administration of justice by the indigenous population.

80. **Act No. 397 of 1997**: the General Act concerning Culture is founded on the basis of the State’s recognition of the equal value of all cultural manifestations by the Colombian population. It establishes special rights for ethnic minorities and areas of participation for the different communities in discussion forums on adequate protection of their events and assets of cultural interest (Cultural Councils, Monuments Council, Arts Councils, etc.). The Act also creates the Ministry of Culture as the highest authority for devising public policies for the proper appreciation, protection and dissemination of the cultural identities of Colombians.

81. **Act No. 581 of 2000 (Quotas Act)** is intended to guarantee women the adequate and effective participation to which they are entitled at all levels of the branches and organs of State. This adequate participation is made effective under the general rule that women must occupy a **minimum of 30 per cent of senior decision-making positions**. In this context, special attention should be drawn to a few specific rules on the allocation of posts that must be provided through

the *terna* (short-list of three) system used in the upper echelons of the judicial branch and the control bodies such as the Office of the Attorney-General of the Nation and the Office of the People's Advocate, in which at least one woman's name must be included.

82. **Act No. 1152 of 2007 (Rural Development Statute)**. Among other things, this Act defines the organizational pattern of the indigenous *resguardos* and rural institutions for indigenous and Afro-Colombian communities in Colombia.

83. There are other laws which, without making specific reference to minorities' rights, establish special ethnic rights in their provisions. Of particular significance is **Act No. 100** (General Social Security System), which recognizes the particular vulnerability of ethnic minorities and provides special benefits for such population groups. Also of special interest is **the General Education Act**, which establishes affirmative action for ethnic minorities' access to education .

84. Mention should also be made of **Act No. 743 of 2002** – the Single Disciplinary Code – which states in its article 35 that no public servant may apply any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (art. 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, approved in Colombia through Act No. 22 of 1981).

85. **Senate draft Act No. 068 of 2007, combined with Senate draft Act No. 40 of 2007**: This would be an appropriate time to mention the existence of two combined legislative initiatives designed to create an anti-discrimination statute in Colombia. The Congress of the Republic is currently debating an ambitious regulation on discrimination based on a statutory draft Act submitted by the People's Advocate, combined with a similar draft submitted by a few parliamentarians (Senate draft Act No. 40 of 2007).

86. The purpose of the initiative is to develop the basic constitutional right to equality and promote conditions that render equality real and effective, through the prevention, elimination and punishment of any form of discrimination and to adopt measures in favour of communities that are discriminated against in Colombia. The instrument therefore not only endeavours to regulate racism, but encompasses all contemporary forms of discrimination. The draft Act, which constitutes a normative development of a fundamental right, was submitted as a *statutory* draft law, so that, should it be approved, it shall have primacy over ordinary laws and as such will serve as a parameter for the constitutionality of all laws that subsequently amend regulations on the subject.

87. Briefly, the text of the draft Act (as presented in the parliamentary committee report submitted by Senator Gina Parody for the first reading in the Senate of the Republic) establishes the following:

Title I, entitled "General provisions", regulates the purpose, principles, conceptual definitions and obligations of the State and of society on the subject of equality.

Title II, entitled “Discriminatory behaviour”, defines discriminatory acts by sector, namely: the sectors of public and private work, education, social security, and other forms of discrimination in public areas and services. It is therefore a descriptive list of forms of discriminatory behaviour, but does not exclude other acts that may be classified as discriminatory.

Title III, entitled “Accessibility”, defines the concepts of reasonable accommodation and the areas of application also defined by the draft.

Title IV, entitled “Affirmative action”, defines the term and establishes some legal parameters for devising specific measures.

Title V, entitled “Protection mechanisms”, seeks to give effect to the Statute so that it does not remain a simply symbolic or rhetorical right. It therefore refers here to the remedy of *tutela*, to popular action, to existing litigious or ordinary remedies and to the policy measures for rendering the law effective. It particularly proposes a measure for the reversal of the burden of proof commonly applied in comparative law, and it proposes to compensate, through procedural law, the imbalances of power between the victims and perpetrators of discrimination. In fact, as the Constitutional Court has pointed out, “acts of discrimination are usually difficult to prove. For this reason, it is appropriate that the burden of proving the absence of discrimination should rest with the authority that issues or enforces a legal provision and not on the person alleging the violation of his/her right to equality, especially when the classification of a person is suspect since it relates to elements explicitly defined as discriminatory in the light of constitutional law”.

Title VI, entitled “Sanctions and reparation”, is also designed to guarantee the effectiveness of these provisions. It governs full reparation, educational sanctions and economic and disciplinary responsibility, as well as police and penal sanctions. Special reference should be made of the classification of the crime defined as “incitement to discrimination”, which seeks to punish incitement to discrimination for suspect or sensitive motives.

Title VII, devoted to the “final provisions on public policies”, regulates State policies for prevention, promotion, instruction and culture through equality, as well as in training and education, establishes estimates on information and statistics and, at the same time, establishes the obligation to promote planning and budgeting with anti-discrimination indicators.

88. This important draft Act must go through its four statutory readings by 20 July 2008. It must be made abundantly clear that to date it is no more than a mere legislative initiative which may well fail in its difficult passage through Congress. It is therefore important to establish that it is not a binding normative provision and that, in all probability, it will not reach the end of the process or become part of the legal system in the future.

(c) Framework of case law relating to ethnic groups

89. Since its inception the Constitutional Court has issued over 50 rulings on the rights of the indigenous people, through which it settles existing doubts about the constitutional provisions, the most important of which are described below.

Ruling	Protected right	Content
T-567-92	Protection of ethnic and cultural diversity	Establishes the constitutional duty to adopt appropriate measures in favour of groups that are marginalized or discriminated against.
T-188-93	Right to life	The authorities must respect the principle of autonomy of the indigenous peoples, the right to peace and to life and must exercise the powers that the law has conferred on them in order to protect and defend those peoples.
T-257-93	Collective ownership	A <i>resguardo</i> is not a territorial entity, but a form of collective ownership of the land, whereby the indigenous peoples have a right to participate in the use, administration and conservation of the natural resources existing on their lands.
T-380-93	Collective ownership	The indigenous community is a subject of basic collective rights: to subsistence, to life and to collective ownership.
T-405-93	Collective ownership	Affirms that the State, in exercise of its sovereignty, may enter into international agreements and treaties with the other governmental entities and establish strategies to comply with the commitments, such as maintaining law and order, controlling drug trafficking and protecting all residents on its soil without distinction based on social class, race, language or religion.
C-058-94	Rights of the indigenous peoples	Exempts the indigenous people living in their communities from compulsory military service.
C-089-94	Political participation	Right of ethnic minorities to form political parties and movements.
T-254-94	Autonomy	Gives constitutional recognition to ethnic and cultural diversity and endows the indigenous peoples with fundamental rights.
T-342-94	Freedom of worship	The freedom, recognized in the Constitution, to profess and propagate a religion, which carries with it the corresponding obligation not to seek, by force or other reprehensible or illegitimate means, to impose a uniform religion or culture on the different sections of society and implies the right to acquaint oneself with and practise any other category of thought or religious worship.
T-384-94	Right to equality	Any prohibition of the use of one's mother tongue denies the fundamental principles enshrined in the Political Constitution and provokes a lack of communication among indigenous groups and their members.

Ruling	Protected right	Content
C-104-95	Collective ownership	The right of collective ownership exercised on indigenous territories is of vital importance for the cultures and spiritual values of the indigenous peoples.
C-394-95	Special jurisdiction	Defines the privileges relating to preventive detention of persons who have been public servants, government officials who enjoy a legal or constitutional privilege, and elderly and indigenous people.
C-139-96	Special jurisdiction	Analysis of article 246 shows the main elements of the indigenous jurisdiction in our Constitution
C-484-96	Special electoral constituency	The creation of a special constituency constitutes an act that directly affects election results, since it modifies – to a greater or lesser extent – the shape of political representation.
C-535-96	Autonomy	If peoples' own interests are to be served, there must be the possibility of different political options in each locality; this does not undermine the principle of unity, since each territorial entity forms part of a whole that recognizes diversity. The principles of unity and autonomy are not mutually exclusive, but must be harmonious.
T-349-96	Protection of ethnic and cultural diversity	Considering that cultural survival is possible only with a high degree of autonomy, it may be concluded that it must be interpreted as a general rule as calling for maximum autonomy for the indigenous communities and, therefore, that restrictions should be limited to those that are essential for safeguarding higher-ranking interests.
T-496-96	Indigenous jurisdiction	From the constitutional recognition of the special jurisdictions derives the right of the members of indigenous communities to a system of justice of their own. It grants the right to be tried by their own authorities, in accordance with their rules and procedures, in their own territory, in order to guarantee respect for the individual's personal world-view.
T-344-98	Indigenous jurisdiction	The National Constitution, in its article 246, governing special jurisdictions, expressly authorized the "authorities of the indigenous peoples" to exercise jurisdictional functions on two conditions: first, that those functions are exercised within the territory of the community concerned; and second, that the rules and procedures used for the purpose are not "contrary to the Constitution and the laws of the Republic". For this reason the Constituent Assembly left it to the legislature to determine, subsequently, "the forms of coordination of this special jurisdiction with the national judicial system".

Ruling	Protected right	Content
T-634-99	Autonomy	As in Western law it is a contradiction that land should be a subject of law, it must be inferred that the Constitution grants "rights" to the territory of the <i>resguardo</i> as an entity which in its identity is not only an integral part of the Colombian nation but is in addition a concept that also resides in culture.. Consequently the <i>resguardos</i> are something more than mere "land" and something less than "indigenous territories"; in other words, within the framework of constitutional philosophy these terms are not synonymous, even though they may coincide geographically in a law on territorial structuring. But it still cannot be said that a <i>resguardo</i> is a territorial entity. The particular nature of the <i>resguardos</i> affords a classification different from that of "land" or "territory"; hence the term "territorial jurisdiction" used in article 246 of the Constitution..
C-169-01	Consultation of the indigenous community	A genuinely representative and participative democracy can only exist if the formal and physical composition of the system corresponds satisfactorily to the various forces that make up a society and allows them all to participate in decision-making that affects them.
T-606-01	Collective ownership	As in Western law it is a contradiction that land should be a subject of law, it must be inferred that the Constitution grants "rights" to the territory of the <i>resguardo</i> as an entity which in its identity is not only an integral part of the Colombian nation but is in addition a concept that also resides in culture.. Consequently the <i>resguardos</i> are something more than mere "land" and something less than "indigenous territories"; in other words, within the framework of constitutional philosophy these terms are not synonymous, even though they may coincide geographically in a law on territorial structuring. But it still cannot be said that a <i>resguardo</i> is a territorial entity. The particular nature of the <i>resguardos</i> affords a classification different from that of "land" or "territory"; hence the term "territorial jurisdiction" used in article 246 of the Constitution.
T-048-02	Principle of ethnic and cultural diversity	Special indigenous jurisdiction and constitutional bloc.
T-1130-03	Differentiated rights	Criteria for differentiation of the indigenous communities from other associations of individuals.
SU-383-03	Prior consultation	Establishes the principles that must govern prior consultation and points out that this is a right of the indigenous peoples.
T-118-04	Indigenous court	Rules of interpretation applicable to conceptual differences and value conflicts in the application of different legal systems.
T-778-05	Right to cultural identity	Political participation of indigenous communities, differentiated treatment.

Ruling	Protected right	Content
C-030-08	Ruling of non-binding effect for failure to conduct prior consultation	The Constitutional Court declared the Forestry Act to be without force because the indigenous peoples had not been previously consulted, as required by the provisions of Act 21 of 1991 (ILO Convention No. 169).

Source: Ministry of National Defence, Human Rights Group, “*Situación de derechos humanos de las comunidades indígenas en Colombia*”: first report, period January-April 2002. Updated by the Ethnic Groups Directorate.

90. The Constitutional Court has also made considerable progress on the subject of the rights of the communities of African descent.

Ruling	Subject
T-422/96 Constitutional Court	Positive differentiation in favour of the Black community of Santa Marta
T-422/96 Constitutional Court	Participation of the Black population in the district education boards
C-484-96	Special constituency for electing members of the Black communities
T-574/96	Black Community – Protection of the Fishing Trade
C-169-01	Black communities’ participation in the House of Representatives
C-524/03	Application for non-constitutionality of some articles of Act No. 152 of 1994
C-086/94	San Andrés Archipelago – Right to discharge Raizal public functions
C-321/94	Characteristics of the Raizal population
C-353/94	San Andrés Archipelago
C-530/94	Special regime for the Archipelago of San Andrés and Providencia
T-111/95	San Andrés Archipelago
T-441/95	Population control San Andrés Archipelago
C-053/99	Cultural protection of the Raizales
C-454/99	Representative of the Raizal island communities
C-039/00	Special regime and autonomy of the San Andrés and Providencia Archipelago
C-169-01	Special electoral constituency
T-955-03	Constitutional rights of the Black communities; legitimization and protection of ethnic and cultural identity
T-190-05	Ruling on racial discrimination. This ruling condemns a commercial establishment for refusing entry to a woman of African descent on account of her ethnic status

91. In conclusion, note should be taken of a very recent ruling by the Colombian Constitutional Court on 23 January 2008 declaring the Forestry Act (Act No. 1021 of 2006) to be without force. In an unprecedented ruling in Colombia, the Court found that the country’s

indigenous and Black communities should have been consulted on that Act. On that ground the Court concluded that with its issuance, without that requirement having been met, the law in question violated article 330 of the 1991 Constitution as well as ILO Convention No. 169, both of which establish the fundamental right to prior consultation for the nation's culturally diverse Black and indigenous populations. This ruling constitutes the transcendental recognition of the constitutional rights of the country's ethnic and racial minorities in that it removes from the legal system a law that directly affected the territories in which a substantial proportion of these groups live.

4. Description of the national public policy on ethnicity: National Development Plans

92. In the 15 years of development of the new Political Constitution there has been evidence of progress regarding the recognition of the importance of a specific State policy on ethnic diversity, as well as implementation of measures intended to overcome the conditions of inequity affecting minority ethnic groups.

93. This recognition and the measures needed to address those conditions have been defined and expressed in concrete terms, especially in the National Development Plans. Article 339 of the 1991 Political Constitution establishes that Colombia shall have a National Development Plan every four years, comprising a general section and a plan for investment by national public entities. The general section will enunciate the long-term national aims and objectives, the medium-term targets and priorities of State action and the general strategies and thrusts of the economic, social and environmental policy that the Government will adopt. The public investment plan will contain the multiyear budgets of the main national investment programmes and projects and the specification of the financial resources required for implementing them.

94. The National Development Plans are prepared by the National Government, discussed in the Congress of the Republic and reviewed by the Constitutional Court. In short, they establish the general thrust that will inform the State's most important policies.

95. It is therefore important to point out that the last three National Development Plans (1998-2002, 2002-2006 and 2006-2010) have included specific components designed to improve the ethnic groups' living conditions and to recognize and strengthen their cultural identity. This means that a public policy devoted to promoting improved living conditions for non-majority ethnic groups in Colombia has been a priority for the State for many years and will continue to be so until 2010.

96. Presented below are the main guidelines established in these development plans, which set out the Government's general public policy commitments regarding ethnicity in Colombia.

(a) 1998-2002 National Development Plan: "Change for building peace" (Andrés Pastrana Arango)

97. The National Development Plan of President Andrés Pastrana's administration contained a chapter entitled "Development and peace: instruments and priorities for peace-building", in which the topic "Ethnic groups" was developed.

98. This plan stipulated the following:

“1. *The Afro-Colombian population*

The overall objective of the National Government regarding the treatment of the Afro-Colombian population shall be the integration of these communities in its plans for poverty elimination, equity, peace-building, strengthening of human and social capital, promotion of competitiveness and increased productivity. In line with this overall vision, peace will be one of its prime concerns, as well as better and more efficient provision of services, which is the responsibility of the State.

The aim of the strategy for the Afro-Colombian communities in *Change for building peace* will be to continue the process launched with the issuance of the 1991 Constitution and its legal developments, in which Colombia's ethnic and cultural diversity is recognized and protected and the State's responsibility to protect the cultural and natural wealth of the nation is established.

[...]

The foregoing means that the Afro-Colombian communities will receive the attention of the national Government in *Change for building peace*. This measure will be geared to overcoming the obstacles in the way of this ethnic group's consolidation as an integral part of the Colombian nation, and those that prevent them from improving their standard of living and quality of life. Likewise, attempts will be made to develop their socio-economic and cultural potential and to ensure that participatory democracy serves to inform the actions of the State, with respect for their special ethnic and cultural characteristics, while contributing to the building and integration of the country that is dear to us all.”

The Plan set out the following strategies:

“Bearing in mind the diverse conditions in which the various Afro-Colombian groups find themselves across the length and breadth of the nation, the measure for developing these communities will obey a few general criteria, but will necessarily be differentiated and personalized in line with their cultural and territorial characteristics.

In the light of the above considerations, the strategies for the Afro-Colombian population will take into account: (i) the strengthening of human capital translated into the development of activities that enhance the social infrastructure, with respect for the population's social and cultural characteristics; (ii) the consolidation of productive activity based on the protection of biodiversity and fragile ecosystems, and support for sustainable production systems developed by Afro-Colombian groups, as well as new and promising production models; (iii) support for social capital that favours actions to consolidate identity and a sense of belonging in the Afro-Colombian population so that it may choose, participate and manage, without renouncing its special nature, also consolidating civil society organizations, collective territories, and their integration into municipal administrations; and

(iv) development of the processes of effective intervention and validation of participation models specific to each of the Afro-Colombian regions and groups so as to enable them to direct and control national policies which, when implemented, succeed in changing their living conditions.

a. *Basic social services [for the Afro-Colombian population]*

Measures in this regard are aimed at guaranteeing efficient and effective provision of drinking-water and basic sanitation services, access for the poorer Afro-Colombian population groups to adequate health care and prevention and to appropriate high-quality education; to that end, the following measures will be taken:

- *Basic sanitation*

Support will be provided for infrastructure works that comprise concrete actions for institutional development designed to strengthen entities that provide water-supply, sewerage and refuse-collection services, promotion of community participation and the technical and financial sustainability of the systems. Specific measures will be geared to:

- Boosting, through the Ministry of Development, the aquaculture programme in order to instruct the communities and local authorities in the management and maintenance of water resources and the water-supply and sewerage systems.
- Promoting the application of appropriate technologies, for example CINARA, the University of Valle Research Centre, for the development of water-supply systems, final disposal of sewage and solid waste, through the generation of designs that take the region's environmental and territorial characteristics into account.
- Strengthening legally authorized local operating agencies, through training and technical assistance for the operation and management of the water-supply and sewerage systems, as a strategy for increasing local capacity to manage these systems.

- *Health*

In addition to the provisions of the sectoral strategy of the Plan, support will be given to the decentralization of the service in the municipalities of the Afro-Colombian regions and to technical assistance; the mechanisms that ensure access to basic care and promotion and prevention measures for the marginalized urban and rural population will be strengthened, taking into consideration its ethno-cultural, social, environmental and economic characteristics.

Special attention will be given to promoting implementation of the territorial health plans for the collective territories of Black communities,

fostering links between folk knowledge and State supply, through areas of participation that comprise and incorporate ethnic, social, cultural and environmental factors.

- *Education*

In addition to the education strategies envisaged in the sectoral section, technical and financial support will be given to the formulation and implementation of the Afro-Colombian ethnic education project in the national education system, with support for projects for curriculum design, the qualification and professionalization of community teachers and education officers and the production of educational material, as well as sociocultural, linguistic and ethno-historical research, etc.

In order to carry out the proposed measures, it is necessary to train local, departmental, regional and national authorities, as well as municipal and departmental education boards, the National Education Commission, the education commissions and the Afro-Colombian ethnic education committees in the planning, implementation, monitoring and evaluation of education projects.

- b. *Productive activities*

In order to boost the productive development of municipalities with a significant Afro-Colombian population, an integral approach will be adopted, which envisages the production, processing and sale of products, generating the required supporting infrastructure with a view to increasing employment opportunities and the inhabitants' income level. To begin with, an inventory must be made of studies, research and accumulated experience in order to produce production maps of the Afro-Colombian regions. The measures contained in this strategy will be geared to:

- Supporting projects for transforming the basis of production in order to use it for strengthening self-sufficiency.
- Promoting the producers' networks in order to generate management plans for sustainable use of forests, the elaboration of sustainable production projects that add value, integrate into production patterns and generate markets with possibilities of integration into the national economy.
- Financing projects that lead to the establishment of stable markets providing a complete chain of production through the implementation of sales strategies and the creation of associative enterprises when the conditions and organizational level of the sector so permit.

- Promoting the creation, organization and strengthening of organizations of Afro-Colombian producers, microenterprises and businesses through training, technical assistance and funding of activities.
- Providing technical and financial support for the regulation process and launching of Act No. 70 of 1993.

c. *Institutional development*

Institutional development measures will be geared towards increasing the management capacity of the communities, civil society organizations and the municipal authorities in order to ensure that the regions in which the Afro-Colombian communities live enjoy greater autonomy that enables them to undertake their own development, applying criteria of decentralization, regionalization and civic participation. One of the first measures that will bring progress in the fulfilment of these objectives will be a countrywide ethnic and cultural survey, which will be extremely useful for determining the territorial location of these communities and their characterization in social and cultural terms.

Special emphasis will be placed on the promotion of successful municipal management models, on training for groups of women, young people and community leaders and for Black community groups occupying titled territories. Funding will continue to be provided for training projects for communities located and working in urban and rural areas and for consolidation of associations of municipalities, providing them with advice on structuring of future work agendas. A priority measure will be the creation of and support for special units for the management of projects for the Black communities (art. 58 of Act No. 70 of 1993) which will support skills project development, formulation, execution and evaluation. The Colombian Agrarian Reform Institute (INCORA) will continue with the process of collective titling for the Black communities and support the launching of development programmes in titled territories. This body will also adopt and implement a special land purchase and endowment programme in support of the Afro-Colombian communities that own no land, or own it insufficiently, in those areas of the country where collective titling is not possible.

As a complement to the above, the activities of the IDB-Pacific Plan programme will continue in accordance with the conditions and priorities established in its formulation, adapted to the criteria and guidelines set forth in the National Development Plan.

At the same time, the Raizal population of the Archipelago of San Andrés, Providencia and Santa Catalina, given their geographical, social, cultural and economic characteristics, their island situation, overpopulation, marginalization and growing poverty, will receive support in order to find alternative solutions to these problems. For this to be achieved, it will be necessary to review the island's political and administrative system and promote the implementation of

mechanisms for the involvement of all social actors in development planning and management processes, as envisaged in the relevant laws: Act No.152 of 1994 (Development Plan Act) and Act No. 388 of 1997 (Territorial Development Act).

2. *Indigenous peoples*

The National Development Plan of the Government of President Andrés Pastrana (1998-2002) stressed that “the constitutional changes of the past decade call for a change in relations between the State, national society and the indigenous peoples so that such relations may continue to effectively recognize ethnic and cultural differences”. In the next paragraph it stated the following:

The objective of State policy on indigenous affairs is the defence, support, reinforcement and consolidation of ethnic and cultural rights, as set forth in the constitutional and legal regulations...

Recognition of territorial rights has been the axis on which relations between indigenous peoples and the State has been based, since the land has cultural value for their communities. Land, in addition to being a factor of production, is associated with traditions that identify their sense of belonging and roots as expressed through the various cultural *practices* that bind each group together.

The policy for the indigenous peoples will aim to attain the following objectives:

Consolidating the land-titling process by establishing *resguardos*, as well as their sanitation and expansion, where such measures are deemed to be necessary, in favour of the development of the indigenous peoples through INCORA. The National Territories Commission may be empowered to perform this task.

Strengthening and consolidating the indigenous providers of the subsidized health system, in an effort to bring about a substantial increase in the enrolment of indigenous people and the adaptation of the service to the communities’ world-view and cultural practices through the Ministry of Health. Likewise, mechanisms will be set up to devise, jointly between the indigenous communities and organizations and between them and the National Government, a system that guarantees effective related services.

Developing ethnic education programmes, with particular emphasis on bilingual and multicultural education, on primary education and on expanded secondary education coverage, using innovative technologies that are relevant to dispersed population groups. Also, to study mechanisms for amending Decree No. 804 of 1995 on ethnic education. Attempts will also be made to ensure that higher education institutions provide financial assistance for indigenous students; this will be coordinated by the Ministries of Education and the Interior.

Developing activities designed to allocate resources for paying priority attention to support for the establishment of indigenous territories as territorial entities; training in political and administrative management of *resguardos* and new territorial entities; formulation of development plans or life plans and training for generating legislative proposals relating to health and mines; this will be headed by the Ministry of the Interior.

Similarly, processing and updating the cartographical and statistical data on the indigenous territories through the use of a database for facilitating the process of self-managed and legal advisory services and consolidate the mechanisms for the protection of the human rights of the indigenous peoples, for attention to the displaced population and for developing strategies for swifter reintegration into their territories, and deal effectively with the situation of vulnerability in cases in which indigenous peoples suffer from precarious living conditions, cultural disintegration and lack of territory for their physical and cultural survival.

Promoting and strengthening the Human Rights Commission, seeking agreements on the legislative and administrative measures that may affect indigenous peoples. To that end, it is necessary for Decrees No. 1396 and No. 1397 of 1996 to be implemented.

Adjusting and improving the channels of coordination in the implementation of the indigenous policy among the various levels of Government and among the sectoral institutions.

Expanding coverage of the instruments of justice in indigenous territories by promoting the traditional forms of dispute settlement and developing the special indigenous jurisdiction, and devising and implementing the mechanisms needed for mediation in the settlement of disputes generated in the indigenous territories, in coordination with the Ministry of Justice and the Higher Council of the Judiciary.

Providing advice and support for programmes on public management, with emphasis on the administration of resource allocation, in collaboration with the Advanced School of Public Administration (ESAP).

Developing an inter-institutional scheme that affords the necessary coordination with the Ministry of the Environment in defining and utilizing mechanisms for evaluating any environmental impact on indigenous communities, and guaranteeing their participation in these processes.

Similarly, together with the Ministry of the Environment, defining the responsibilities of the State and of the indigenous communities with regard to environmental protection in their territories, ensuring their participation in the use and conservation of those resources and in the profits they generate.

Prior consultation will be the instrument for reaching agreement when it comes to large-scale international projects for exploring and using natural resources and the road infrastructure, which may affect their ecosystems or the survival of their culture. The process of regulating access to the genetic resources and biodiversity in their territories will be continued.

Finally, in coordination with the Ministry of External Relations, establishing international and border policies relating to the indigenous peoples by organizing forums, encounters and meetings so as to generate international agreements on development, cooperation, settlement of disputes, conservation of biodiversity and the defence and promotion of the rights of the indigenous peoples.

3. *The Roma people*

“Lastly, the 1998-2002 Development Plan stated that the Roma people, also known as Gypsies, are a tribal people with a strong nomadic tradition adapted to new forms of roaming. No census of this population’s precise numbers or exact location has been taken, although the main nuclei are located in the cities of Bogotá, Girón, Cúcuta, Cali and Sogamoso. Where this population group is concerned, the following has been established:

On the basis of constitutional responsibility, which involves recognition and protection of the nation’s ethnic and cultural diversity, as well as the duty of the State to protect its cultural riches, the national Government, headed by the Ministry of the Interior, ensures the inclusion of these communities [Roma] in its plans for reducing poverty and improving Colombians’ quality of life, respecting their special cultural characteristics and devising, together with the Roma themselves, measures for addressing their main problems.”

**(b) 2002-2006 National Development Plan: “Towards a community State”
(Álvaro Uribe Vélez)**

99. The National Development Plan of the first administration of President Álvaro Uribe Vélez established the need to build *social equity*, which called for: (a) increasing the efficiency of social spending so that more resources are translated into better results; (b) improving the focus of spending so that the resources reach the most needy; and (c) consolidating a social protection system so that economic crises do not totally compromise the future potential of the most vulnerable groups. The foregoing, among other things, is designed to strengthen ethnic groups, which are victims of social inequity. To that end, it has been promised that:

Measures will be sought to afford consensus building with the indigenous and Afro-Colombian communities in order to improve their living conditions and that the services of the financial and credit system to include these communities will be guaranteed.

Progress will be made on legal instruments that foster the development of the Raizal population of the San Andrés, Providencia and Santa Catalina Archipelago.

Regarding the Roma (Gypsies), mechanisms for recognizing their rights and customs will be proposed and programmes and projects for improving their living conditions will be promoted.

The indigenous peoples will be helped to design their own development plans in keeping with their world-view. The State will support their formulation and implementation and will also guarantee compliance with international conventions and treaties for the full development of the rights of the indigenous peoples.

In departments with indigenous peoples, the weight of the indigenous population will be one of the criteria for the definition of projects for purposes of allocation of resources for regional projects to the appropriate sectors, in accordance with their development plans. In the regional quota assigned to the department in health, education and basic sanitation programmes, account will be taken of ethnic health, ethnic education and basic sanitation projects for the indigenous communities.

The Government will coordinate and devise a strategy for channelling national, regional and inter-institutional resources for purposes of land acquisition and the establishment, expansion and rehabilitation of *resguardos* for the indigenous peoples.

The Ministry of the Interior will devise and define policies designed to raise the standard of living of ethnic groups and guarantee their participation in decisions concerning them.

The National Government will endeavour to implement the National Development Plan formulated by the National Department of Planning in 1998 for the Afro-Colombian population with a view to achieving a multi-ethnic and multicultural nation.

The National Government will adopt special emergency measures to guarantee human rights and remedy the adverse effects of from the armed conflict.

Impetus will be given to a special programme for the acquisition and provision of lands for Black communities that own no land or insufficient land. In addition, with the support of the territorial entities, a policy will be implemented to legalize and title urban land in subnormal areas, to improve the Black communities' access to various housing programmes and contribute to the equipment of sports, cultural and recreation areas, and guarantee a policy of employment, health, access to development loans and cooperation resources, all of which will serve to strengthen the productive development processes.

The Government will allocate resources and coordinate with the Afro-Colombian communities the formulation of a comprehensive long-term development plan in keeping with their own ethnic and cultural vision and characteristics, pursuant to Act No. 70 of 1993.

Institutions will be strengthened in order to guarantee the Black communities' participation and their own concepts and the promotion of their culture and consolidation of their heritage.

As recognition of the proposals that the Afro-Colombian, indigenous and Mestizo communities have been building up and in order to develop international commitments, a

State policy will be promoted for the strategic ecozone of the Colombian Pacific, based on Pacific Agenda 21 and the Pacific Plan.

In the areas identified within the Basic Territorial Management Plan as areas of indigenous consensus building, in which there are plans for infrastructure works of municipal interest and/or in order to develop the Special Economic Export Zones (ZEEE), the decision on land use will be excluded from the process of consensus with the indigenous authorities and will remain under the jurisdiction of the relevant municipal Territorial Planning Council.

Also envisaged is the design of a comprehensive registration and identification programme involving all existing ethnic groups, as established by law.

As far as financially possible, support will be given to the approval of the international instruments for the protection of the indigenous peoples.

The national Government will promote the strengthening of indigenous intercultural education in accordance with the ethnic education principles contained in its PCI.”

In parallel with the previous specific investment programme, and bearing in mind that the law and order situation in Colombia in 2002 was particularly hard on minority ethnic groups, there is a general programme entitled “Democratic Security”, for which the Government launched a differentiated strategy which included:

“Development of depressed and conflict zones

The intention is to re-establish a local economic base using productive and income-generating projects, especially in the agriculture and livestock, forestry, agroforestry and cattle-herding sectors. These projects will be agreed on with the communities and take into account all the links in the chain, from production right up to sales and agribusiness, in order to strengthen small producers within the chain.

A special boost will be given to the Alternative Development Programme (PDA) for replacing illegal crops in environmentally strategic zones, guaranteeing the resources for all stages of the process and ensuring that they flow effectively and smoothly, while at the same time generating other subsistence and income-generating alternatives in the short term, such as management and conservation incentives and food security programmes.

Impetus will also be given to measures for developing the physical and social infrastructure in these areas. In particular, the Colombia Profunda programme will be strengthened and road, airport and river projects begun or well under way will be completed. In addition, programmes will be developed to extend the supply of electricity to areas that are not connected, especially through projects for small hydroelectric plants and/or construction of new networks, normalization of the service in connected and non-connected areas, community telephones and information technologies.

In depressed and conflict areas, support will be given to the Regional Development and Peace Programmes (PDP), encouraging, inter alia, the process begun in the peace laboratories of Eastern Antioquia, Cauca and Catatumbo. This measure aims to

promote a process of broad social participation and institutional strengthening with a comprehensive approach that links national sectoral policies in target regions within the framework of the Development and Peace Programmes network, through partnerships between the State and civil society. The measures to be promoted will include economically viable and environmentally sustainable projects, using associative and economic solidarity schemes. In these programmes priority will be given to the municipalities located in conflict areas and to the departments most affected by the negative actions deriving from the conflict and the breakdown of the peace process.

Advances will be made on measures that promote the social reconstruction of the municipality of Bojayá y Vigía del Fuerte (Antioquia) and its area of influence.

Protection and promotion of human rights and international humanitarian law

Prevention of violations of human rights and international humanitarian law (IHL) will be based on the early-warning system, which will consolidate information for timely risk assessment and anticipation of acts against the community. At the same time impetus will be given to a strategy for instruction of the civil and military authorities and citizens in general.

The victims of forced displacement will receive comprehensive assistance in the areas of nutrition, shelter and health (physical and psychosocial). Minors will receive formal education assistance in State establishments, and for those orphaned by the conflict ICBF will be required to provide every social assistance in a comprehensive and dignified manner. The National Council on Care for the Displaced Population will meet on a regular basis and the Consolidated Registry and the System for Estimating the Extent of Displacement will be consolidated with support from the Social Solidarity Network.

The re-establishment of the displaced population will be promoted through land titling, housing subsidies and the development of associative productive projects financed with microcredit loans. A pilot programme will be carried out to enable nearly 30,000 families to return to their homes.

The Government will strengthen the National Fund for Care for the Displaced Population established by Act No. 387 of 1997.

The State will promote the strengthening of programmes for the protection of human rights defenders, trade unionists, indigenous advocates and/or social and political activists who are being persecuted and threatened, as well as witnesses, judges and personnel involved in criminal proceedings.

Comprehensive social, economic, educational and other measures will be taken to dissuade minors from joining illegal armed groups, and they will be encouraged to break off ties with such groups with a view to their full reintegration into society.

The Government will strengthen the Special Committee for Promotion of Investigations of Human Rights Violations, thus guaranteeing the effective exercise of the principles, rights and duties enshrined in the Constitution, the law and the international treaties.

The Human Rights and IHL Unit of the Office of the Public Prosecutor of the Nation, which comes under the National Directorate of Prosecutors' Offices.

The National Government will prepare and execute a National Plan of Action on Human Rights and International Humanitarian Law.

A model for follow-up, evaluation and monitoring of public policies that have a bearing on human rights - both civil and political rights and those relating to economic, social and cultural, collective and environmental rights - will be devised and implemented.

The Government will approve and launch the execution of a National Plan against Anti-personnel Mines, which will contain the strategies, targets and measures for their destruction and for comprehensive care of victims.

The positive initiatives of civil resistance in some cities, such as Bogotá with its Territory of Peace programme, will be used to contribute to peace in the country. To that end, National Life and Human Dignity Day will be promoted.

The Government will formulate and implement measures for the prevention and eradication of human rights violations against women. It will promote respect for the integrity, freedom and human dignity of women on the part of both the State and the protagonists in the armed conflict.

The Anti-Personnel Mines Observatory created by Act No. 759 of 2002 for humanitarian mine clearance will be strengthened.

Strengthening of coexistence and values

The National Coexistence System will be adopted in the interests of institutional strengthening and consolidation of a national culture of coexistence. The system will function through consensus-building scenarios open to direct participation on the part of citizens, the public and private sectors and the international community. Within this framework, impetus will be given to coexistence and transparency seminars through the participation of the civic and community media in projects aimed at the peaceful settlement of conflicts and the recognition of and training in fundamental values such as solidarity, honesty, transparency, justice, tolerance and respect for cultural diversity.

With a view to building a new democratic and cultural form of civic mindedness, four major policy thrusts will be implemented in order to improve relations and foster the full development of creativity among Colombians: firstly, initiatives will be taken to promote the social ownership of the cultural heritage in the form of revitalization of historic centres and promotion and dissemination of Colombia's oral and intangible heritage. Secondly, the National Reading and Libraries Plan will be launched with the aim of making Colombia a country of readers and significantly improving Colombians' equitable access to information and knowledge. To this end some 590 public and private libraries will be built up, their goods and services base will be expanded, and book and reading campaigns will be conducted. Thirdly, the National Plan of Music for Coexistence will pay special attention to children and young persons belonging to orchestras, choirs, bands and other

groups all over the country. In addition, 200 musical bands will be helped with equipment, and Colombia's musical heritage will be researched, promoted and disseminated.

Effective public policies on women's human rights, which promote a culture of non-violence and respect for their multi-ethnic and multicultural diversity, will be established."

(c) **2006-2010 National Development Plan: "Towards a community-based State: development for all" (Álvaro Uribe Velez)**

100. The current National Development Plan aims to strengthen ethnic groups, which is why in its chapter on "Special dimensions of development" it establishes that, although the Political Constitution defines a set of rights for the entire Colombian population, article 7 specifically establishes the State's recognition and protection of the nation's ethnic and cultural diversity, as well as incorporating other special articles in different areas for ethnic groups.

101. In that regard the current National Development Plan recognizes the special circumstances of the country's ethnic groups and identifies specific challenges and strategies for dealing with them, as follows:

Recognition and protection of ethnic diversity

The National Government has established that "historically, the ethnic groups have been victims of marginalization and racial, social, political, economic and cultural discrimination. Their current situations continue to be unfavourable in comparison with the rest of the Colombian population. These groups are excluded from the benefits of development, with a low standard of living expressed in terms of poverty, inequality, violence, displacement, discrimination and deficient formation of human capital and fragmentation of the social fabric (...).

"In comparison with the rest of the population, these groups post higher rates of poverty, illiteracy and mortality (...).For these ethnic groups the National Government has been developing a strategy to deal with poverty and the social, legal, political, economic and cultural inequality from which they suffer; to reinforce their participation and autonomy; to strengthen their cultural identity; and to ensure their recognition, respect and appreciation by all of Colombian society (...).

Challenges relating to ethnicity

Indigenous peoples

The indigenous peoples require alternative solutions for strengthening their participation in territorial decision-making bodies; clarification and legalization of land ownership; and the acquisition, expansion and rehabilitation of *resguardos*. There is also a need to confront problems relating to the exercise of autonomy in their territories and to the high level of vulnerability and risk of physical and cultural disappearance of some indigenous communities owing, for instance, to the low standard of living, disease, malnutrition and the acts of violence perpetrated by illegal armed groups.

Afro-Colombians

Unlike the indigenous groups, the Black or Afro-Colombian population tends to be identified as a single homogenous group even though – despite a common ancestry – there are historical, social, cultural, economic and territorial dynamics that differentiate them. It is therefore necessary to devise, implement and evaluate differentiated policies that provide more pertinent responses for addressing the issues relating to this population group, taking its diversity into account. These policies must recognize the Afro-Colombians' contribution to our nation and improve their living conditions, strengthen their organizational and institutional processes, generate economic alternatives and overcome their situation of poverty and social exclusion.

Raizal population

In the case of the Raizal population, policies must seek to solve a number of problems such as the loss of essential components of their culture, the deterioration of their living conditions, environmental and natural resource problems, and external dependence for basic resources; increased poverty, few opportunities for employment and alternatives for young people.

Meanwhile, the population density of the Archipelago of San Andrés, Providencia and Santa Catalina which, according to data from the 2005 census, is 1,354 inhabitants per km², makes it one of the most densely populated islands in the Caribbean. At the same time, migration is generating on the Archipelago a phenomenon of transformation of the ancestral population into a minority within its own territory.

Roma-Gypsies

Regarding the Roma or Gypsies, one of the challenges is to proceed with specific studies that take account of their socio-economic situation, afford better knowledge of their reality and specificities and become reference points for the formulation of both national and territorial policies for this population. The visibility of this ethnic group and the non-stigmatization of their activities must also be encouraged. Additionally, it is necessary to promote the prompt establishment of a normative framework that expedites recognition of the rights of this ethnic group.

Generally speaking, what the various ethnic groups require is the guarantee of both access to and quality of basic services and support for the formulation and implementation of food security plans that allow them to overcome problems relating to malnutrition and afford them food self-sufficiency. It is also necessary to strengthen their participation and give them recognition in various institutional areas and develop information systems that involve the ethnic dimension in order to detect quantitative and qualitative changes in their living conditions and point the way to public policies that recognize their special characteristics.

Strategies

The following strategies will be implemented in order to foster the recognition and protection of the ethnic groups and intercultural relations:

General strategies

- Political, social, economic and cultural strengthening of the various ethnic groups;
- Promotion of participation and institutional coordination with the representatives of the ethnic groups;
- Improved institutional capacity for assisting ethnic groups at the national and territorial levels;
- Strengthened processes of follow-up and linkage of policies, plans and programmes designed for ethnic populations;
- Development and strengthening of information systems in order to guarantee proper execution and monitoring of measures and resources for these groups;
- Development of intercultural processes that afford linkage of plans, programmes and projects for improving their living conditions in keeping with their special characteristics;
- Design and implementation of affirmative policies;
- Definition of criteria for territorial and ethnic differentiation and inclusion of the youth dimension, to serve as a framework of action for the design and implementation of policies, programmes and projects;
- Inclusion of the ethnic dimension in the reports, plans and programmes of the national entities and international organizations relating to human rights and international humanitarian law;

Specific strategies

Indigenous people. A comprehensive policy for the indigenous peoples will be formulated in a participatory manner and will include aspects relating to territoriality, identity, autonomy and government, and development plans. This task of formulation will be coordinated by the Ethnic Groups Directorate of the Ministry of the Interior and Justice and will take into account other policies, plans and processes in which regional guidelines or strategies have been established.

Where territoriality is concerned, priority actions such as the following may be mentioned:

- Formulation of a national land acquisition and improvement programme based on existing studies and the requests made by the communities, which will be devised by the National Government in conjunction with the indigenous organizations;

- Financial and institutional strengthening of INCODER in order to continue to move forward with the establishment, expansion and rehabilitation of *resguardos*;
- Joint conduct with the indigenous organizations of a territorial characterization study that includes the items agreed in 2006 in the Indigenous Territories Commission, which will serve as the base for the design and implementation of the National Land Plan, by agreement between the indigenous communities and the National Government;
- Implementation of mechanisms that lead to the concerted solution of problems of jurisdiction over indigenous territories with the relevant authorities, in cases such as overlapping with parks and nature reserves;
- Support for the development of projects for the conservation, recovery and sustainable use of natural resources, implemented by the indigenous peoples, and strengthening of the indigenous authorities' environmental management capacity through training and project financing activities.

With regard to social rights and the strengthening of identity, support will be given to the following:

- Formulation and implementation of programmes for the construction and improvement of housing, drinking water and basic sanitation in keeping with the ecological and cultural conditions of each people;
- Development of health programmes based on ancestral lore in order to link them to the General Health and Social Security System. Total coverage will be available under the health system, and measures will be taken to guarantee effective and timely care.
- Expanded coverage of support and care programmes for special population groups such as the elderly, the disabled, children and expectant and breastfeeding mothers.
- Strengthening of indigenous education through the concerted definition of ethnic education programmes that will be linked to the education system, guaranteeing expanded coverage and improved quality for the various educational levels.
- Guarantee of the exercise of rights by the indigenous people in the process of sociocultural reconstruction, with prior recognition by the competent authorities.

The quest for greater autonomy and strengthening of their governments calls for:

- The communities' and organizations' greater participation in defining legal norms, administrative measures and projects that concern them.
- Strengthening of the indigenous authorities' capacities to govern themselves, and support and recognition of development within the dynamics of planning at all levels.

- Support for the autonomous process of strengthening indigenous governments and the special indigenous jurisdiction and its coordination with the national judicial system.
- Development of a programme of training in the proper use and management of the resources of the General Participation System and its monitoring and evaluation.

With a view to strengthening economic and productive development:

- Support will be given to pilot projects that are in keeping with the indigenous development plans and production systems, which will take into account the proposals being formulated for the indigenous communities with a high degree of vulnerability and risk of disappearance;

In addition, regarding other highly important topics relating to communities in special circumstances owing to their location or their vulnerability:

- In border areas support will be given for greater coordination of national and territorial entities with those of neighbouring countries in an effort to develop programmes for improving the living conditions of the communities living in these areas. The indigenous peoples located in these areas will be involved in the formulation of the plans and projects for the areas;
- Regarding promotion and protection of human rights, the indigenous peoples perspective is being included in the National Plan of Action on Human Rights, especially in terms of displacement prevention and care for the population that has been displaced or whose survival as a group is at risk.

Afro-Colombians. The National Government, pursuant to Act No. 70 of 1993 and CONPES No. 3310 of 2004, proceeded with the formulation of a comprehensive long-term plan for the Black, Afro-Colombian, Raizal and Palenquero population, which has served as a reference point for devising strategies that recognize ethnic diversity and promote its development.

One of the main strategies is to continue with the formulation of the comprehensive plan and to that end the National Government, through the Ministry of the Interior and Justice – Ethnic Groups Directorate – is to design a project that guarantees regional participation.

That process will incorporate this population's ethnic and cultural visions and their special characteristics and will take into account the characteristics of territories such as the Pacific, the Caribbean Coast, Valles Interandinos, Palenque, Buenaventura and the Archipelago of San Andrés, Providencia and Santa Catalina.

In addition, based on the aforementioned project, the Ethnic Groups Directorate of the Ministry of the Interior and Justice, in coordination with the Presidential Social Action Agency, will manage resources for international cooperation that make for greater strengthening of the process of the Comprehensive Plan.

At the same time progress must be made on the implementation of affirmative action for the Black, Afro-Colombian and Raizal population in the various incentives, projects, programmes and policies proposed by the National Government, especially those concerned with the Strategy for the Reduction of Poverty and Inequality. Progress must also be made on providing an information system that permits the identification, characterization and registration of this population group, in accordance with the provisions of CONPES No. 3310 of 2004.

For fostering economic and ethnic development, the following activities will be promoted and will be geared to:

- Regulating and developing Chapters IV, V and VII of Act No. 70 of 1993, promoting agro-ecological models, economic development processes, utilization of environmental goods and services and access to the new information and communication technologies, to name a few; environmental sustainability parameters must be borne in mind, territorial fragmentation and loss of biological diversity must be avoided and the characteristics of the population groups must be respected.
- Promoting the exchange of both territorial and sectoral planning experience, in order to put mechanisms, programmes and projects for the social and economic development of this population into practice.
- Fostering economic development processes designed to guarantee food security, involving the use of native seeds, and boosting larger-scale production processes, bearing in mind the acceptable limits of change in ecosystems.
- Generating economic alternatives based on sustainable use of the terrestrial and marine biodiversity of territories such as the Pacific and the Archipelago of San Andrés, Providencia and Santa Catalina, through activities such as ecotourism, green markets and the sale of environmental goods and services.
- Promoting associative and incubatory processes geared to the promotion of alternative industries such as cultivation, pharmacology, animal-breeding and others derived from economic activities such as fishing and mining.
- Promoting the design and implementation of a comprehensive programme targeting children and young people in order to develop a culture of enterprise and a sense of belonging.

Strategies will be promoted in order to improve levels of social development and will be geared to:

- Improving this population group's living conditions and opportunities and eliminating situations of inequity through expansion of coverage and quality improvement in the social sectors of health, education, housing, drinking water and basic sanitation. Likewise, promoting the inclusion of the Afro-Colombian population in policies formulated for achieving the Millennium Development Goals;

- Extending the coverage of the Families in Action Programme to the Pacific region, given the high density of the Afro-Colombian population there and the conditions of poverty of this region's inhabitants;
- Promoting the formation of Afro-Colombian human capital through: expanded coverage in the education cycle for boys, girls, young people and adults, generating conditions and incentives or tied subsidies that help prevent dropping out of school; and enhancing the quality and relevance of education and consolidating ethnic education processes;
- Guaranteeing access to higher education through instruments such as the strengthening of the loan cancellation programmes and the promotion of CERES; training for work, entrepreneurship and labour skills. Also, strengthening the implementation of the Chair of Afro-Colombian Studies, especially in those municipalities and/or departments with the greatest Afro-Colombian presence;
- Defining and implementing a public social protection policy, particularly in the area of prevention and health promotion and care;
- In the territorial context, boosting community participation as a key component of comprehensive management of the public or environmental services in rural, urban and island areas, replicating and adjusting some cultural practices relating to the use of resources and satisfaction of their basic needs;
- Researching and implementing low-cost methods for rainwater collection, and the use of other natural sources of water, in scattered communities that are difficult of access through the CARs and other relevant entities;
- Designing specific programmes for the construction and improvement of homes for the Black, Afro-Colombian, Palenquero and Raizal populations, in keeping with their particular territorial, ethnic and cultural characteristics.

In order to enhance cultural traditions there are plans to:

- Continue the process of collective and participatory construction of the National Plan of Culture of the Black or Afro-Colombian and Raizal populations, placing emphasis on strategies likely to strengthen the identity, self-recognition, upgrading, promotion and preservation of culture in all its manifestations and component parts.

Regarding territoriality, environment and biocultural diversity:

- To continue, in the framework of Act No. 70 of 1993, to explore possibilities of collective titling of uncultivated land other than in the Pacific region, such as the Caribbean basin, Putumayo, settlement areas, inter-/Andean valleys.
- To design a local diversification and economic restructuring programme that addresses biodiversity, making use of food, cultural, pharmacological, medicinal, ornamental, ecotourism, fishing and other forms of potential, especially in the Pacific region.

- To initiate a process with maritime, fishery and environmental authorities in order to define mechanisms for the recognition of rights of the populations located in coastal and maritime areas to utilize their resources.
- Coordination by the Ministry of the Environment, Housing and Spatial Development (MAVDT) and the Ministry of Agriculture and Rural Development of a working group with the relevant national and local entities and the community councils in order to analyse land issues in areas such as Barú, Islas del Rosario, Tierra Bomba and Hato Viejo.
- Formation of a task force with the representatives of the community councils and biosphere reserves such as SEAFLOWER in the Archipelago of San Andrés, Providencia and Santa Catalina which permits exchanges of experiences and the promotion of planning processes for sustainable development.

Strengthening of governance and institutional sustainability:

- To design and implement a programme of institutional strengthening for the regions with the greatest concentrations of Black or Afro-Colombian and Raizal inhabitants, with a specific component for the Colombian Pacific region which must be geared, inter alia, to improving the institutional capacity of the territorial and ethnic administrations and their links with social and community organizations for improved public management and proper performance of their tasks;
- To strengthen territorial management models such as associations of municipalities, community councils and other local organizations;
- To strengthen the interaction of environmental institutions with the territorial entities and Afro-Colombian and Raizal communities in order to guarantee the protection of the territories, access to various programmes and projects, and understanding of the regulations and their enforcement through management and accountability;
- To strengthen the organizational processes, community councils and representative bodies by: (1) support for their dynamics and boosting incentives for association with the territorial entities; (2) boosting training processes; and (3) generating inclusive participatory processes that are representative of broad sectors of the communities.

Strengthening and protection of human rights:

- To formulate, as part of the National Plan of Action on Human Rights and International Humanitarian Law, differentiated programmes that seek solutions to the problems affecting the Afro-Colombian communities in this regard;
- To implement programmes for the return of the displaced Black and Afro-Colombian population. Likewise, to develop programmes for differentiated care for this displaced population in host cities;

- Construct evaluation and monitoring indicators that are relevant for improving the effectiveness and efficiency of State measures for prevention and for the protection and exercise of the population's individual, social and collective rights.

Raizales. In the framework of the national Government's proposal, Vision for Colombia, Second Centenary 2019, the National Department of Planning (DNP) has promoted the holding of preliminary exercises among the Raizal population in order to identify their vision for long-term development and proposals for the sustainable use of the maritime territory. The following measures will be based on those proposals:

Organizational and institutional development and strengthening:

- Reinforcing areas of participation, representation and dialogue between the Raizal population and the National Government and other actors. Also, reviewing legal instruments leading to the consolidation of sociocultural and economic rights, in accordance with articles 7 and 310 of the Constitution.

Improvement of their levels of social and economic development:

- Promoting social development with the community's leadership and participation, in keeping with its traditions in the areas of health, recreation, sport, community participation, comprehensive education and training, and revival and promotion of Raizal culture;
- Promoting economic development through productive projects that generate employment for the indigenous population;
- Devising programmes for the recovery and protection of the natural island and maritime environment;
- Coordinating between the national and departmental governments the adoption of policies and instruments leading to the solution of public services issues in the Archipelago of San Andrés, Providencia and Santa Catalina;
- Training teachers of ethnic, intercultural and multilingual education for the island population and encouraging programmes of research and exchanges of experience and of teachers with English-speaking island States, especially those of the Caribbean.

Roma. In order to promote the recognition of the Roma people as an integral part of the Colombian nation and the protection of their sociocultural characteristics and specificities, the following measures will be adopted:

- Dissemination among national and territorial institutions and the public at large of information on this people's existence and the sociocultural richness of their lifestyles, under the 2001-2010 National Plan of Culture;
- Consolidation of information and statistics for making diagnoses that afford greater knowledge of lifestyles and living conditions and in order to provide information for

the definition of policies and programmes for their benefit in the areas of education, health, training for work, and housing;

- In territorial entities with Gypsy settlements or groups, promotion of their participation in the processes of planning and definition of development plans, with a view to strengthening them as an organization of civil society and as generators of proposals for improving their living conditions;
- Development of a participatory process with the legally recognized Roma organizations in order to establish medium- and long-term lines of action for education, health, and housing; access to mechanisms for financial support such as credit and subsidies for the poorest sectors of the population group, and progress on the legislative development that recognizes internal processes for organization and dispute settlement;
- Implementation, through the National Education Service (SENA) and the Ministry of Trade, Industry and Tourism, of programmes of skills development and technical training for work in branches such as crafts, arts and trades;
- Support for the establishment of associative businesses around family and Kumpania groups;
- Promotion of border policy activities with Central America and the Caribbean countries, making use of the geopolitical situation and cultural affinities, through binational agreements for facilitating Roma or Gypsy cultural, educational, sporting and commercial exchanges.

(d) Synopsis of the overall commitments of the public ethnic policy

102. In short, once the three latest National Development Plans are reviewed, it can be seen that there is a non-transferable commitment of the State to the specific and differentiated treatment of the minorities in Colombia. Hence, based on the acknowledgement that poverty and violence usually strike these communities with the greatest force, the public policy defined transcends the terms of office of the various governments and comprises common components, strategies and measures sustained over time and intended to be fine-tuned and strengthened with the passage of years. Moreover, it must be borne in mind that the National Department of Planning controls the monitoring and fulfilment of goals set in the development plans, with a view to ensuring that they are effectively addressed and implemented by all agents of the State. In the section of this report that will deal with the activities of the Colombian State relating to articles 2 and 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, the specific activities developed for the effective fulfilment of those commitments will be described.

**5. Special situation of public policy relating to women,
especially women belonging to ethnic minorities**

103. In accordance with the attributes of the Office of the Presidential Adviser on Equality for Women, the Colombian State has developed the following main activities regarding the elimination of racial discrimination:

104. For the past five years the National Government has been implementing a social policy, the monitoring of whose results from a gender perspective show that it affords equal opportunities for women and men. Within the framework of this policy, the Office of the Presidential Adviser on Equality for Women has been entrusted with the task of preparing and spearheading the launching of the Affirmative Policy for Women Builders of Peace and Development included in the National Development Plans (2002-2006 and 2007-2010), which is linked to the Social and Democratic Security Policy and comprises a set of programmes, measures and strategies in the following areas:

- (a) Employment and entrepreneurial development;
- (b) Education and culture;
- (c) Prevention of violence against women;
- (d) Political participation; and
- (e) Institutional strengthening.

This policy focuses its activities on women with least resources, especially women heads of households, entrepreneurs, micro-entrepreneurs and social and community leaders from different ethnic groups, and fosters their linkage to public policies and to the National Government's programmes, projects and strategies.

105. As part of the formulation of the National Plan of Action on Human Rights, the Office of the Adviser has played a permanent and active part in the Thematic Axis of Non-discrimination and Promotion of Identity. The group of representatives of State institutions in that thematic axis has jointly formulated proposals on the following themes:

- (a)1. Reference framework;
- (b) Problem of structuring;
- (c) Cause and impact trees:
 - (i) There is one (1) general tree on discrimination with ten (10) population trees – one per population. One population group comprises women and includes indigenous, Afro-Colombian and displaced women. There are also independent population groups that comprise indigenous and Afro-Colombian women;
 - (ii) Significant progress on defining cause and impact;
- (d) Scenario of challenge;
- (e) Goals to be attained.

In this way, the Office of the Adviser intends that the entire axis should work with a gender perspective in the various population groups and specifically endeavours to present the

guidelines and measures likely to eradicate discrimination against women, with their ethnic and cultural differences in mind.

106. The Gender Affairs Observatory (OAG) is a tool of the Office of the Presidential Adviser on Equality for Women and was created to monitor fulfilment of national and international regulations in force with regard to equality of women and gender equity and for monitoring public policy, plans, programmes, projects and budgets for identifying their differentiated impact, with a view to the formulation of recommendations that help eliminate discriminatory acts and fight the persisting gender inequalities in the country.

107. Accordingly, the OAG periodically monitors the statistical data produced by the Colombian State on the basis of the five thematic axes defined in the Women Builders of Peace and Development Policy:

- (a) Employment and entrepreneurial development;
- (b) Education and culture;
- (c) Political participation;
- (d) Violence against women; and
- (e) Sexual and reproductive health.

108. The process of gathering, processing, arranging and analysing statistical data enables the OAG not only to detect whether there have been changes in the situation of women and men, but also to verify enforcement of the legislation and the international treaties and conventions relating to gender equity.

109. The categories of analysis used by the OAG are:

- (a) Sex;
- (b) Age;
- (c) Geographical location; and
- (d) Ethnic origin.

110. In this connection, the information and data handled and distributed by the Office of the Adviser are clearly disaggregated by ethnic group and gender.

111. The Office of the Presidential Adviser on Equality for Women is currently participating in the activities established in the CONPES Pacífico document (CONPES 3491 of 2007, details of which are given below), which seeks to focus the actions of the Colombian State on five departments (25 municipalities) of the Colombian Pacific region with a substantial female presence.

112. This project serves to carry out the following activities devised for the direct benefit of the Afro-Colombian women living in that area of the country.

- (a) To grant loans of the order of 1.5 billion pesos to women entrepreneurs in the Pacific region;
- (b) To hold 15 workshops for encouraging the entrepreneurial spirit, 15 selection workshops and 3 fairs with the participation of the 5 Pacific departments;
- (c) To establish and strengthen women's community councils in this region ; and
- (d) To train 2,000 women in the region through SENA.

113. The Office of the Presidential Adviser on Equality for Women arranged and coordinated three laboratories and a central meeting of indigenous women in 2005 as an initiative for generating opportunities for dialogue and for communicating the importance of activities that indigenous women have been conducting from their communities. Each laboratory discussed special issues relating to the seven participating ethnic groups (Guambiano, Arhuaco, Wiwa, Wayúu, Kankuamo, Huitoto and Ticuna) regarding the needs and living conditions of the indigenous women in each indigenous community, on the basis of an analysis of political, economic, ideological and social power.

The *first regional laboratory* was held in Sierra Morena, Cauca, between 29 September and 2 October and was attended by 50 women from the 14 town councils of the Guambiano territory. Two members of the Arhuaco people attended as observers.

The *second laboratory* was held between 3 and 6 October in Valledupar and was attended by 52 women from the Arhuaco, Kogui, Wiwa, Kankuamo and Wayúu peoples. Also present at this event was an observer from the Guambiano people, who shared its experiences from the Cauca laboratory.

The *third laboratory* was held in Leticia from 26 to 29 October and was attended by 30 women from the Huitoto and Ticuna indigenous communities. Observers from the Guambiano and Arhuaco peoples also attended.

As an outcome of this venture, the Office of the Adviser organized a Central Meeting of Indigenous Women on 23 and 24 November 2005, which was attended by 54 women from the laboratories and by representatives of the State entities with competence in that field, indigenous organizations and international cooperation organizations. The event was used to communicate the results of the three regional laboratories and to discuss the main problems affecting indigenous women.

OAG Bulletin No. 8, which can be consulted on the web page of the Office of the Adviser, documents the process and makes a normative, statistical and academic evaluation of the current situation of the country's indigenous women.

114. Mention should also be made of the issuance of Acts No. 581 of 2000 (Quotas Act) and No. 823 of 2003 (Act concerning Equal Opportunities for Women), explained in detail further

on, as part of the measures taken by the Colombian State to promote the political rights of women (the former) and their economic, social and cultural rights (the latter).

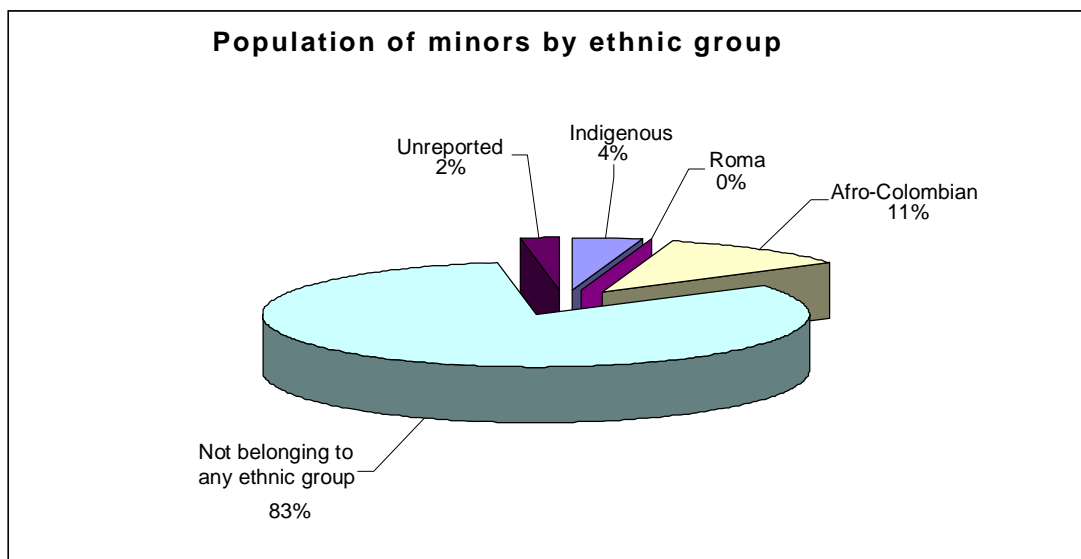
115. In conclusion, attention should be drawn to the creation in 2007 of a Women’s Commission within the Congress of the Republic; it is made up of women parliamentarians and discusses, prepares and promotes legislative proposals for consolidating the guarantee of women’s rights.

6. Special situation of public policy relating to children from an ethnic minority

116. The scenario for children from a minority ethnic group, like that of women, will be dealt with broadly and specifically in this section. First, a general diagnosis of the situation will be set out, followed by the latest relevant legislative measures and, lastly, the public policy framework established by the Colombian Family Welfare Institute (ICBF) for children from ethnic communities will be developed.

(a) Diagnosis

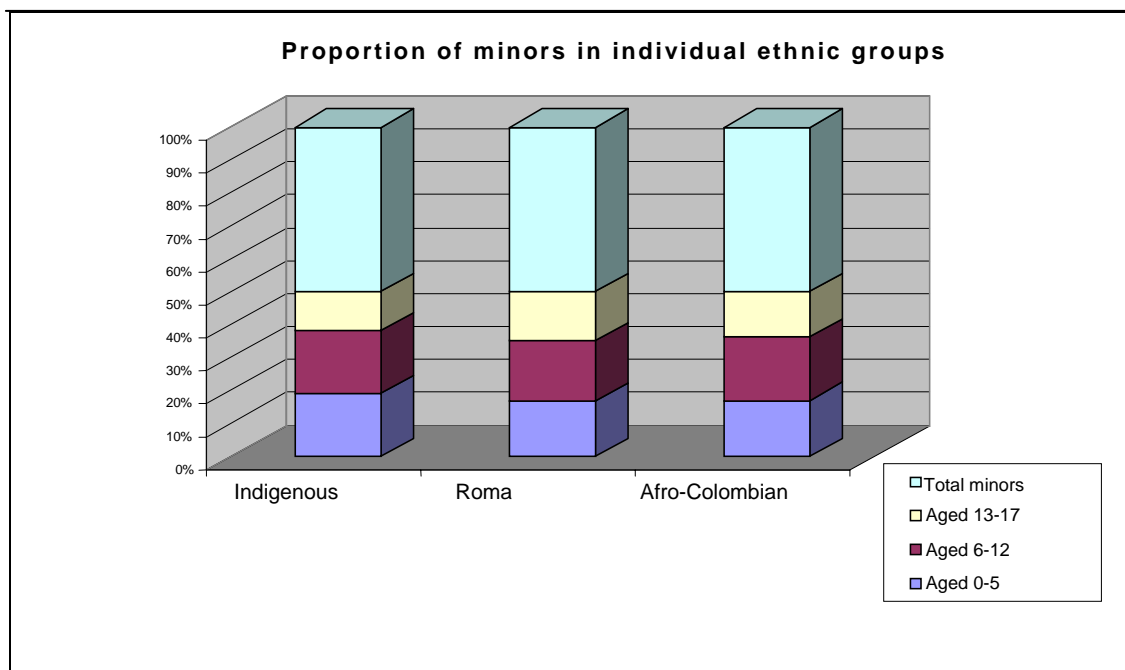
117. Regarding the population of minors, according to the same source, there are 15,184,330 minors, of whom 12,494,045 claim not to belong to any ethnic group; 1,715,456 claim to belong to the population of African descent, 638,837 to the indigenous population and 1,447 to the Roma population.



Of Colombia’s total indigenous population, 46 per cent are minors; 38 per cent of this population group are in the 0-5 age group, 38 per cent are in the 6-12 age group, and 24 per cent are in the 13-17 age group.

118. The Afro-Colombian population accounts for 40 per cent of all minors, 34 per cent of whom are in the 0-5 age group, 39 per cent in the 6-12 age group and 27 per cent in the 13-17 age group.

119. In the Roma or Gypsy population, 29.8 per cent are minors, 34 per cent of whom are in the 0-5 age group, 37 per cent in the 6-12 age group and 29 per cent in the 13-17 age group.



120. According to the 2005 census, three per cent of the total child and adolescent population, or 468,999 minors, suffer from some physical disability. Of these, 27 per cent are in the 0-5 age group, 43 per cent in the 6-12 age group and 31 per cent in the 13-17 age group.

(b) Legislative measures relating to children from ethnic minorities

Children's and Adolescents' Code

121. With regard to children, Colombia has issued Act No. 1098 of 2006, the Children's and Adolescents' Code, which brought Colombian legislation into line with the Convention on the Rights of the Child and other international obligations concerning protection of children and adolescents. The aim of this Code is "... to guarantee children and adolescents full and harmonious development to enable them to grow up within the family and the community in an environment of happiness, love and understanding. Recognition of human equality and human divinity shall prevail, without any discrimination" (art. 1)

122. Given the importance of understanding the country's ethnic diversity, the Children's and Adolescents' Code establishes recognition of the difference in the civil, political, economic and cultural rights of the various ethnic groups that coexist in our nation. From this viewpoint, provision is made for comprehensive protection to be applied differentially and to take the form of a public policy that informs current and future decisions in the interest of these communities, based on their specific characteristics.

Gender

123. Article 12 defines gender perspective "... as the recognition of the social, biological and psychological differences among persons owing to their sex, age, ethnicity and the role they play in the family and the social group". In this connection, in order to attain equity in society, implementation of the Code must take the gender perspective into account in all areas in which children and adolescents develop.

Ethnic population

124. Along the same lines, article 13 stipulates the guarantee of rights to which the children and adolescents belonging to the indigenous peoples and other ethnic groups are entitled : "Children and adolescents belonging to the indigenous peoples and other ethnic groups shall enjoy the rights enshrined in the Political Constitution, the international human rights instruments and the present Code, without prejudice to the principles that govern their cultures and social organization."

125. Similarly, article 39, paragraph 2, of the Children's and Adolescents' Code, referring to the family's obligations towards children and adolescents, stipulates that "Among indigenous peoples and other ethnic groups, family obligations shall be established in keeping with their traditions and cultures, as long as they do not contravene the Political Constitution, the law and the international human rights instruments."

126. Article 41, paragraph 22, identifies as an obligation of the State : "To guarantee ethnic education for indigenous children and adolescents and those of other ethnic groups, in accordance with the Political Constitution and the law governing the subject."

127. With regard to criminal responsibility of adolescents belonging to the indigenous population, article 156 states that: "Adolescents belonging to the indigenous communities shall be tried according to the rules and procedures of their own communities, in keeping with the special indigenous legislation provided for in article 246 of the Political Constitution, the international human rights treaties ratified by Colombia, and the law, provided that the penalty imposed does not impair their dignity. Likewise, they may not be subjected to ill-treatment or harassment, and the judicial authority shall be informed of the action or process that the community is to undertake in the light of whatever measure is taken."

128. In addition, article 43, paragraph 2, of the Code establishes measures for protection from any form of discrimination at school: "Children and adolescents shall be effectively protected against any form of ill-treatment, physical or psychosocial aggression, humiliation, discrimination or ridicule by their peers and teachers."

(c) Differentiated attention to ethnic groups on the part of the ICBF

Background

Start-up of institutional work with ethnic groups, 1979-1985

129. The start-up of the work of the Colombian Family Welfare Institute (ICBF) was situated within the norms existing at the time: *Act No. 07 of 1979* establishing the norms for child

protection, reorganizing the ICBF and establishing the National Family Welfare System; and *Decree No. 2388* of the same year, which imposes on the ICBF the obligation to formulate the National Family Welfare Plan in keeping with the national development plans and “to submit to the National Indigenous Policy Council the plans and programmes for protecting indigenous minors.” In accordance with these provisions, a start was made on implementing projects in the field of nutrition in some of the country’s departments, districts and communities of the period.

130. In addition to these experiences, regional offices such as those in the departments of Magdalena and Cauca, given the existence of important nuclei of indigenous populations in their territories, began to pay attention to these peoples’ cultural, social and economic characteristics in the quest for alternatives for implementing the nutrition programme limited to the delivery of food supplements.

131. On 22 February 1980 the Board of Directors of the ICBF approved the implementation of the Sierra Nevada de Santa Marta pilot project with a view to presenting alternatives for improving these communities’ living conditions and establishing general guidelines for institutional action with indigenous groups throughout the country.

132. Some of these initiatives were centred on inter-institutional coordination and linkage for the organization of primary care, education, health and nutrition, increased supply of food of high nutritional value and the demarcation of indigenous reservations.

133. Various lessons were drawn from these projects:

- (a) The need to incorporate the indigenous communities’ cultural visions, expectations and priorities as a prerequisite and essential component for determining the course that institutional activities should follow;
- (b) Interdisciplinary work, intercultural dialogue and ongoing evaluation of the activities carried out, as a central methodological tool in project planning and development;
- (c) Institutional flexibility in activities in order to ensure that they vary on a regular basis, on the understanding that indigenous communities also evolve, that their culture is dynamic and that change should be interpreted in such a way that erroneous traditionalist models are not imposed;
- (d) Investigation and ongoing validation of the findings with the indigenous authorities, and use of that knowledge in order to change situations and realities;
- (e) Exchange and validation of knowledge, abandoning unilateral actions and encouraging self-management processes;
- (f) Support for inter-institutional work and officials’ permanent commitment to the processes of intercultural dialogue and projects.

134. Accordingly, attempts are being made to secure the participation of the community in activities conducted jointly from their inception, and thought is being given to creating permanent and sound channels of communication. The aim of the projects was to start to develop

the communities' capacity to analyse their own reality and take appropriate decisions, finding better responses to regional and indigenous issues.

135. The Cauca region implemented projects for school canteens, school orchards, fish-breeding ponds, community demonstration farms, and programmes such as the "Materno Infantil", which include aspects for "green" diagnoses, recognition of typical farming practices, co-financing with community work and making plots of land available, all of which are key factors for the functioning of productive projects. A review of the attached information on current coverage of the ICBF programmes with indigenous peoples in the department of Cauca shows outreach to 12 municipalities and 15 *resguardos* of the Páez, Guambiano, Totoro and Yanacona peoples.

Emergence and consolidation of alternatives to ICBF care for the indigenous peoples, 1985-1991

136. With the issuance of Act No.55 of 1985, the ICBF National Headquarters allocated resources for implementation of the project entitled "Additional care for the indigenous communities and official old people's nursing homes".

137. At the time the Sub-Directorate for Nutrition was establishing criteria for intervention in indigenous communities with the idea of helping to improve their quality of life, strengthening the strategic design of community participation and self-management. On the administrative front, classifiers of expenditure for the purchase of equipment, the purchase and maintenance of livestock, farm inputs and fuel and the purchase of foodstuffs of high nutritional value and communications and transport were being established.

138. In this way the first general outlines emerged with the aim of directing institutional attention towards indigenous communities. Their main objective was defined as "promoting in the indigenous communities self-management processes for strengthening and improving their living conditions, in keeping with their own systems of social and economic organization, nutrition and social control." Parameters for action were also established in each area of nutritional, social and legal intervention.

139. Subsequently, ethnic development was pursued as "the process of consolidation and expansion of the scope of their own culture, through the strengthening of the socio-cultural unit's capacity for autonomy, in order to guide their self-development and the exercise of self-determination for building their future".

140. In methodological terms, there was the Participatory Action Research (IAP), a social practice that promoted research with the communities' active participation, which evolved as an instrument for transforming the social reality and for control over decisions affecting these groups of people. Moreover, this tool facilitated collective reflection and the projection of the community inasmuch as knowledge was produced, control over the process was achieved and decisions regarding its use were taken collectively.

141. The idea, therefore, was to generate a process in which the communities permanently reviewed their decisions (planning, execution and evaluation of activities) in the light of their own experiences, while new ones were projected with the aim of defending their autonomy and strengthening their organization.

Current differentiated ICBF plans and programmes

142. The knowledge acquired pointed up the need for a special ICBF policy for ethnic groups providing the conceptual framework and general outlines for the task of incorporating a differentiated-attention approach into the activities being developed by the Institute at all levels. Accordingly, August 2007 witnessed the start-up of formulation of a plan in that connection; it is currently being internally validated by ICBF. This policy, with its respective outlines, is intended to provide the practical theoretical framework for ICBF activities on the subject, thus filling in gaps in training and establishing clear working guidelines that will reinforce differentiated treatment of ethnic groups. In this connection, one priority of 2008 will be the dissemination and implementation of the ICBF policy for ethnic groups.

143. One way or another, in order to guarantee the right to equality of each and every child and adolescent in Colombia, ICBF, in pursuance of its institutional mission, is developing differentiated treatment of ethnic groups, which is anchored in three main lines of action:

- (a) Formulation of seven departmental and municipal plans of action for strengthening differentiated treatment in the following regions and divisions: Guainía, Arauca, Guajira, Meta, Guaviare, Córdoba and the municipality of Río Sucio (Caldas). These plans were devised in 2005 and 2006 with the assistance of ICBF National Headquarters. The plans are currently being executed and their outcomes monitored;
- (b) Individual initiatives of some regions and divisions, consisting of the design and implementation of programmes for differentiated attention to ethnic groups, sometimes through the “Ethnic group support “ programme. These efforts have yielded various results, including interesting experiences to be taken into account, as well as others that have been less successful and need to be evaluated in order to learn from the possible mistakes;
- (c) Other activities generated from the response to requests from the Public Prosecutor’s Office or the Constitutional Court have been:
 - (i) Work coordinated with the indigenous organization AZICATCH (Asociación Zonal Indígena de Cabildos de Autoridades Tradicionales de Chorrera) and the non-governmental organization (NGO) FUCAI (Fundación Caminos de Identidad) to address the serious malnutrition situation of the inhabitants of Chorrera (Amazonas). This work made it possible to allocate 400 child breakfast places; these will be distributed in the Chorrera inner city, and from there AZICATCH will distribute them among the 20 other communities of the area;
 - (ii) Humanitarian attention to the forcibly displaced population belonging the indigenous communities of Sicuani and the Punta Bandera *resguardo* in the municipality of Cumaribo, department of Vichada;
 - (iii) Monitoring of the situation of the Embera Chamí indigenous people, who are reduced to begging in the city of Bogotá. In coordination with the Ministry of the Interior and Justice and the Office of the Mayor of Bogotá, work is under

way on a plan for caring for this population group, and a repatriation plan is being devised to enable these families to return to their places of origin. The ICBF Bogotá regional office is actively participating in this venture and the establishment of the Risaralda regional office of ICBF is eagerly awaited so that these families can be included in the care plan for the Embera Chamí population in the department of Risaralda.

- (d) The programme on the rights of minors who have severed connections with illegal armed groups, with emphasis on rights of the indigenous peoples. In 2004, ICBF, together with the International Organization for Migration (IOM), the Latin-American Human Rights Association (ALDHU), the Office of the People's Advocate and various civil society organizations, implemented a project on "Promotion, prevention and training in human rights, international humanitarian law, collective rights and the indigenous legal route" with a view to publicizing the legal route followed for organizing national and international laws for the protection of the rights of the indigenous peoples and for minors under 18 who have broken away from illegal armed groups. This project dealt with the situation of a population group composed of minors, victims of political violence, who are members of indigenous peoples. The indigenous authorities were urged to decide on the path that their children and young people who had left the armed groups should follow, a situation that requires them to be consulted and supported for the protection of the minors themselves.
- (e) Research programmes on indigenous issues. Given the importance of information on the ethnic population living in Colombian territory, a great many human and financial resources have been invested in the development of research programmes such as:
 - (i) The indigenous family in Colombia. 1996;
 - (ii) Approach towards a state of the art on indigenous kinship and family in Colombia (1980-1994). 1996;
 - (iii) Study on the living conditions and quality of life of the Yukpa ethnic group of the Irota *resguardo* in Codazzi, César. Diagnosis and alternatives. 1997;
 - (iv) Family structure of the indigenous population of the pasturelands. 1997;
 - (v) Establishment of contacts with the indigenous communities of Vaupés for generating guidelines for institutional intervention. 1997;
 - (vi) Communities of the Domo-Planas and Caño la Sal reservations, department of Meta. Anthropology applied to ICBF intercultural consensus building. 1998;
 - (vii) Impact of the educational family welfare programmes on the preservation of the cultural values of Quibdó families and children. 1998;

- (viii) Cultural and social prospects of the indigenous communities of the Turpial-La Victoria and Wacoyo *resguardos*. Basis for ICBF intercultural management. 1999;
 - (ix) Plan for technical assistance to ICBF regional units and/or agencies for devising plans of action for differentiated attention to ethnic groups. 2004;
 - (x) Technical document on recommendations to the Colombian Family Welfare Institute for differentiated care for ethnic groups. 2005;
 - (xi) Brief synopsis of the activities of the Colombian Family Welfare Institute on behalf of ethnic groups. 1985-2003. 2005;
 - (xii) Mechanisms for monitoring feedback on action plans for strengthening ICBF differentiated care for ethnic groups. 2006.
- (f) Policies and programmes with a gender perspective. Lastly, ICBF is promoting policies and programmes with a gender perspective. As already mentioned, in this way ICBF contributes to the development of the National Policy on Sexual and Reproductive Health and Sexual and Reproductive Rights, especially with regard to prevention of teenage pregnancies, sexual health and sexual and reproductive rights for adolescents and the prevention of domestic and sexual violence; in addition, it signed a memorandum of understanding with the United Nations Population Fund (UNFPA) in order to develop the project on “Gender equity, rights and sexual and reproductive health in ICBF” by promoting gender equity and the exercise of sexual and reproductive rights as human rights, and their inclusion in the main areas for attention; in addition, it is working on strengthening a Mission Information System (SIM) within the Institute in order to highlight, in all its programmes and services, variables relating to the gender perspective and, on that basis, to opt for appropriate policy measures.

B. Article 2

1. Information on legislative, judicial and administrative measures designed to fulfil the commitment to:

- (a) Refrain from committing discriminatory acts;**
- (b) Refrain from encouraging discriminatory acts;**
- (c) Repeal or amend discriminatory laws;**
- (d) Prohibit or ensure the cessation of discriminatory acts; and**
- (e) Promote anti-racist movements.**

144. Two fundamental sets of measures must be mentioned in this regard: the first refers to the steps being developed by the National Administrative Department of Statistics (DANE) in order to deliver sound quantitative data on the conditions of the minority population groups in

Colombia, and to inculcate awareness of the importance of including an ethnic variable at all levels of State authority when any public policy is being devised. The second refers to the activities promoted by the Office of the People's Advocate with regard to discrimination, which have culminated in the presentation to the Congress of the Republic of a draft law which is intended to be a statute against discrimination in the country. Both sets of measures are explained below.

(a) The DANE measures: Census with an ethnic approach

145. One fundamental effort made by Colombia in the ethnic sphere has been that of seeking to obtain valid statistical information comparable over future years and of a nature to serve each of the specific public policies being followed to combat all forms of discrimination in the country. During 2005 an important step towards the achievement of this aim was made with the conduct of the national census by DANE; in that census, following earlier advances, the variable of ethnicity was officially recognized as a fundamental element in the entire process. What is more, and not only during the census, DANE has been conducting activities in different regions of the country designed to develop a statistical culture relating to the ethnic peoples. These activities were conducted within the framework of the Socialization and Dissemination Plan proposed by DANE, one of the pillars of which was the inclusion of the variables of ethnic membership. The manner in which this variable was applied in the 2005 national census is described below.

The 2005 national census

146. From the outset the Socialization and Dissemination project has been the development of a participative strategy targeting ethnic groups in relation to the 2005 General Census. It sought to develop trust in the objectives and characteristics of the census project through communication, dissemination and skills development activities designed to inform, motivate and orientate the Afro-Colombian population and secure their support and participation in the census project.

147. This strategy comprised information workshops for awareness development and training at national, regional and local levels held with ethnic organizations and leaders. These workshops were organized with the aim of establishing a basis necessary to ensure the success of the 2005 general census and which would enable the ethnic population to understand the characteristics of the project. Thus the work was directed to promoting an appropriate understanding of the project, the importance of self-recognition among the categories listed in the question on ethnic membership, matters relating to the collection of information in the field and other activities occurring during the course of the 2005 general census.

148. The activities conducted fell into two phases. Initially the emphasis was on contacts with the relevant actors for purposes of attainment of the objectives of an institutional nature and with the bodies representing the ethnic population. The outcome of these meetings was that DANE entered into concrete commitments with that population. Subsequently the activities undertaken by DANE with each of the ethnic groups within the framework of its responsibilities and commitments are described.

Institutions and bodies representing ethnic groups involved

149. Beginning in 2005, the Ethnic Groups team of the Census and Demography Directorate of DANE resumed the activities conducted in earlier years concerning contacts with the different actors in the ethnic population of Colombia. Continuous dialogue was maintained with Afro-Colombian leaders and organizations at national and regional levels. The methodology of the 2005 General Census, which was designed to yield information in the collective territories of the Black communities and the indigenous *resguardos*, was communicated to them.

150. The outcome of the meetings held with the national indigenous organizations and the high-level Afro-Colombian advisory bodies was the adoption of specific commitments between the parties. The National Indigenous Census Board (JIN), consisting of the four principal national indigenous organizations and the National Afro-Colombian Board, which consisted of a subcommittee of Afro-Colombian advisory boards on the census, was established. Likewise, at the regional level Territorial Indigenous Boards (JITs) and Afro-Colombian Territorial Boards (JATs) were established consisting of Afro-Colombian and indigenous advisory bodies and departmental and local organizations.

151. These boards were established by the Director of DANE under Decisions Nos. 692 and 786 of 2005, under which provisions were adopted concerning the participation of ethnic representatives in the 2005 general census. Their members had the task of holding discussions with DANE on all matters relating to the census at meetings in which knowledge of and a sufficiency of interest in the project were generated, thus facilitating its execution on a basis of active acceptance of the project and participation in it by the ethnic groups.

152. The functions of these boards, which were in continuous touch with the central and territorial offices of DANE, were as follows:

- (a) Convening and oversight to secure genuine participation by Afro-Colombians and indigenous people as operational personnel (investigators and supervisors) through the personnel management process;
- (b) Presentation of the proposal made by members of the Municipal Civic Census Board;
- (c) Support in the planning component of operations in ethnic territories;
- (d) Participation in matters relating to the use and exploitation of the census information, in particular regarding proposals for subjects to be explored in the post-census studies;
- (e) Access, through public invitation, for members of the ethnic groups to training courses for investigators at the CAN-DANE Advanced Studies Centre.

153. In addition, facilities for dialogue with the Afro-Colombian members of Congress were organized to enable them to obtain detailed knowledge of the census project and its scope in terms of production of statistical information from which to measure the size of the Afro-Colombian population and determine its characteristics.

154. The outcome of the provision of these facilities for dialogue and participation was the final drafting of the question on ethnic membership. This used, as criteria for the identification of ethnic membership, self-identification as such on account of cultural traits, such as membership of one of the ethnic groups (indigenous, Roma, Raizal from the San Andres and Providencia archipelago, Palanquero de San Basilio and Afro-Colombian or a descendant of an Afro-Colombian); language and territorial links; and recognition of oneself as such on the basis of racial traits currently in use in Colombia, such as Black and Mulatto.

33. On the basis of your CULTURE, PEOPLE or PHYSICAL CHARACTERISTICS, do you consider yourself to be:

1 indigenous ?

1.1. To which INDIGENOUS PEOPLE do you belong ?

--	--	--	--	--	--	--	--	--	--	--	--	--	--

(write name of people here)

2 Roma ?

3 Raizal from the San Andres and Providencia archipelago ?

4 Palanquero de San Basilio ?

5 Negro, Mulatto, Afro-Colombian or a descendant of an Afro-Colombian ?

6 None of these?

Go on to question 35

34. Do you speak the LANGUAGE of your people?

1 Yes

2 No

155. As regards work conducted with institutions with an active interest in ethnic affairs, separate meetings were held with a number of them, and during 2005 DANE convened four inter-institutional committee meetings. The aim was to socialize the project and its characteristics and scope and to secure the cooperation of the different institutions in their respective fields of action. In this way the commitment and assistance of institutions such as the Office of the President of the Republic, the Office of the Attorney-General, the Office of the People’s Advocate, INCODER, the Ethnic Groups Directorate of the Ministry of the Interior and Justice, the Ministry of External Relations, the Ministry of the Environment and other ministries were obtained.

156. The continuing support of the authorities in the departments, and particularly the units assigned to work with the ethnic groups, was also available, as was that of the local authorities in municipalities where ethnic populations predominated.

Commitments secured

157. The following is a summary of the specific commitments obtained by DANE with the ethnic groups, within the framework of the different facilities within which the institution worked with representatives of the Afro-Colombian, indigenous and Roma populations, for purposes of the conduct of the 2005 general census:

- (a) In the area of awareness development it was decided to hold regional workshops focusing on the questions concerning territoriality and ethnic membership in the census questionnaire. . Invitations would be sent through organizational channels to Afro-Colombian leaders, regional organizations and community advisory boards and to national and regional indigenous organizations;
- (b) DANE undertook to disseminate promotion of the census through the communications media, and particularly the “identification of self as Afro-Colombian” component, through television commercials and radio slots;
- (c) DANE undertook to train and fully integrate members of the ethnic population as operational personnel for the conduct of the census in the collectively-held territories of Black communities and in *resguardos* and their participation in the operational planning component in the ethnic territories;
- (d) There was also a commitment regarding oversight of the process by the ethnic communities, participation in the use and exploitation of the census information and an effort to maintain continuous communication with DANE.

Fulfillment of the commitments and the strategy for the ethnic groups

158. The strategy designed for the population distinguished between the territorial contexts in which the different ethnic groups were established. In this way distinctions were established between the measures taken with respect to the Afro-Colombian, indigenous and Roma population groups in the towns and those taken with respect to population groups living in *resguardos*, collectively-owned territories and Black communities and other rural areas.

159. The aim of these territorial distinctions was in line with the message of awareness development in terms of the importance of self-identification. The intention was to generate knowledge and acceptance of the ethnic and phenotypic categories covered by the question concerning ethnic membership in the census questionnaire. It is important to mention that these categories were consulted and that consultations took place with representatives of each group within the different facilities created by DANE from 1998 onwards in order to achieve optimum results in the measurement of the ethnic population in the census and other specialized surveys.

160. In addition, the territorial differentiation included in the design of the census strategy was a response to the need to establish a genuine relationship with the resident population within a framework of discussion matching the importance of the census information in each context and its range in line with the requirements of the communities themselves.

161. In that context three components were devised for the successful attainment of the objectives proposed in the strategy, namely: (a) the conduct of regional workshops;

(b) dissemination by means of instructional vehicles (posters concerning the 2005 census with the self-identification component clearly explained and a model pamphlet with specific texts outlining the nature of the ethnic and phenotypic categories covered by the census question); and (c) implementation of a campaign in the communications media (DANE placed the commercial produced by the organizations themselves on television, on both regional and national channels, as part of the self-identification campaign entitled “*Las caras lindas de mi gente*” (The beautiful faces of my people) as well as 10,377 radio slots in the various regions of the country).

162. In addition to the foregoing, it proved possible to include in the staff persons from indigenous and Afro-Colombian communities who had the approval of their own communities to go into the territories and collect information; this created trust in the operational stage of the census. The territorial boards cooperated fully in this process, helping in the preselection of the personnel to be incorporated. DANE, together with the training institutions and the ethnic territorial boards, conducted the preselection of the indigenous and Afro-Colombian personnel who entered the training courses for subsequent incorporation in the operational personnel collecting census information in the field.

163. The training provided the preselected personnel with a body of theoretical and practical knowledge covering conceptual, methodological and operational aspects of the census and imparting the necessary skills to the operational personnel; the outcome was a body of staff trained and ready for census implementation work in the field. Furthermore, the involvement of the communities in the planning of the census generated trust within the communities themselves, since the investigators and their supervisors were actual community members. That involvement also gave rise to substantial savings in staff for the translation of the questions and the explanation of their context, as well as in the time required for implementation on account of their confirmed knowledge of the territory.

164. Finally, agreements of intention were concluded whereby the community entered into a commitment with DANE to provide assistance and monitoring to ensure proper conduct of field operations. The interest of the communities and other ethnic social actors thus made for better communications and control over the census proceedings, ensuring full legitimacy for the results obtained.

Post-census activities

165. The work performed with the ethnic communities was a preliminary to a stage in the project - referred to as the post-census stage - extending beyond the actual implementation stage. It derives from a commitment by DANE to use and exploit the census information in a manner corresponding to the needs of the population in a specific territory and to work in coordination with the members of the communities themselves.

166. To comply with the foregoing, it has been planned to reach out to indigenous, Afro-Colombian and Roma leaders and representatives, through the Centre for Advanced Andean Studies (CANDANE), giving them access to the programmes available in that institution.

167. DANE also proposed to achieve an appropriate dissemination of knowledge of the elements of statistics among the ethnic groups. To that end it envisages, within the training

component of its Socialization and Dissemination project, the organization of a series of regional courses and workshops designed to provide the tools necessary for the use and analysis of the statistical information gained from the 2005 census in a manner permitting establishment of the socio-demographic composition of the ethnic peoples, that being an essential input for the elaboration of public development policies targeting that sector. In fact, the courses have trained members of the Afro-Colombian, indigenous and Roma populations in the use of the information yielded by the 2005 General Census, that being a necessity for the framing of national public policies and the development plans of their communities.

168. Workshops are also being held in the regions on a personal-attendance basis in order to permit better absorption of their contents by the participants with the intention that they should replicate the knowledge obtained at the workshops in their communities.

169. Finally, DANE is working on the inclusion of variables relating to ethnic membership and territorial location in a number of scenarios. For instance, with regard to the registers of births and deaths, which record the level of coverage and recognition of the behaviour patterns and factors surrounding births and deaths in these population groups, a pilot test of the new questions was carried out in the Valle department, where training was given both to health workers in the department and leaders and traditional healers in the different communities in the zone. Similarly, a membership module is being included in the general household survey to obtain continuous data on the different ethnic groups in the country. Finally, a single register of populations in *resguardos* and collective territories held by Black communities is being established with a view to obtaining continuing and up-to-date information on the ethnic populations of those areas. To that end work on that tool has been progressing with a view to organizing concertation on it through workshops and meetings with the different ethnic organizations and national institutions.

(b) Measures taken by the Office of the People's Advocate: the draft Anti-discrimination Statute

170. The Office of the People's Advocate has taken a number of measures of a general character in the fight against discrimination; there are enumerated below.

171. A working group has been formed consisting of the Office and organizations of civil society representing different groups which have in the past been consistently discriminated against in the country. The essential purpose of this group is to conduct a process of discussion on the subject of anti-discrimination which will point the way to proposals in the legal, policy, educational and other fields on the subject.

172. The group has been meeting every month since 2003 and has been discussing the need to carry out a nationwide study on discrimination within the country. The outcome of the discussions has been a draft law (in the preparation of which the group took part), in the form of a statute, on equality and non-discrimination. The purpose of this law is to develop the basic constitutional right of equality and to promote conditions designed to make that equality genuine and effective by preventing, eradicating and punishing all forms of discrimination and by the adoption of measures benefiting groups suffering from discrimination in Colombia (see above, paras. 86 et seq.).

173. The group is also elaborating a plan of action to combat discrimination, known as “For a Discrimination-free Nation”, which aims to contribute to the eradication of concepts, prejudices, stereotypes and discriminatory practices impeding recognition of the differences existing in the country.

174. It is also proceeding with the establishment of a repository of cases of discrimination based on the experiences of each individual as transmitted through the Web page of the Office. The information compiled will be useful to the Office for the preparation of reports and studies on the subject and corrective action.

175. The Office also exercises a direct and continuing influence on anti-discrimination policies and discriminatory acts through the Community Advocates programme.

176. Finally, the Office, with the assistance of national and international organizations and non-governmental organizations defending human rights, has promoted the existence of humanitarian missions.

2. Information on special and concrete (economic, social, cultural) measures to ensure the protection and development of racial groups

177. It is important to refer, in this part of the report, to the general measures of positive discrimination taken by the State of Colombia specifically for the benefit of the Afro-Colombian population on the Pacific Coast and the particularly vulnerable among the indigenous groups. The majority of the affirmative measures taken by the State of Colombia for the benefit of any of its ethnic minority population groups could without difficulty be described within this report in the sections relating to every one of the articles of the Convention. However, the cases of the Black population in the Colombian Pacific zone and of the endangered indigenous population groups are treated separately in this part of the report on account of the multiple facets (economic, social, cultural, etc.) of their conditions and the special efforts which the Government has devoted to them.

178. In addition, at the end of this section mention will be made of an important reservation made in the negotiation of the free trade treaty between Colombia and the United States of America under which Colombia retains the right to take affirmative measures benefiting traditionally minority communities.

(a) Special strategies for the Colombian Pacific zone

179. The following is a description of the special and affirmative strategies adopted to promote the development of the Afro-Colombian population in the Pacific basin and the regulatory instruments which put them into practice. These are: the Comprehensive Development Plan for the Pacific Coast (PLADEICOP); the comprehensive national long-term plan for the Black/Afro-Colombian, Palenquera and Raizal population 2006-2019; and the Intersectoral Commission for the Advancement of the Black/Afro-Colombian, Palenquera and Raizal Population.

180. The **Comprehensive Development Plan for the Pacific Coast (PLADEICOP)** laid emphasis on the potentialities and natural riches of the region and on the need to make maximum use of them. It was supported, inter alia, by the United Nations Children’s Fund (UNICEF) and

put into execution by the Cauca Valley Corporation (CVC). It is thought that this plan marked the beginning of the institutionalization of development in the Pacific zone, since it stressed the need to “convert the Colombian Pacific zone into a corridor carrying a heavy traffic in goods and services”. Thus the conclusions and proposals in the programme were directed to the furthering of infrastructure plans. These included the construction of the Atrato-Truandó Inter-ocean Canal and of the Inter-Ocean Overland Bridge between Bahía Candelaria on the Atlantic coast and Bahía Cupica on the Pacific. These plans have given place to new proposals, including those described below.

181. The **Pacific Twenty-One Agenda (AP XXI)** was formally initiated in 1998. It was designed to solve the problems of poverty and environmental vulnerability in the Colombian Pacific Coast region by means of a comprehensive and universal strategy concerning a future for the territory which would be in line with the cultural patterns of its inhabitants. It developed as a political process and a series of measures to achieve sustainable development to be completed within a 20-year time-span. The general objective set by AP XII was “to construct a model for the region which will contribute to the creation of a society which in its diversity will be just, equitable, tolerant and prosperous with a vision of endogenous and sustainable growth”. The second phase of AP XXI has been incorporated in the second objective (“Stimulate sustainable growth and the creation of employment”) in the “Towards a community State” National Development Plan. One of the components of the eighth strategy of that objective (“Environmental sustainability”) is the planning and administration of the environment.

182. **Plan Pacífico** was elaborated in March 1992 and has obtained the approval of the Governments of Cesar Gaviria Trujillo, Ernesto Samper Pizano, Andrés Pastrana Arango and Alvaro Uribe Vélez. It corresponds to the guidelines proposed by the United Nations Development Programme (UNDP), the World Bank and the Global Environmental Facility (GEF), which envisage the Colombian Pacific region as a genetic bank on account of its uniqueness and biodiversity.

183. The Plan Pacífico was conceived as an investment plan to develop human capital, build aqueducts and schools and establish facilities for concertation and effective agreements among communities. Its general aim was to contribute to sustainable human development in the Pacific region of Colombia, i.e., to enhance the productive opportunities and skills of the population to enable it to achieve greater and better formation of social capital, the latter term comprising human capital, infrastructure, the environment and institutional civic capital.

184. The concrete objectives of Plan Pacífico are as follows:

- (a) To consolidate the successes of the Democratic Defence and Security policy in the Pacific region;
- (b) To reduce, poverty, promote equity, foster employment, and advance towards a scheme of sustainable development for the inhabitants of the Pacific region which will respect their particular characteristics;
- (c) To take steps to ensure that the benefits derived from greater economic growth are translated into welfare for the Afro-Colombian and indigenous populations of the Pacific region; and

- (d) To promote convergence between the Pacific region and the rest of the country.

185. The first draft of the second phase of Plan Pacífico was announced by the President of the Republic and the Director of the National Planning Department; but it has not yet been officially confirmed. However, its main provisions are known.

186. For the second phase of the Plan the National Government will invest 8.8 billion pesos in the Pacific region of the country under the Development Plan during the period 2007-2010.

187. The resources will be invested in four main components: 1.8 billion pesos for Democratic Security and comprehensive parallel social measures; 3.9 billion for the poverty reduction strategy; 2.6 billion for infrastructure; and 500 million for other programmes.

188. Earlier plans for the revitalization of the Pacific region of Colombia gave rise to specific measures by various bodies (which are continuing even as this report is being prepared) and to planning documents of a mandatory nature. The National Department of Planning (DNP), in its capacity as the technical advisory body to the President, is the body responsible for giving material effect to the terms of the plans mentioned and to the national development plans. To that end the DNP has defined in operational terms and promoted the design and creation of strategies for the advancement of national public policies in the social, economic and environmental fields designed to promote equality and combat discrimination. The legal instrument for the achievement of these ends is a document known as CONPES (Document of the National Economic and Social Policy Council). In the case under consideration here it may be affirmed that the legal status of CONPES documents on the subject is comparable to that of a national plan for the promotion of racial equality and the fight against discrimination. This is because an instrument of this type lays down strategies and lines of action to be followed by designated bodies of State, through specific measures for the reduction of the inequality experienced by the ethnic communities, in areas related to their respective functions and in a context of communication among institutions.

189. Since 1992, four CONPES documents concerning priority attention for the development needs of the Pacific region of Colombia, and in particular those of its majority Afro-Colombian population, have been issued. The following are the four CONPES documents existing on the subject:

- (a) **CONPES 3169 of 2002** (“Policies for the Afro-Colombian population”). This document lays down the principal institutional commitments for the improvement of the living conditions of the Afro-Colombian population residing in the Pacific Basin (Antioquia, Cauca, Chocó, Nariño, Risalda and Valle del Cauca departments);
- (b) **CONPES 3180 of 2002** (“Programme for the reconstruction and sustainable development of the Urubá river in Antioquia and Chocó and the lower and central Atrato river. Development of CONPES 3169 (Policies for the Afro-Colombian population).” This document sets out the programme for the reconstruction and sustainable development of the Urubá river in Antioquia and Chocó and the lower and central Atrato river, areas in which the great majority of the inhabitants are Afro-Colombians victims of the violence generated by the conflict in the territory.

The programme is proposed as a development of the strategies set out in CONPES document 3169 of 23 May 2002 (Policies for the Afro-Colombian population).

- (c) **CONPES 3310 of 2004** (“Policy of affirmative action for the Black or Afro-Colombian population”). This document was produced partly in response to the recommendations of the Durban Conference and those of the Special Rapporteur of the United Nations Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. This document sets out the policy of affirmative action for the Black or Afro-Colombian population. It is designed to focus measures taken by the National Government on these communities, to set higher targets for coverage in national programmes, to implement affirmative measures benefiting the Black or Afro-Colombian population in the short term, to improve the systems of identification, measurement and registration of that population, to draw up a comprehensive long-term plan and to give effect to the provisions of the National Development Plan and CONPES 3169 of 2002. In pursuance of these aims the document brings together a number of directives, programmes and administrative measures designed to create conditions improving access to opportunities for economic, social and cultural development and to promote the integration of the Afro-Colombian population;
- (d) **CONPES 3491 of 2007** (“The policy of the State for the Pacific region”). This document establishes the application of the “A community State: development for all” policy contained in the National Development Plan. It is an ambitious document which seeks to bring about a revival in the Afro population of Colombia by endeavouring to bring the Pacific region into the ambit of national and international development as part of a strategic programme designed for social and economic renewal, fostering the improvement of the living conditions of its peoples while keeping in mind the natural ecosystemic conditions and the characteristics of the ethnic groups in the region.

190. **The comprehensive national long-term plan for the Black/Afro-Colombian, Palenquera and Raizal populations, 2006-2019.** To complement the plans described earlier, and to some extent in implementation of the commitments contained in CONPES 3310 of 2004, the comprehensive national long-term plan for the Black/Afro-Colombian, Palenquera and Raizal populations, 2006-2019, is in course of adoption. It can be seen that this long-term plan is not limited in scope to the Black communities of the Pacific region of Colombia but covers the entire Afro-Colombian population. Moreover, it does not replace the specific plans for the Pacific region, but rather seeks to provide elements for the elaboration and implementation of future State policies and provide benchmarks and guidelines for them in the area of positive differentiation. The primary objective set out in the plan is the abolition of the conditions of inequality and discrimination under which the Afro-Colombian, Palenquera and Raizal populations have laboured by measures of structural change as part of a specific policy of ethnic development guaranteeing respect for the ethnic integrity – cultural, environmental and territorial – of those peoples, their institutional and organizational strengthening as ethnic groups and the improvement of their quality of life in a gender and generational perspective. The plan was drawn up by a high-level advisory commission under the leadership of the National Department of Planning and the Ministry of the Interior and will certainly receive official sanction in the form of a regulatory instrument in the near future.

191. **Specific measures of affirmative action derived from earlier positive discrimination strategies favouring the Colombian Pacific region:** The National Government is planning to undertake the following affirmative action measures once the final touches have been made to the policy planning guidelines laid down in the most recent National Development Plan.

- (a) The Colombian Educational Credit Institute (ICETEX) will seek mechanisms in line with the particular characteristics of the Afro-Colombian population to strengthen the Educational Credits Fund for students from among these peoples with meagre financial resources and good school records. This is the subject of Decree No. 1627 of 1996 and involves the allocation of international cooperation funds. Among other things,
- (b) The Ministry of Education will extend coverage and improve educational standards, placing particular emphasis on the Pacific region. To that end:
 - (i) It will increase the numbers of places in secondary schools in municipalities in which a substantial proportion of the population is of African descent and, at the same time, increase the allocations of computers to those schools;
 - (ii) It will continue, under the “*Para que todos aprendamos*” (“So that we all learn”) programme (a literacy and basic education programme for illiterate young people and adults), to promote the spread of literacy and basic education and the improvement of their living conditions and well-being on the basis of an application strategy and educational models specializing in the education of young people and adults and comprising flexibility and limited attendance;
 - (iii) To increase coverage, the use of accelerated apprenticeship models will be introduced through the intermediary of private organizations acting as clearing houses, in cooperation with the Ministry of National Education, and targeting population groups displaced and marginalized by the *violencia*;
 - (iv) Similarly, incentives will be given through the Rural Education project (PER) for education at grassroots level. Measures will also be taken to promote and implement the elaboration, publication and dissemination of documents supporting education procedures for ethnic groups, analyses of the standards of educational service provided by the education secretariats, and concertation on plans of action for the development of an education of specific relevance to ethnic groups.

192. In connection with the foregoing, the Government is planning to take the following measures in the area of international cooperation to introduce the affirmative action measures referred to:

- (a) The Ministry of the Interior and Justice will take into account the situations of displacement brought about by the effects of internal hostilities, and also the situations of Afro-Colombians, when contributing to the formulation of the Human Rights Action Plan;

- (b) The Ministry of External Relations and the Colombian International Cooperation Agency will include in their strategies the management of international cooperation resources to promote the development of ethnic groups in situations of vulnerability, including the Afro-Colombian population. Among other things, they will promote the inclusion of the ethnic variable in the relevant international conventions;
- (c) The Ministry of the Interior and Justice will request the Higher Council of the Judicature for information on the numbers of Afro-Colombians involved in the different levels of the administration of justice, showing levels and grades.

The Intersectoral Commission for the Advancement of the Afro-Colombian, Palenquera and Raizal Population. Decree No. 4181 of 2007

193. Following inter-institutional meetings attended by the Ministry of Culture, the National Department of Planning, the High Counsellor for Social Action and International Cooperation, the Presidential Programme for the Promotion, Respect and Safeguarding of Human Rights and the Implementation of International Humanitarian Law, the Ethnic Groups Directorate of the Ministry of the Interior and Justice and the Office of the High Presidential Counsellor for the Management of International Agreements and Economic and Social Cooperation, an Intersectoral Commission for the Advancement of the Afro-Colombian, Palenquera and Raizal Populations was established by Decree No. 4181 of 30 October 2007 for the purpose of evaluating the living conditions of the Afro-Colombian, Palenquera and Raizal populations and submitting recommendations to the National Government for the abolition of the obstacles to the economic and social progress of those peoples (particularly women and children) and for the protection and effective attainment of their civil rights. The Commission has already started to meet and will be reporting its initial conclusions in the near future.

The Comprehensive Plan for the Support of Extremely Vulnerable or Endangered Indigenous Communities

194. This is a plan comprising comprehensive and intersectoral institutional measures seeking to remedy the grave situations of population groups that are highly vulnerable and at serious risk, this by means of concertation in specialized workshops for departmental, national and local institutions and indigenous authorities and organizations designed to arrive at concrete, specific and budgeted institutional commitments.

Progress made with the Comprehensive Plan as at November 2007

DEPARTMENT	MUNICIPALITY	ETHNIC GROUP	POPULATION	DATE
CHOCÓ	Ístmina, Litoral San Juan Vagado Tadó, Bajo, Medio and Alto Baudó, Certegui, Bajo, Medio y Alto San Juan	Embera Katio and Waunan	5,000 persons	18 and 19 April 2007
RISARALDA	Mistrató, Pueblo Rico	Embera Chami	2,1000 persons	2 and 3 May 2007
CESAR	Becerril, La Paz and Codazzi	Yukpa	800 persons	27 and 28 June 2007
GUAVIARE	San José del Guaviare	Guayaberos	420 persons	25 and 26 April 2007
CASANARE	Hato Corozal and Paz de Ariporo	Saliba, Cuiba, Sikuane, Yamalero, Yaruro, Maiben, Masiware, Tsiripo, Amorua and Wipiwí	500 persons	13 and 14 June 2007
META	Concordia, Puerto Gaitán y Mapiripán	Sikuane, Guayaberos	900 persons	30 and 31 May 2007
GUAJIRA	Riohacha, Dibulla and San Juan del Cesar	Wiwa	700 persons	21 and 22 March 2007
CORDOBA	San Andrés de Sotavento	Senú	170 persons	13 and 14 June 2007
GUAINIA	Puerto Inírida	Curripaco, Puinave, Piapoco, Cubeo, Sicuani, Piaroa, Tucanos, Guanana, , Piratapuyo and Baniva	300 persons.	7 and 8 November 2007

The negotiation of the free trade agreement with the United States; negotiation of the reservation concerning affirmative action

195. During the commercial negotiations on a free trade agreement between Colombia and the United States the ethnic rights of the Colombian minorities were continually kept in mind. The Colombian negotiators were in fact extremely firm in establishing that Colombia reserved the right to adopt or maintain any measure giving rights and preferences to socially or economically disadvantaged minorities and its ethnic groups. Thus a reservation was included to the effect that Colombia had the right to adopt or maintain measures relating to the communal lands of the ethnic groups on the basis of article 63 of the National Constitution, which states: “The communal lands of the ethnic groups, the *resguardo* lands and other properties designated by law are inalienable, imprescriptible and unseizable.”

196. The agreement established that the United States recognized the importance of biodiversity and the traditional learning associated with it; the sovereignty of the State over the resources concerned; and the need to secure the prior consent of the State and of the traditional communities to obtain access to genetic material relating to biodiversity and to share fairly with

the communities the benefits obtained by the use of genetic resources and traditional learning. At the present time the free trade agreement has been approved by the Congress of Colombia and is awaiting approval by the United States Congress.

C. Article 3

1. Information on legislative, judicial and administrative measures taken to give effect to article 3, especially regarding the punishment of segregation and apartheid

197. It is important to emphasize that in Colombia there is no national policy of segregation or apartheid or elements in laws, binding standards or action policies containing any level of deliberate differentiation to the disadvantage of certain communities. However, as recognized earlier (paragraphs 49 et seq.), if the concept of segregation is considered in a broad sense, as recommended by the Committee on the Elimination of Racial Discrimination in a number of its guidelines (and in particular in General Recommendation XIX), it may be argued that a measure of passive discrimination exists with regard to housing, especially against the Afro-Colombian population, both at the regional level (where the Colombian Pacific region is both the region with the greatest numbers of Afro-Colombians and the poorest region in the country) and in the large towns in the area of urban housing. In this regard it is worth mentioning that the recently adopted policy of statistical precision, once it has been consolidated and the measurements it makes have become more comparable and global, will afford a better understanding of these situations so as to permit a positive approach to them. The measures of positive discrimination (explained earlier), with emphasis on the efforts to promote the development of the Colombian Pacific region, should also be recalled. In addition, as explained below in connection with the follow-up on the recommendations of the Committee to the Government of Colombia (Part II, section 8), the Ministry of the Environment, Housing and Spatial Development and local authorities in the larger cities have undertaken wide-ranging studies emphasizing the ethnic variable in the housing sphere. This information, together with the emergence of awareness of the ethnic problems, will unquestionably yield valuable results in the design of public policies during the coming years for the purposes of combating the historical and geographical segregation from which the Afro-Colombian population suffers.

D. Article 4

1. Information on legislative, judicial and administrative measures taken to give effect to article 4, especially those designed to take measures concerning:

- (a) Acts of discrimination or of incitement;**
- (b) Declaration of dissemination of racial hatred as a punishable offence;**
- (c) Declaration of illegality of groups or propaganda promoting discrimination.**

198. The new Penal Code of Colombia (Act No. 599 of 2000) contains a number of provisions relating to the prohibition of discrimination within the country.

199. It should be pointed out that a study of the crimes envisaged in Title II of the Penal Code, “Crimes against persons and property protected by international humanitarian law”, brings up article 147 concerning “Acts of racial discrimination”, which directly sanctions practices of racial segregation occurring in connection with armed conflict and its development.

200. In addition, attention should be drawn to the fact that other types of behaviour designated in the Penal Code are aggravated when the underlying reasons for the acts involve some form of racial discrimination or intolerance, such reasons thus constituting elements that alter the limits of the penalty, for example, this is the situation regarding the crime of forced disappearance (art. 166, paragraph 4, of the Penal Code) while in other cases they constitute generic circumstances justifying higher penalties.

201. Lastly, mention should be made of the existence of Senate draft Act No. 040 of 2007, merged with Senate draft Act No. 68/07, explained above in the context of the legislative framework on discrimination in Colombia (Part II, paragraph 2), the provisions of which establish a new offence entitled “incitement to discrimination”, which is intended to sanction incitement to discrimination when the grounds are suspect or sensitive.

2. Information on legislative, judicial and administrative measures for implementing the general recommendations on legislative omissions and for drafting laws that are in keeping with non-discrimination

202. It is worth reiterating the existence of Senate draft Act No. 040 of 2007, mentioned above in the context of the legislative framework on discrimination in Colombia (Part II, second section), which aims to establish a new and ambitious Statute against discrimination in the country and to correct any existing legislative omission in the country in order to address discriminatory practices.

E. Article 5

1. Special information relating to refugees and displaced persons

(a) Situation of refugees

203. The 1951 Convention relating to the Status of Refugees was approved through Act No. 35/1961, and the 1967 Protocol relating to the Status of Refugees was approved through Act No. 65 of 1979. The issuance of the 1991 Political Constitution was followed by the issuance of Decree No. 2450 of 30 October 2002 (*Diario Oficial* No. 44.982), which established the procedure for determining refugee status, established the regulations governing the Advisory Committee on the Determination of Refugee Status and adopted other provisions. Additionally, 1996 witnessed the drawing up of the memorandum of intent between the Government of the Republic of Colombia and the Office of the United Nations High Commissioner for Refugees (UNHCR) for the promotion and development of the law on refugees.

Implementation in particular of Article 5 of the 1965 Convention:

204. Between 2003 and 2007 Colombia received 250 applications for refugee status from foreign nationals; of these, 65 were accepted, 105 refused and 80 are being studied for presentation to the Advisory Committee on the Determination of Refugee Status.

205. Under Colombian legislation on refugee status, refugees in Colombia shall enjoy, in accordance with the Constitution and the laws, all the rights established for foreigners, as well as the special treatment provided for in the 1951 Geneva Convention.

206. In accordance with the foregoing, refugees are obliged to respect and obey the Constitution, the laws and the regulations and, more generally, the norms established for foreigners and recognized refugees.

207. Among the measures taken to prohibit racial discrimination in all its forms and to guarantee all persons the right to equality before the law, without distinction of race, colour or national or ethnic origin, the Colombian Constitution stipulates that all persons are born free and equal before the law, shall be given equal protection and treatment by the authorities, and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy.

208. In this regard, article 2 of Decree No. 2450 implicitly prohibits racial discrimination when it stipulates that the term “refugee” shall apply to *all persons who, owing to well-founded fears of being persecuted for reasons of race, religion, nationality, belonging to a particular social group, or political opinion find themselves outside their country of nationality or habitual residence.*

209. In this context there is a guarantee of promotion of conditions that make equality genuine and effective, and measures are adopted in favour of groups that are discriminated against or marginalized.

210. Regarding the personal safety of refugees, there have been no reports, testimony or complaints of criminal offences committed on racial grounds, especially against asylum seekers or refugees.

211. Regarding the political rights of refugees, it must be made clear that, under the Constitution, political rights are reserved for nationals, but the law may grant foreigners residing in Colombia the right to vote in municipal and district elections and consultations. Act No. 1070 of 2006 precisely regulates the vote of foreigners residing in Colombia as set forth in article 100 of the Political Constitution. Pursuant to this Act, foreigners residing in Colombia may vote in the municipal and district elections and consultations held in the last place in which they have set up home. Likewise, the elections in which foreign residents in Colombia may take part are those for district and municipal mayors, district and municipal councils and local district and municipal administrative boards throughout the national territory. At the same time, the Constitutional Court has ruled as follows:

“Although in principle the exercise of public functions and positions is reserved for Colombian nationals, when the Constitution or the law does not require a person to be a Colombian national for occupation of a particular position, foreign Colombian residents who have acquired Colombian nationality may participate in competitions for public positions classified as career posts and may acquire career rights.

“Since citizenship implies nationality, foreigners may be Colombian citizens who acquire Colombian nationality by adoption, whether or not they retain their own nationality. Once a person has acquired Colombian nationality by adoption, that person may hold a public

position in the Colombian State, except for certain positions listed in Act No. 43 of 1993, none of which are administrative career posts. In other words, foreigners *who have acquired Colombian nationality by adoption* are not prohibited from occupying administrative career posts.”

212. With regard to other civil rights, the Constitution establishes that foreigners in Colombia shall enjoy the same civil rights as are granted to Colombians. However, the law may, for purposes of law and order, withhold certain civil rights from foreigners or make them subject to special conditions. Thus, except for the limitations established by the Constitution or by law, foreigners enjoy the guarantees granted to citizens throughout the territory of the Republic.

213. The State of Colombia guarantees to everyone the freedom to express and propagate their thoughts and opinions, to transmit and receive truthful and impartial information and to establish mass communication media. The latter are free and bear a social responsibility. The right of correction on equitable terms is guaranteed; censorship is prohibited.

(b) Status of the displaced population

214. The Colombian Constitutional Court, in its *tutela* ruling T-025 of 2004, declared that: “the situation of displaced persons is unconstitutional and the national and territorial authorities must implement and adopt, within their spheres of competence, measures to correct and reverse that situation ...”. The Court also said it had established that one of the problems in the design and execution of State policy regarding comprehensive care of the displaced population is the lack of a specific approach to these population groups that would make it possible to identify and address their particular and pressing needs deriving from their specific situation within that of internal displacement.

215. Hence, regarding attention to the displaced population belonging to ethnic groups, the formulation of the National Plan for Assistance to Populations Displaced by Violence (Decree No. 250 of 2005) included a differentiated gender, age and diversity perspective, adopting the recommendation of the Constitutional Court in its aforementioned ruling regarding the need to make that perspective explicit: “Attention to the displaced population must be based on affirmative actions and differentiated approaches that are sensitive to gender, generation, ethnicity, disability and sexual preference.” The Plan’s guiding principles include a differentiated approach in terms of gender, age and ethnic origin, and establishes four distinct areas: (a) a differentiated approach in terms of a mechanism for considering the characteristics of each population in the formulation and development of activities; (b) a differentiated approach in terms of affirmative action for vulnerable groups, which involves “paying special attention to women and children, with priority accorded to widows, female heads of household and orphans”; (c) a differentiated approach in terms of preferential access for some sectors of the population to family protection programmes; and (d) a differential approach in terms of different population groups.

216. The Colombian State has a number of specific measures based on the differentiated approach that was intended to inform the National Plan for Assistance to Populations Displaced by Violence.

217. In a document of November 2007, the Presidential Agency for Social Policy and International Cooperation – Social Action – through the Subdirectorate for the Displaced Population, reported on the measures taken to prevent and prohibit racial discrimination and to promote equality for all persons before the law, especially for persons in a situation of forced displacement owing to violence.

218. In this regard, it must be said that Social Action, as the body that coordinates the National Comprehensive Care Scheme for the Displaced Population (SNAIPD), has developed measures intended to protect this population group from discriminatory practices generated by their ethnic origin, and also by the very fact of their displacement. Bearing in mind the extent of those persons' vulnerability, the National Council for Comprehensive Care for the Displaced Population (CNAIPD) issued Decision No. 03 of 2006 "whereby measures are devised in order to guarantee the right of the displaced population to protection from discriminatory practices".

219. This Decision No. 03, referred to above, establishes the duty of the State entities to provide preferential and differentiated attention to this population group with a view to guaranteeing authentic and effective equality. Its intention is that no public official belonging to SNAIPD shall indulge in discriminatory behaviour against the displaced population on pain of appropriate disciplinary investigations and punishment.

220. Aware of the need for officials to identify what constitutes a discriminatory practice, CNAIPD formulated a brief characterization, established without prejudice to other discriminatory practices (such as those established in the Durban Declaration), which includes the following:

- (a) Denying, restricting or obstructing access to and enjoyment of the right of the population in a situation or condition of displacement when it has fulfilled the necessary requirements for that right;
- (b) Meting out intolerant, degrading or inhuman treatment that undermines the dignity of the population that is in a situation or condition of displacement;
- (c) Issuing an administrative regulation that discriminates negatively against the condition and situation of displacement;
- (d) Inciting or performing acts of persecution against this population;
- (e) Failing to provide priority attention to this population.

Differentiated measures with regard to the various types of population in a situation of displacement

221. In the light not only of the indigenous and Afro-Colombian communities, but also of other communities owed special constitutional protection, such as women, children, young people, adults and the disabled, CNAIPD signed Decision No. 08 adopting measures for highlighting and deepening differentiated activities provided for in public policy concerning attention to the population in a situation of displacement.

222. Decision No. 08 constitutes a tool for the elimination of all the forms of discrimination to which the displaced population is usually subjected, since one of the prime forms of discrimination is based on the failure to recognize and highlight the population's ethnic, cultural and age diversity.

Specific public policy for displaced children

223. Within the framework of the policy on care for the population displaced by the *violencia*, the purpose of the plan of action of the Colombian Family Welfare Institute (ICBF) is to assist families and communities that have been forcibly expelled from their territory and their homes.

224. ICBF participates in the National Comprehensive Care Scheme for the Displaced Population and devises and executes a special Plan. It works on the following four lines of approach: (a) priority and timely attention to the displaced population, without any obstacles to access; (b) promotion of cohabitation as a family, and prevention of and attention to domestic violence among the displaced population; (c) promotion of the participation of the displaced population and their organizations in ICBF situational contexts; and (d) promotion of the obligations and rights of the displaced population.

225. ICBF uses several avenues that include activities relating to psychosocial care, with emphasis on intervention in crises, food assistance and support for psychosocial and community reintegration; those concerned may join regular ICBF programmes.

226. Among the most salient special programmes for the displaced population in a situation of displacement is the Extended Help and Recovery Operation (OSPR) developed jointly with the Social Action unit of the Office of the President and the World Food Programme (WFP) which is intended to boost the social and economic rehabilitation of persons affected by violence, specifically the internally displaced population, through the delivery of food assistance and improved food security.

227. The elements of the strategy are:

- (a) Relief strategy: this element absorbs 38 per cent of food aid within the framework of the OPSR. Its aim is to meet the immediate needs of recent internally displaced groups, protect the human and physical assets of families which have been displaced for less than 18 months and provide support for groups at high risk of displacement.
- (b) Rehabilitation strategy: for groups who have been displaced for between 6 and 12 months the assistance provided during the first six months is complemented by food aid for a longer period. This strategy covers children under age 5 at nutritional risk; pregnant women, breastfeeding mothers and children under age 2; children aged 3-5 (pre-school age); food for schoolchildren; food for work and food for training and community kitchens.

228. This operation assisted 508,248 persons in 2005 and 2006; the investments of all the bodies participating in the two phases of the operation amounted to some US\$ 80 million. A new phase, to be implemented in 2007 and 2008, is currently being negotiated.

229. The ICBF has 56 mobile units, located in 29 departments of the country, for the provision of emergency aid. It is estimated that in 2006 they provided aid to 236,807 persons in 340 municipalities. The following are the guidelines for the operations of the mobile units: diagnosis and planning; psychosocial care with emphasis on care in crises; community organization and participation; and food and nutritional security. Immediately on the outbreak of an emergency children and families are enrolled in ICBF programmes.

230. Another element is that of emergency food rations. The aim here is to contribute to emergency humanitarian aid and the revival of families affected by natural or human disasters by providing a food supplement for pregnant women, breastfeeding mothers and children aged between 6 months and 5 years and 11 months while they surmount the conditions of crisis and emergency, and also to support families forcibly displaced on account of the *violencia* by providing food parcels and psychosocial care in coordination with the National Comprehensive Care Scheme for the Displaced Population. During the year 2006, 44,988 persons received aid and 110,391 rations were distributed at a cost of 4,078,222,865.95 pesos.

231. In all ICBF programmes priority is given to care for children, pregnant women and breastfeeding mothers in displaced population groups; the programmes are designed to guarantee the rights of the family to dignity, psychological and moral integrity and family unity.

Public policy specifically directed to the displaced indigenous population

232. This policy seeks to give effect to the guideline document issued for the bodies forming part of the National Comprehensive Care Scheme for the Displaced Population (SNAIPD) at national and department levels with the aim of ensuring special treatment for the indigenous population, taking into account their particular ethnic and cultural features.

233. The participating entities are:

- (a) The Ethnic Groups Directorate in the Ministry of the Interior (implementation at regional level);
- (b) The Presidential Agency for Social Action in the Office of the Vice-Presidency of the Republic (parallel measures);
- (c) The Human Rights Directorate in the Ministry of the Interior (parallel measures).

234. The results obtained up to October 2007 are:

- (a) Nine regional workshops (2 in Meta, 3 in Chocó, 2 in Caquetá, 2 in Nariño): elaboration of action plans in the areas of prevention and protection, humanitarian aid and reestablishment reflecting the differential focus; these will be included in the PIU (with the participation of indigenous authorities and organizations and bodies of the SNAIPD);
- (b) A total of 250 representatives of indigenous bodies and communities have been trained and attuned to legal frameworks, principles, mechanisms and rights designed to guarantee the provision of care with a differential focus by the bodies of SNAIPD.

The case of the Nukak Maku indigenous community

235. In addition, by Decision No. 05 of 2006 the special, differentiated Effective Care Plan was adopted. It concerned the members of the Nukak Maku indigenous community, who had been forced to move to urban areas, and the groups under threat of displacement in the department of Guaviare.

236. The Nukak Mau indigenous community is a nomadic community continually moving around its territory, recreating its customs and traditional practices, which are based on its own particular styles of housing and hunting. Between 2003 and 2006 it began an involuntary move out of its territory on account of the activities of the FARC (Revolutionary Armed Forces of Colombia) illegal armed group. Social Action has therefore made efforts to provide them with humanitarian emergency aid, health care and education designed to assist the process of relocation, basic sanitation measures and care for minors and breastfeeding mothers.

Public policy specifically directed to displaced women

237. *Directive on care for the displaced population with a gender perspective.* As part of the measures being taken by the State of Colombia to prevent and palliate forced displacement, the Office of the Presidential Adviser on Equality for Women, in pursuance of the agreement signed with UNHCR, is proceeding with the preparation of a Directive on Prevention, Care and Socio-economic Stabilization for Displaced Population Groups with a Gender Perspective, designed to promote the inclusion of the gender perspective in policies, programmes and projects aimed at improving the condition of displaced population groups. The directive envisages differentials in focus according to ethnic origin; consequently the Ethnic Groups Directorate of the Ministry of the Interior is drawing up a directive with an exclusively ethnic differential focus.

238. The text of the directive points out the need to implement training processes for officials caring for members of the displaced population who commit discriminatory acts, inter alia, against displaced persons, on grounds of race or ethnic membership.

239. The following may be mentioned as results obtained so far from the directive: (a) elaboration of an analysis of the situation from the standpoints of regulation, case-law, statistics, public policy and institutional availabilities; (b) the setting up of an inter-institutional board whose membership includes Social Action, UTEC and the Office of the Presidential Adviser on Equality for Women; (c) the conduct of awareness development workshops in view of the importance of including the gender perspective in the National Comprehensive Care Scheme for the Displaced Population; (d) definition of the structure of the directive, based on the Government's strategy to promote the advancement of women and gender equality.

2. Information on legislative, judicial and administrative measures to give practical effect to the right to equal treatment before the tribunals and all other organs administering justice

240. The entire population of Colombia enjoys the presumption of innocence. This is a principle of law fully guaranteed by the Constitution. The right to a defence and to legal assistance is guaranteed in such a manner that due process is not unjustifiably protracted. Colombia is a country in which the protection of fundamental constitutional rights enjoys constitutional rank,

irrespective of race, nationality or any act of discrimination against its nationals, foreigners or ethnic groups. In short, any person may have recourse to the judicial authority in order to obtain effective compliance with a law or an administrative measure.

241. With respect to criminal justice, the institutional memory, or information system, of the Office of the Public Prosecutor is designed to provide statistical data relating to each and every crime and offence designated as such in the Colombian Penal Code with variables permitting determination of the gender, age and status of the author and even steps in the trial proceedings. However, these data do not as yet envisage any element indicating race.

242. In the light of repeated requests relating to the more systematic organization of the investigations on the subject of race being conducted by the Office of the Public Prosecutor, on 7 June 2007 the National Directorate of Prosecutors' Offices issued instructions to the Data Processing Office of the Office of the Director to introduce an item or variable covering persons in the records who belong to ethnic groups recognized by Colombia.

243. In addition, and in a direct relation to the training of officials in particular conflict areas, the 1996 memorandum of intent concluded between the Government and UNHCR (referred to earlier) stated that the parties must encourage the training of public officials and other actors of importance in civil society in conflict zones in the prevention of situations giving rise to forced human displacements, referring to concepts such as pacific and stable social interaction in the ethnic, political and religious spheres and between national and social groups; the importance of minimization of situations of violence in conflict zones; and the promotion of the defence and protection of human rights.

3. Information on legislative, judicial and administrative measures to give practical effect to the right to security of person; information specifically on the incidence of criminal offences committed on racial grounds

244. The State of Colombia has introduced various measures with a view to guaranteeing the right of individuals belonging to ethnic minorities to security of person and others permitting the proper counting and evaluation of the incidence of racial motives in crimes committed in Colombia. The following is an explanation of the measures taken in these areas by the Ministries of Defence and of the Interior and Justice, the Office of the Public Prosecutor and the National Prison System Institute (INPEC).

(a) The comprehensive human rights and international humanitarian law policy of the Ministry of Defence

245. In January 2008 Dr. Juan Manuel Santos, Minister of Defence, General Freddy Padilla de León, Commander of the Armed Forces of Colombia, and Brigadier-General Oscar Adolfo Naranjo, Director-General of Police, presented for the first time the Comprehensive Human Rights and International Humanitarian Law Policy of the Ministry of National Defence. This policy, which was welcomed by the Colombia office of the United Nations High Commissioner for Human Rights, is the outcome of several years of effort within the defence policy of the State of Colombia to make human rights a cross-cutting theme in the different activities of the members of the security forces.

246. The final outcome is an ambitious and comprehensive policy with strategic, technical, educational and cooperation elements designed to secure complete respect for human rights and international humanitarian law in the operations of the security forces. As was announced during the presentation, under this policy the State imposes on itself a standard of “zero tolerance” of human rights violations by members of the security forces.

247. In addition to being cross-cutting in character, affecting every aspect of the operations of the security forces, the policy envisages innovative measures concerning the “security of person” of particularly vulnerable persons. Thus in addition to its general provisions on the subject it lays down differential approaches for indigenous and Afro-Colombian communities, displaced persons, child victims of violence, human rights defenders and other groups at risk. Of particular importance among these measures is the establishment of a centre giving priority attention and a rapid response to requests from individual members of these groups; the possibility of speeding up administrative compensation measures for them; and the adoption of instruction and teaching measures for all the members of the security forces laying special emphasis on the differential approaches which these groups deserve,

(b) The ETNOCRER programmes of the Ministry of the Interior and Justice

248. In compliance with the National Development Plan (2002-2006) a facility (the Committee on Regulation and Evaluation of Risks (ETNOCRER)) was established for concertation and the recommendation of measures for the protection of communities within the Human Rights Protection Programme of the Ministry of the Interior and Justice. The Committee has an ethnic focus, and its membership includes communities of indigenous groups and peoples of African descent.

249. The Committee has held several meetings, which have formed the basis for the following initiatives:

- (a) 525 measures of protection have been taken concerning 139 **indigenous** leaders. These consisted of 41 mobile phones, 27 Avantel installations, 138 cases of assistance with temporary relocation, 9 cases of assistance with overland transport, 4 satellite phones, 268 air tickets on domestic flights, 15 cases of assistance with removal expenses, five comprehensive protection schemes, 11 bullet-proof vests and armoured seats;
- (b) 203 measures of protection have been taken concerning 29 leaders of **African descent**. These consisted of 41 cell mobile phones, 7 Avantel installations, 138 cases of assistance with temporary relocation, 6 cases of assistance with overland transport, 4 satellite phones, 102 air tickets on domestic flights, 2 cases of assistance with removal expenses, 1 bullet-proof vest and 2 armoured seats.

(c) Measures taken by the Ministry of National Defence, the Armed Forces and the National Police

250. Under the present Government the Ministry of National Defence, working through its Human Rights Office, has been implementing a public policy of protection of ethnic minorities, the basic features of which were stated in ministerial circulars Nos. 2064 of 2003 and 151 of

2004. Following a concertation process with the indigenous organizations and with the participation of the Indigenous Peoples Division in the Office of the People's Advocate and the Ethnic Groups Directorate in the Ministry of the Interior and Justice, the Ministry of Defence issued Directive No. 16 of 30 October 2006 restating the policies established in circular 2064 of 2003 and laying down instructions designed to strengthen the collective rights of the communities in such areas as autonomy, territory, culture and special jurisdiction.

251. In pursuance of the directives issued by the Ministry of Defence, security advisory meetings have been organized with indigenous communities, together with training workshops, in agreement with the Office of the People's Advocate, on ethnic minority legislation for members of the security forces and a number of inter-institutional meetings attended by the authorities representing those minorities.

252. This policy has secured the participation of representatives of the ethnic minorities. This is a major step forward in the process of recognition of the indigenous authorities as public authorities under the terms of the 1991 Political Constitution.

253. Directive No. 16 of 2006 contains precise instructions for the armed forces and the national police concerning the development of a policy of promotion and protection of the individual and collective rights of the communities.

254. To give effect to this policy the High Command of the Armed Forces issued Standing Order No. 800-07 of 2003 with the aim of strengthening the policy of promotion and protection of the human rights of the indigenous communities and communities of other minorities and to ensure that their ethnic constitutional and legal rights are respected and their surrounding environment preserved during military operations on their territories. The national police authority, for its part, issued Instruction No. 029 of 2003, entitled "Protection of human rights in indigenous communities", explaining the framework of the policy of protection of these communities and stating the measures to be taken by commanders of department and metropolitan police services.

255. Similarly, and with a view to avoiding collateral damage in indigenous *resguardos* during the planning and execution of air operations, the air force has prepared an interactive CD showing the geographical locations of the *resguardos* and territories of the ethnic minorities, and giving information on the coordinates of each, in every department in the country.

256. On the training side, with the participation of the Ethnic Minorities Division, during the years 2003-2007, 46 regional workshops were held for members of the security forces and local indigenous authorities on the subjects of law and legislation concerning ethnic, racial and linguistic minorities. These workshops, which cost approximately six million pesos each, were held in Valledupar, Santa Marta, Montería, Leticia, Popayán, Manizales, Riohacha, Puerto Carreño, Buenaventura, Quibdó, Cúcuta, Arauco, Pasto, Ibagué, Inírida, San Andrés, Carepa, Cioveñas, Villavicencio, Bahía Málaga and Ipiales.

257. The Ministry of Defence has also held the following advisory meetings on indigenous security, during which facilities were established for concertation and understanding between indigenous authorities, civil authorities and the security forces and joint measures were adopted for the repulse of terrorist actions threatening the guarantee of their rights: on 26 September 2003

in Valledupar with the communities of the Sierra Nevada de Santa Marta; on 9 October 2003 at Tierralta with the Embera Katió and Zenú communities; on 15 December 2003 in Popayán with the Cauca communities; on 17 March 2004 at Rio Sucio with the Embera Chamí community; on 18 June 2004 at Inírida with the communities of the Colombian Amazon region; on 21 October 2004 at Ibagué with the Pijao community and on 16 May 2005 at Quibdó with the Black communities and the peoples of African descent in Chocó. These meetings produced inter-institutional plans of action which are in course of execution.

258. In addition, by Circular No. 151 of 15 September 2004 the Minister of Defence issued instructions for the establishment of points for contact or liaison between the security forces and the indigenous communities of each region in order to facilitate information flows and to build up confidence, mutual respect and credibility between the security forces and the indigenous authorities.

259. The common criteria, concepts and challenges on which the above-mentioned measures are based are as follows:

260. To guarantee the protection of the indigenous population the armed forces and the national police, in the exercise of their functions, must bear in mind the fact that the country's indigenous communities form a group which is extremely vulnerable to demands from illegal armed groups and that they enjoy a special set of standards of constitutional origin which seeks to guarantee their survival as collectivities. As basic requirements for guaranteeing the protection of the human rights of the indigenous communities, the High Command of the Armed Forces and the Directorate-General of the National Police are required:

- (a) To establish criteria and issue orders directed to execution of the preventive measures necessary to secure the integrity of the communities during the conduct of military and police operations in indigenous *resguardos* and territories;
- (b) To give a timely response to requests for protection emanating from indigenous communities or settlements in each of their jurisdictions following prior evaluation of the allegations submitted;
- (c) To pay special attention to information relating to activities of the illegal armed groups which seek to breach the fundamental human rights and the autonomy provided for in the Constitution for the benefit of the indigenous communities and in the rules of international humanitarian law;
- (d) To issue instructions to the military and police units to refrain from making unfounded statements which may place the integrity of the members of indigenous communities at risk;
- (e) To require military and police units to refrain from using indigenous names to designate units, military or police installations, material or equipment, or operations or activities specific to the security forces;
- (f) To include elements relating to indigenous legislation in military training and skills development programmes;

- (g) To seek mechanisms for the development of closer relations with the communities and to participate with the civil authorities in the conduct of activities of benefit to them;
- (h) To inform this Office of the results of the operations being conducted to protect the rights of the indigenous communities and of the civil-cum-military measures taken to benefit the communities and to provide personnel with instruction in the subjects of human rights and indigenous legislation;
- (i) To inform this Office which indigenous communities are at greatest risk from the terrorist pressures of the illegal armed groups;
- (j) To inform this Office what measures and plans the armed forces and the national police have for looking after these high-risk communities. In response to these measures a point will be designated for liaison or contact between the indigenous authorities and the military and police units in each region which will be responsible for dealing directly with the communities, listening to their complaints, receiving information, fostering mutual trust and securing the content and implementation of circular No. 2064 of 4 March 2003.

(d) Measures taken by the Office of the Public Prosecutor; incidence of criminal offences committed for reasons of race

261. As mentioned above (see art. 5, A) the institutional memory, or information system, of the Office of the Public Prosecutor is designed to provide statistical data on each and every type of offence described in the Colombian Penal Code: the variables it comprises even include gender, age and the status of the author and even court proceedings. However, until 2007 no mention of racial status was contemplated. In response to repeated requests concerning the organization of the investigations conducted by the Public Prosecutor's Office on the subject of race, on 7 June 2007 the National Directorate of Prosecutors' Offices issued appropriate instructions to the Data Processing Office in the Office of the Director to introduce in their information systems an item or variable relating to persons involved and belonging to the ethnic groups recognized by Colombia.

262. It is important to recall that, following the review of the offences covered by the Penal Code, Title II (Offences against persons and property protected by international humanitarian law) now contains an article 147 (Acts of racial discrimination) which explicitly declares racial segregation practices occurring on the occasion of and in the conduct of armed conflict to be punishable offences.

263. In addition, it should be mentioned that other conventional forms of illegal conduct (basic types of offences) are deemed to be aggravated if the motives underlying them imply any form of racial discrimination or intolerance. These are of a nature to change the range of penalties applicable: this is the case, for instance, with the offence of forcible disappearance (art. 166(4) of the Penal Code) and with other cases of a general and less severely punishable nature.

264. Once the foregoing bases of criminality in relation to racial discrimination had been established, the information systems of the Public Prosecutor's Office were consulted under the heading "Acts of racial discrimination" as defined in article 147 of the Penal Code. The following information was received from the Public Prosecutor's Office:

No. of complaints	6
No. of cases where complaint settled	2
No. of investigations opened	6
No. of investigations precluded	1
No. of investigations ending in a sentence	0
No. of cases filed	1

(e) Report of the National Prison System Institute on progress in the fight against racism and racial discrimination

265. There is specific data on the numbers of members of ethnic groups in State prisons and penitentiaries. Although that information is not definitive for purposes of evaluation of the proportion of members of ethnic groups among persons entering the judicial penal system, it does complement the information submitted previously, in the hope that the National Directorate of Prosecutors' Offices will obtain overall figures in coming years.

266. The Treatment and Development Subdirectorate of INPEC, through its Social Development Division, and in compliance with its institutional task of providing comprehensive care and treatment for the inmate population and with the basic principles underlying its philosophy (social responsibility, resilience, reflexive processes, autonomy and positive social integration), is reorientating the work it performs with the individuals belonging to what are traditionally known as "vulnerable groups". As a result of this development the following one-off measures have been taken:

Identification of the population

267. A first approximation to the identification of the Colombian ethnic minorities was effected during the 2005 census of the prison population, which on that occasion targeted exclusively the indigenous inmate population. Important data emerged, such as:

Number of indigenous individuals: 586 inmates.

Distribution: Western region, 378 (64.5%); Central region, 127 (21.6%); Northern region, 46 (7.8%); the remainder were distributed over the North-Eastern region (26), the Eastern region (6) and Viejo Caldas (3).

Gender: 551 members of this group (94.02%) were men and 35 (5.97%) women.

Legal situation: 345 inmates (58.87%) sentenced, 240 (40.95%) awaiting trial;

Length of sentences: between 5 and 10 years' imprisonment, 104 inmates (17.74%); sentences of 1-5 years, 88 (15.01%); sentences of between 10 and 15 years, 57 (9.72%); sentences of 25-30 years, 25 (4.26%); sentences of 15-20 years, 22 (3.75%); 30-35 years, 16 inmates (2.73%); 20-25 years, 14 (2.38%); 35-45 years, 9 (1.53%); and sentences of 45-60 years, 7 inmates (1.19%).

Nature of offences: The ten most frequently encountered groups of offences (groups in which the numbers of inmates per offence was 17 or more) were as follows: homicide (156 inmates); manufacture, transport and possession on one's person of narcotic drugs (107); rebellion (74); abusive sexual acts and carnal knowledge (46); kidnapping (31); aggravated theft (29); breaches of Act No. 30/86: National Statute on Narcotic Drugs (26); extortion (21); conservation of plantations (18); and conspiracy to commit offences (17). There was also a group of inmates designated as "Other", 48 in number, who had committed offences occurring less frequently.

268. In 2006 a second census of minority groups in the prison population was carried out covering seven particular groups: indigenous individuals, Afro-Colombians, older adults, foreigners, persons with disabilities, pregnant women and breastfeeding mothers. The census yielded the following information:

Total population; 5,897 inmates, including 533 indigenous persons, 1,668 Afro-Colombians, 2,789 adults, 247 foreigners, 584 persons with disabilities, 42 pregnant women and 34 breastfeeding mothers.

Distribution by region:

Group	Central region	Western region	Northern region	Eastern region	N. Eastern region	V. Caldas region
Indigenous	128	229	98	13	12	53
Afro-Colombian	258	1,069	39	59	100	143
Older adults	1,035	298	389	404	320	343
Foreigners	148	18	34	34	4	9
Persons with disabilities	195	39	60	145	66	79
Pregnant women	14	4	10	6	0	8
Breastfeeding mothers	16	8	5	3	0	2

Gender: 426 women and 5,471 men, distributed by group as follows:

Group	Women	Men
Indigenous	35	498
Afro-Colombian	97	1,571
Older adults	158	2,631
Foreigners	29	218
Persons with disabilities	31	553
Pregnant women	42	0
Breastfeeding mothers	34	0

Legal situation: 426 sentenced, 5,471 in pre-trial detention, distributed by group as follows:

Group	Pre-trial	Sentenced	Not known
Indigenous	129	375	29
Afro-Colombian	822	844	2
Older adults	739	2,008	42
Foreigners	72	173	2
Persons with disabilities	112	450	22
Pregnant women	21	20	1
Breastfeeding mothers	12	22	0

269. In 2007 a third census of minorities was carried out which explored in greater detail the general questions investigated in 2006. The variables analysed following that census are as follows:

Number of inmates per group (graph 1):

Indigenous	Afro-Colombian	Older adults	Pregnant and breastfeeding	Persons with disabilities	Foreigners	Total
680	1,895	3,348	83	792	279	7,077

Number of inmates distributed by group and gender (graph 2):

Indigenous		Afro-Colombian	Older adults	Pregnant and breastfeeding	Persons with disabilities	Foreigners	Total
Females	26	80	310	83	27	34	560
Females	654	1,815	3,038	0	765	245	6,517
Total	680	1,895	3,348	83	792	279	7,077

DIAGRAM 1

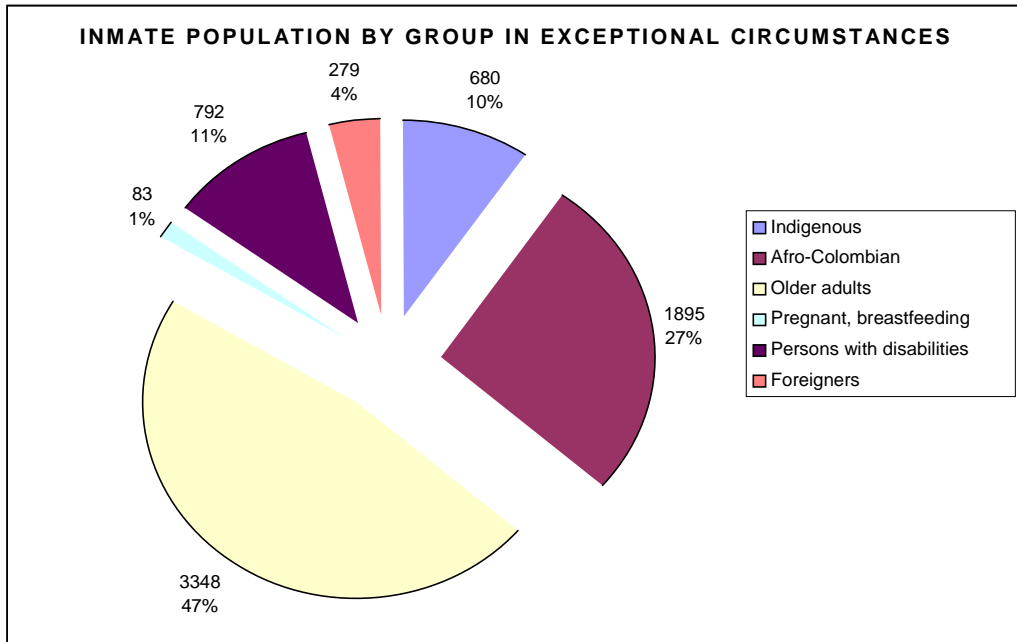
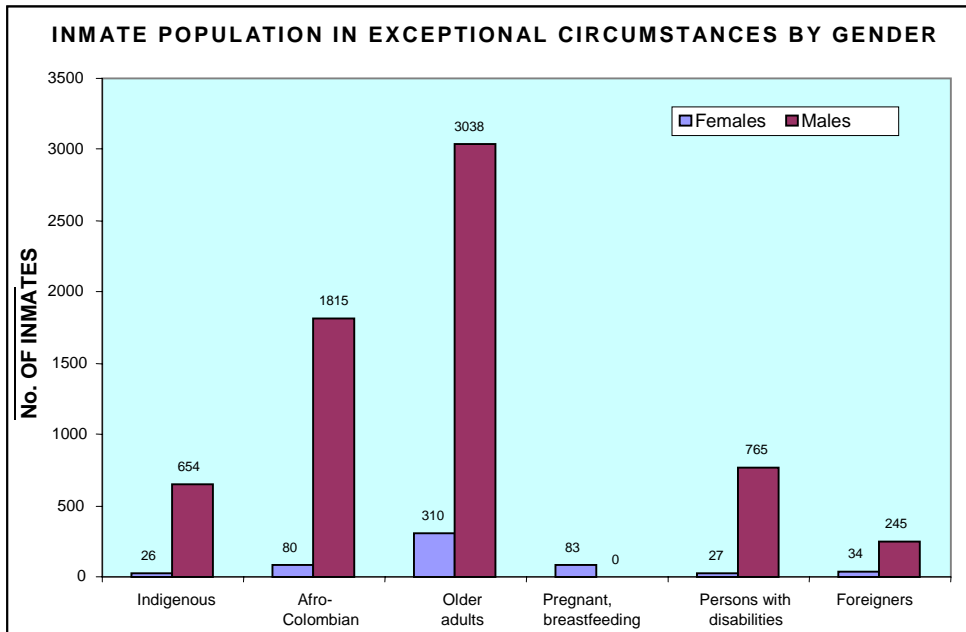


DIAGRAM 2



Number of inmates in each group according to legal situation (diagram 3):

	Indigenous	Afro-Colombian	Older adults	Pregnant, breastfeeding	Persons with disabilities	Foreigners	Total
Pre-trial detention	142	400	678	19	175	85	1499
Sentenced	522	1486	2637	64	560	194	5463
Information unclear	16	9	33	0	57	0	115
Total	680	1895	3348	83	792	279	7077

DIAGRAM 3

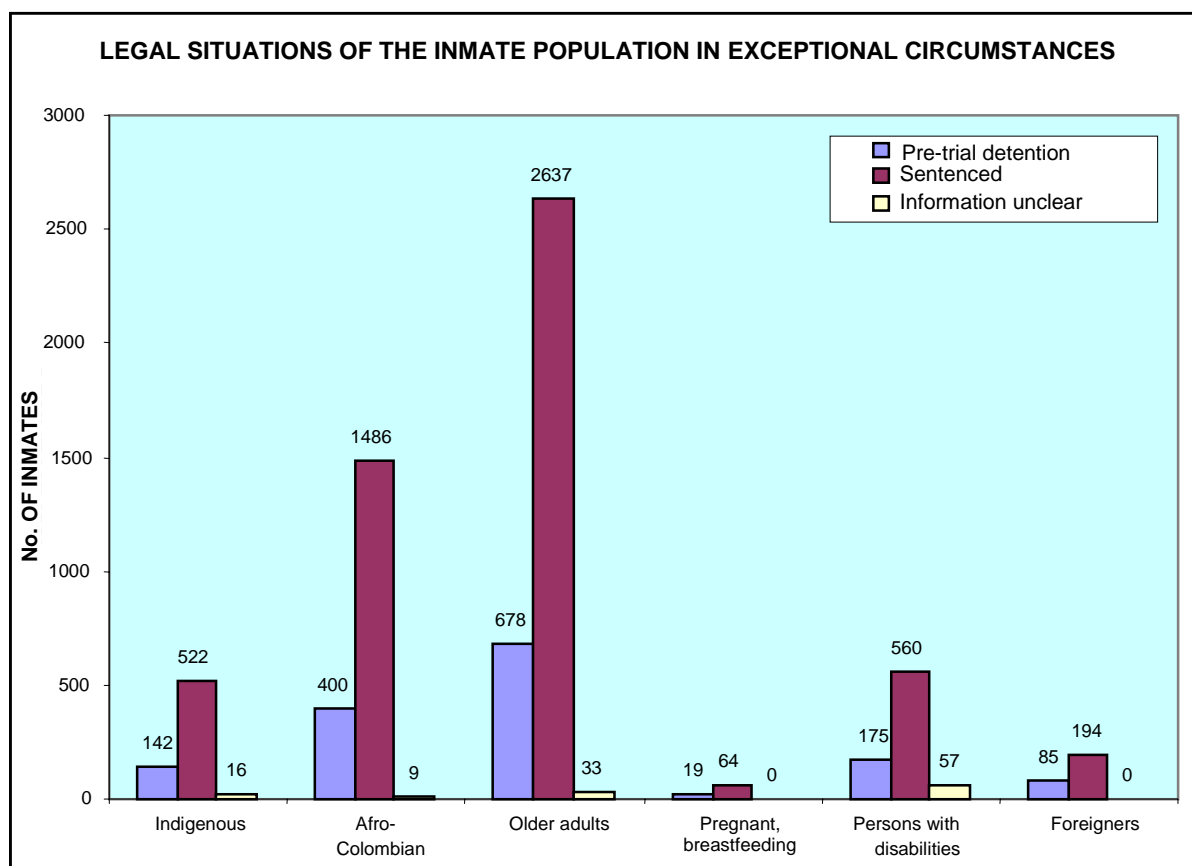
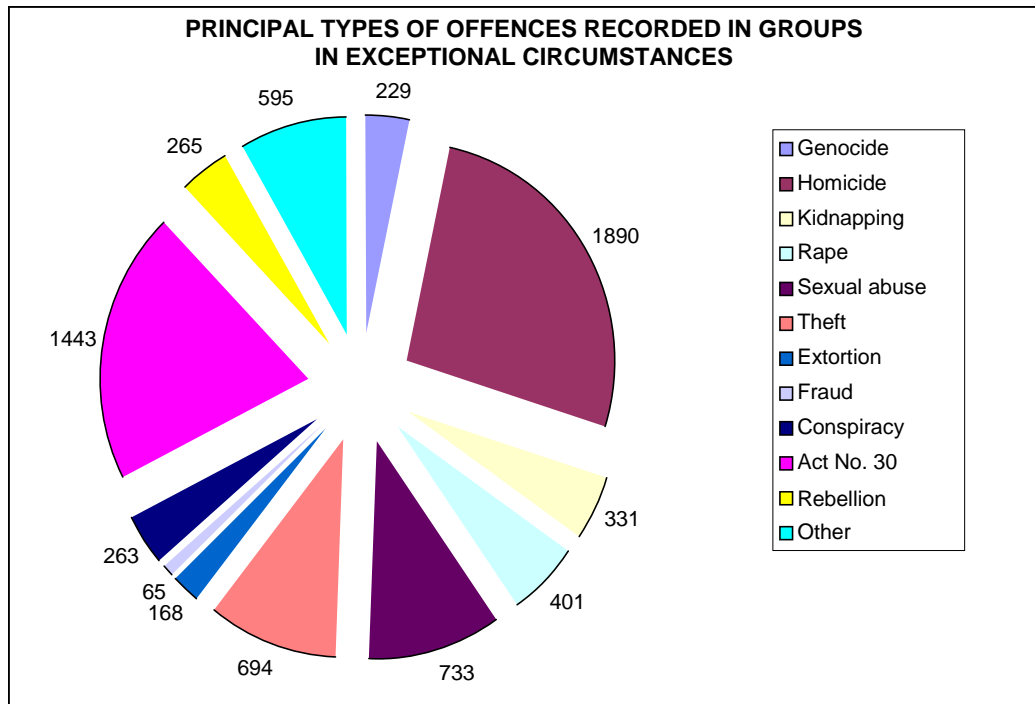


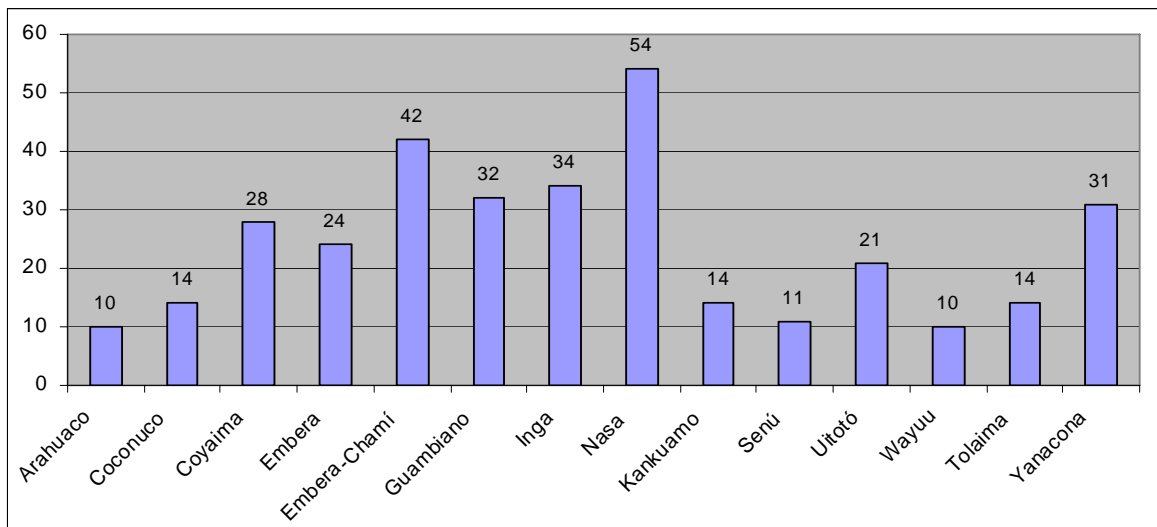
DIAGRAM 4

DIAGRAM 5

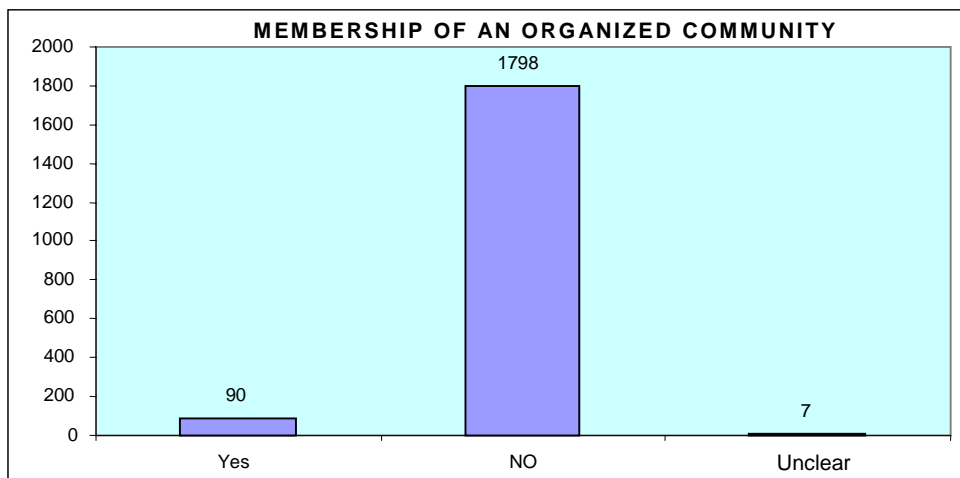


270. With regard to the specific data on racial origin (i.e., the indigenous and Afro-Colombian population), the following observations may be made:

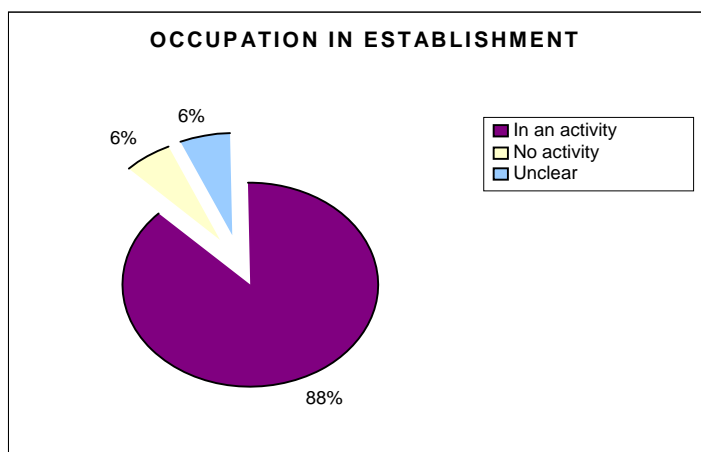
271. People or ethnic group of origin: the graph shows the legally recognized indigenous peoples (according to the DANE report) with the largest numbers of members deprived of liberty. The remaining population is made up of peoples with fewer than 10 inmates per group or on whom the information is unclear.



272. In the case of Afro-Colombians, it was established that 90 inmates form part of organized and legally recognized Black communities and that the great majority (1,798 inmates) identified themselves in general terms as members of that group.



273. As regards occupational activity in prison establishments, graph 6 shows that the level of occupation among indigenous inmates was 88 per cent. They were mainly present in education (44 per cent) and labour (44 per cent).



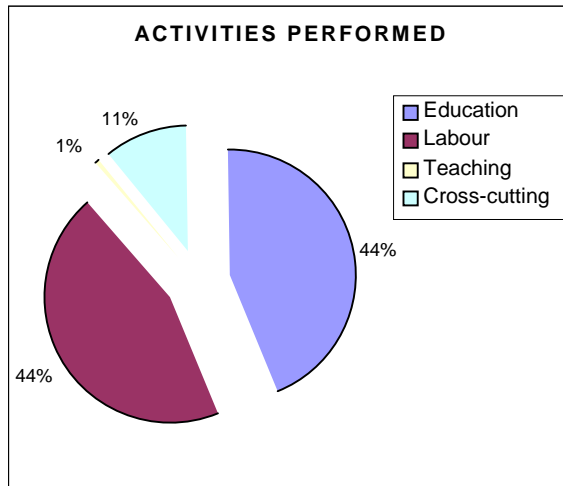
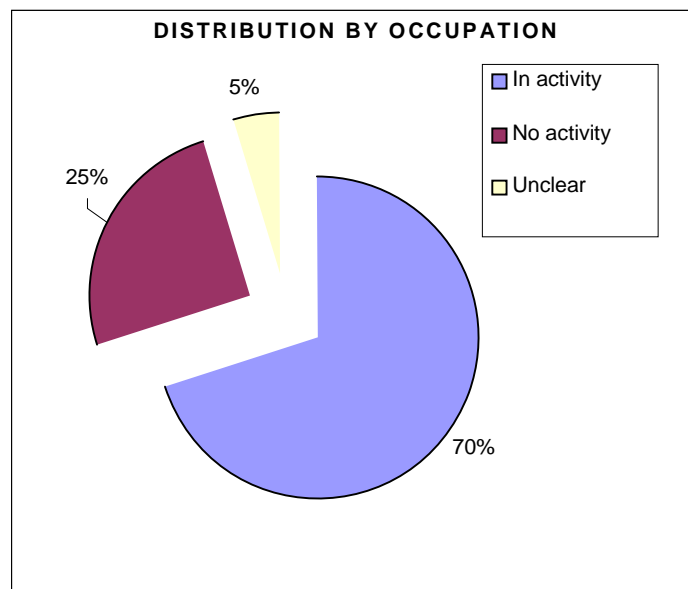
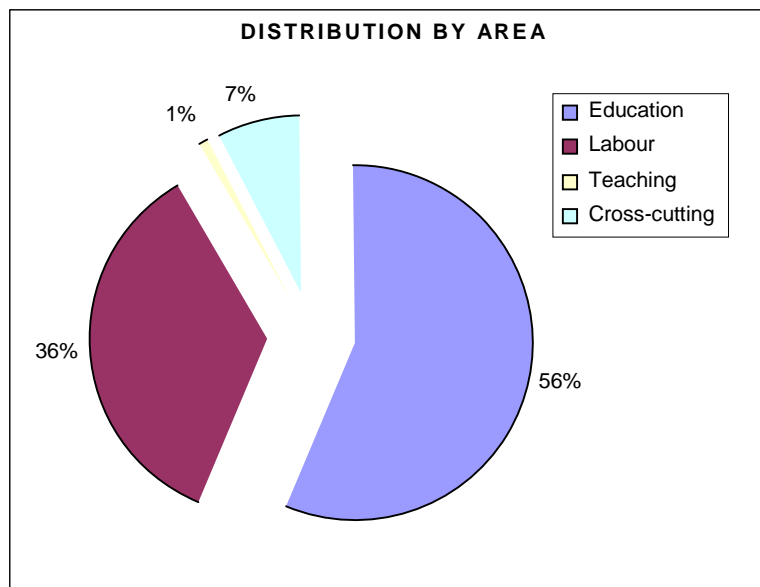


DIAGRAM 6

274. Diagram 7 shows the same indicators for Afro-Colombians. Their level of occupation is 70 per cent; they engage mainly in educational activities (56 per cent) and labour (36 per cent).

DIAGRAM 7





275. It is worth mentioning here that this year a process of “Determination of characteristics of sentenced persons in INPEC prison establishments from a criminological and penitentiary standpoint” was begun as the first phase of the “study of the criminological profiles of the sentenced and imprisoned population in INPEC establishments”, which considers women prisoners separately and provided for an initial pilot project to conduct a census of women; the data obtained are currently under review.

e) **Information on legal, judicial and administrative measures to put into practice the political rights of the minority peoples**

276. The following is an explanation of the measures taken by the State of Colombia to promote the adequate participation of women and the ethnic minorities in politics in the country. It should be stated at the outset that the right to vote in Colombia is universal and that that no distinction of any kind among voters is envisaged.

Participation of women in the political sphere

277. In 2000 Act No. 581 (the “Quotas Act”) was promulgated. Its aim is to ensure that women enjoy the adequate and effective participation to which they are entitled at all levels in the branches and bodies of public authority. Such participation may be deemed adequate under the general rule that there should be a minimum of 30 per cent of women at the top decision-making levels. However, special attention should be paid to certain specific rules governing appointments to posts which have to be filled by the *ternas* system (selection from three candidatures submitted), as is the case with the highest bodies in the judiciary and the supervisory bodies such as the offices of Attorney-General and People’s Advocate; in these cases the list of names submitted must contain that of at least one woman.

278. In addition, to evaluate this Act the Public Service Administration Department and the Administrative Office of the Congress of the Republic submit to Congress and the Attorney-General periodic reports on the filling of posts and the percentage of participation by women in each branch and body of the public administration.

279. In December 2006 the most recent “report on the filling of posts with a gender perspective”, covering the year 2006, was submitted to Congress and the Attorney-General. It compiled and consolidated the reports of the branches and bodies of the public authorities as follows:

280. The proportion of women in managerial posts was 34 per cent in the executive branch, 34 per cent in the autonomous agencies, 23 per cent in the legislative branch, 20 per cent in the judicial branch, 44 per cent in the control and supervisory bodies and 38 per cent in the electoral body. In the territorial context 60 per cent of department authorities met the required minimum and that, out of the 19 departmental capital authorities reporting, in six (Manizales, Mitú, Pereira, Popayán, Riohacha and Valledupar) the proportion of women in managerial posts fell short of the 30 per cent required by the Act (in other words, 68.5 per cent of departmental capital authorities reporting comply fully with the gender minimum). If one adds up the figures for all the territorial authorities (districts, departments and municipalities), it emerges that 33 per cent of posts in territorial administrations are occupied by women.

281. All in all, it seems clear that there is a well-established trend in the executive branch and the autonomous and control bodies as regards the political participation of women. However, further progress is needed with regard to the application of the Act in the judicial and legislative branches, and greater promotional action is needed at the territorial level in order to increase the number of local bodies complying with the requirement. In any case, when the figures for today are compared with those for the beginning of the century, it becomes clear that the Quotas Act has given substantial impetus to the participation of women in the political sphere.

282. Finally, there is one specific case which deserves mention: that of the present Minister of Culture, Dr. Paula Marcela Moreno Zapata, the first woman belonging to the Afro-Colombian ethnic group to occupy a Cabinet post in the history of Colombia.

Participation in politics by ethnic groups

283. The National Constituent Assembly of 1991 marked the beginning of active participation by indigenous ethnic groups in Colombian democracy. Two indigenous members – Lorenzo Muelas (20,083 votes) and Francisco Rojas Birry (25,880 votes) were elected to this body, which framed the current Political Constitution of Colombia. Their participation brought about a constitutional advance in Colombia with the establishment of a special indigenous constituency for the Senate (art. 171 of the Political Constitution of Colombia) and the special constituency for the ethnic groups in the House of Representatives (art. 176 of the Constitution), together with the recognition of their territories in line with their cultures, the emergence of specific institutions for indigenous ethnic groups and of a context for the creation of political participation bodies and the legal development and dissemination of their rights at constitutional level.

284. The constitutional sanction of the special indigenous constituency and of the special ethnic constituency for the House affected the electoral progress of ethnic political movements. Indeed, these bodies have been a facilitating element for the indigenous peoples in the political processes, since candidates for these seats are only required to have occupied a position of traditional authority in their respective communities, or have been the head of an indigenous

organization, subject to certification from the organization concerned, authenticated by the Ministry of the Interior.

285. According to figures issued by the National Civil Status Registry, the following indigenous persons were elected to the Senate and the House during the 10 years following the promulgation of the 1991 Political Constitution: in the 1991 elections, Gabriel Muyuy and Anatolio Quirá (to the Senate); and in the 1994 elections, Lorenzo Muelas and Gabriel Muyuy (to the Senate). In the 1998 elections the indigenous peoples increased their representation in the Senate and the House; in the Senate Martín Emilio Tengana and Francisco Rojas Birry won seats on the basis of their constituency; but in addition Jesús Piñacué, an indigenous person, stood in an ordinary national constituency and won a seat (alliance between the Alianza Social Indígena movement and the conservatives). In the House two indigenous persons – Jhony Aparicio Ramírez del Guanía (1,683 votes) and Leonardo Caicedo P. del Vaupés (1,420 votes) were elected on the basis of their territorial constituency, representing the Alianza Social Indígena movement.

286. The representation of the indigenous population in the Congress of the Republic after the 2006 elections to the Senate and the House of Representatives for the period 2006-2010 was as follows: the two seats in the Senate attached to the special constituency were occupied by a member of the Nasa or Paez ethnic group, Senator Jesús Enrique Piñacue Achicue, of the Alianza Social Indígena movement, and Ernesto Ramiro Estacio of the Colombian Indigenous Authorities Movement (AICO). In the House of Representatives an indigenous woman of the Wayúu group, Orsinia Patricia Polanco Jusayu, was elected by the left-leaning Polo Democrático Alternativo party with 27,869 votes on a list without preferential voting.

287. In addition, the following political movements and parties with indigenous representatives took part in the elections to the Congress of the Republic (Senate and House of Representatives) for the period 2006-2010:

- (a) Polo Democrático Alternativo;
- (b) Alianza Social Indígena movement;
- (c) Community Participation Movement (MPC);
- (d) Colombian Indigenous Authorities Movement (AICO);
- (e) Communal and Community Movement of Colombia;
- (f) Únete Colombia movement.

288. At the regional and local levels these movements have achieved significant gains in elections to councils, assemblies, governorships and municipal authorities. In the 1994 elections Alianza Social Indígena entered ten lists for councils in the country, eight of which were elected. As for assemblies, only one list was entered (in Cauca); it was elected. At the elections to corporations and municipal authorities in 1997 the results of the political activity of the indigenous movements was even more apparent. At those elections 152 municipal councillors representing indigenous movements were elected (37 representing the Indigenous Authorities Movement and 115 Alianza Social Indígena); at the departmental level eight deputies on these lists were elected (seven representing Alianza Social Indígena and one the Indigenous

Authorities Movement); and 13 municipal mayors were elected (five from the Indigenous Authorities Movement and eight from Alianza Social Indígena).

289. In 2000 the Alianza Social Indígena endorsed two candidates in extremely important mayoral elections: Antanas Mockus in Bogotá and Sergio Fajardo in Medellín. For the first time, by joining forces the two movements (the Indigenous Authorities Movement and Alianza Social Indígena) secured the governorship of a department for the indigenous peoples. This electoral triumph occurred in the Cauca department, where Floro Tunubalá Paja was elected governor with a substantial number of votes (149,083), together with enough indigenous deputies to make up one quarter of the membership of the departmental assembly (Segundo Tombé Almendra, Luis Alberto Fiscue Ipia, Arquimedes Vitonas Noscue and Marcos Aníbal Avirama).

290. The data on the 1994, 1997 and 2000 elections in the Cauca department reveal a highly interesting political phenomenon in the electoral field; not only did the indigenous groups secure a governorship, but in addition they obtained striking results in councils and assemblies. Similar trends were observed in the Nariño and Antioquia departments.

291. Furthermore, this democratic development concerning indigenous ethnic groups living in Colombia has enabled the population to express itself as a civil society and to establish itself, through its organizations and interest groups, as a negotiating partner with the Government with the aim of playing an active part in the public policies being developed for the protection of its rights (this occurred, for example, when these associations were consulted during the negotiation of the free trade treaty between Colombia and the United States).

Afro-Colombian communities' participation in politics

292. The Colombian Constitution establishes a special constituency for the Afro-Colombian communities which secures them two seats in the House of Representatives.

293. In the congressional elections for the period 2006-2010 two representatives – Silfredo Morales Altamar for the Raíces Negras (Black roots) movement and María Isabel Urrutia Ocoro of the Afro-Colombian Social Alliance – were elected to the House in the special constituency for the representation of the Black groups. In addition, the following Afro-Colombians were elected in ordinary constituencies: Senator Piedad Córdoba in the Senate and Edgar Eulises Torres, Odin Sanchez Montesdeoca, Franklin Legro Segura, Alberto Gordon May and Julio Gallardo Archibold in the House of Representatives. Former members of Congress of different political parties and persuasions meet, hold talks with the Government, present themselves to civil society and, on certain occasions, act as representatives of organized Afro-Colombians (see www.bancadafrocolbiana.net).

294. The following are the political movements and parties seeking to win seats as representatives of the Afro-Colombian population:

- (a) Black Roots;
- (b) Afro-Colombian Social Alliance;
- (c) AFROUNINCCA;

- (d) ASOPRA;
- (e) CORPOSINPAC;
- (f) Organization of Afro-Colombian Women;
- (g) United Corporation for African Culture (CUCAF);
- (h) National Association of Colombian Students (ASNEA);
- (i) FUNDECON;
- (j) Cimarrón National Movement;
- (k) APONURY,
- (l) HACIA,
- (m) Tambor Yoruba Foundation;
- (n) ANALDIC;
- (o) Association for the Promotion and Integration of Negritude;
- (p) Afrocolombiana “Malcolm X”;
- (q) Despertar;
- (r) Intercambio de Experiencias Afro-Colombian Association;
- (s) FUNDECONA;
- (t) CINDET Movement;
- (u) FUNDAIN;
- (v) Convivencia Pacífica Organization;
- (w) Association for the Promotion and Defence of Ethnic Rights;
- (x) COAGROPACIFICO Ltda;
- (y) ASOPACIFICO;
- (z) Canoas Movement,
- (aa) Cimarrón Study, Communications and Community Promotion Centre.

295. It should be mentioned that in 2007, at the level of central executive power, for the first time a cabinet minister (Paula Moreno Zapata, Minister of Culture) and one of the

Vice-Ministers for Social Protection (Andrés Palacios, Vice-Minister for Labour Relations) belonging to the Afro-Colombian group were elected.

296. With regard to citizen participation, concertation facilities have been created and institutionalized. These include the National Concertation Board, the National Territorial Commission, the High-level Consultation Commission, the district, departmental and regional consultation boards and the community councils for the Black or Afro-Colombian population. In addition, some national bodies have created specific facilities permitting interaction among all the ethnic groups and discussion and concertation on policies and proposals designed for these communities; one example is the Inter-ethnic Committee for the project on evaluation of capacity needs and information processes for purposes of implementation of the Convention on Biological Diversity, which seeks, among other things, to protect traditional learning.

297. Another important aspect concerns the facilities established in the management boards of the autonomous regional corporations (the regional environment authorities), in State rural development bodies and in the National Cultural Council.

298. Decree No. 2249 of 1995 created concertation facilities relating to education policies through the Teaching Commission, which operates at the regional and national levels. Decree No. 3050 of 2002 provides for participation in the elaboration of the National Development Plan and provides for the composition of a commission for the inclusion of the Afro-Colombian component. In addition, Decree No. 1320 of 2002 facilitates mechanisms for the protection of economic and production rights and regulates prior consultation of the Afro-Colombian communities on public and private projects being conducted in their territories.

299. Likewise, the Constitutional Court has protected the right of participation by the Afro-Colombian population on district education boards. This was established by ruling T-422 of 1996 on a motion of *amparo* by a representative of these communities regarding an omission by the administrative department of the District Education Service, which had failed to appoint him to the District Education Board. The Court considered that his right to equality had been infringed and ordered the appointment of a representative of that community. The participation of a population group traditionally excluded from real decision-making power in the system of management of education is now finally admitted as a means of achieving its full integration into society and respect for and preservation of its important contribution to culture.

Afro-Colombian organizations registered with the Ethnic Groups Directorate of the Ministry of the Interior and Justice

300. The associations formed by the Afro-Colombian population are a fundamental element in the recognition of their demands and participation in decision-making, and are also appropriate bodies for consultation and discussion on subjects of interest to these ethnic groups in the context of their relationship with civil society as a whole and with the State. The following are the Afro-Colombian organizations registered with the Ethnic Groups Directorate of the Ministry of the Interior and Justice:

- (a) Intercambio de Experiencias Afro-Colombian Association (AIE);

- (b) Association of Afro-Colombian Students at the Autonomous University Foundation of Colombia (AEAFUAC);
- (c) Association for the Promotion and Integration of Negritude (AFIN);
- (d) Association of Afro-Colombian Students (AFROCENTRAL);
- (e) Association of Displaced Afro-Colombians (AFRODES);
- (f) Association of Afro-Colombian Students of INCCA University (AFROUNINCCA);
- (g) Perlas del Pacífico Women's Association (ASFPERPA);
- (h) National Association of Colombian Students (ASNEA);
- (i) Caucana Guajui Limones Association (ASOCAGUALIS);
- (j) Guapireña Settlement Association (ASOCOLONIA GUAPIREÑA);
- (k) National Association for the Development and Defence of the Peoples of the Pacific Coast (ASOPACÍFICO);
- (l) Canalete Organization of Afro-Colombian Studies (CANALETE);
- (m) Cimarrón National Movement (CIMARRÓN);
- (n) Convivencia Pacífica Foundation;
- (o) Colombia Negra Cultural Foundation (FCCN);
- (p) Akenathon Siglo XXI Foundation (FUNAK XXI);
- (q) Foundation for the Promotion of Associated Projects (FUNCIFPA);
- (r) Pro Municipio Magûi Civic and Social Foundation (FUNCIPPROMAGUI);
- (s) Foundation for the development of Black communities (FUNDECH);
- (t) Association of Progressist Women Heads of Families (MUJERES PROGRESSISTAS);
- (u) Association for the Full Development of Children and Women; Displaced Afro-Colombian Women, Informal Women Workers, Heads of Families and Marginalized Women (NIMUAFRO);
- (v) Projection to the Future Organization (OPF);
- (w) Afro-Colombian Ancestry Organization (OANAC);
- (x) Organization of Black Communities Association (OECONE);

- (y) Organization of Afro-Colombian Women (ORMUAFRO);
- (z) Interdisciplinary Organization of Afro-Colombian Professional Students (QUILOMBO ZUMBI);
- (aa) Afro Religions Corporation (RELIGIONES AFRO);
- (bb) TALLER NUESTRA CULTURA;
- (cc) Yambambó Colombian Artistic Foundation (YAMBAMBÓ).

Civil rights: freedom of expression

301. On this subject, as stated earlier, the State of Colombia guarantees to everyone the freedom to express and propagate their thoughts and opinions, to transmit and receive truthful and impartial information and to establish mass communication media. The latter are free and bear a social responsibility. The right of correction on equitable terms is guaranteed; censorship is prohibited.

- (f) **Economic, social and cultural rights: to work, to form and join trade unions, to housing, to health, to education, to culture**

The right to work

302. The Colombian Constitution states that work is a right and a social obligation and that it enjoys special protection in all its forms by the State. Everyone is entitled to work under decent and fair conditions.

303. Some recently promulgated legislative instruments amplify the substance of the right to work, laying particular emphasis on combating discrimination. These are:

Act concerning administrative career progression and management of public affairs (non-discrimination)

304. Article 2 of Act No. 909 of 2004 lays down the principles of the function of administration, which is designed with the constitutional principles of equality, merit, morality, efficiency, economy, impartiality, transparency, rapidity and openness in mind. Merit, the personal qualities and the occupational skills of each person are substantive elements in the processes of selection of members of the public service.

Act on harassment at work (non-discrimination)

305. The adoption of Act No. 1010 of 2006 was an attempt to define, remedy and punish the different forms of aggression, ill-treatment, vexation, disparagement and offensive treatment and, generally speaking, any affront to human dignity inflicted on persons carrying on their economic activities in the context of a private or public employment relationship. The act defines the different forms of harassment at work; these include discrimination in employment, which consists of differential treatment on grounds of race, gender, family or national origin, religious

belief, political leanings or social standing or any other grounds which are without relevance from the employment standpoint.

Act concerning equality of opportunities for women

306. Act No. 823 of 2003 lays down general principles concerning equality of opportunities for women. It establishes a set of programme commitments on the part of the State to introduce special protection for women in the public, employment, family, statistical, health, housing and other spheres with a view to strengthening their position in society and give additional impetus to the institutional effort begun with the Quotas Act (referred to under article 5 in section (e) (Political rights).

The right to form and join trade unions

307. There is a constitutional guarantee of the right of freedom of association for the conduct of the different activities which individuals carry on in society. This implies a right to form trade unions or associations without intervention by the State provided that their internal structures and functioning comply with the legal order and with democratic principles. There are no special provisions concerning the right of minorities to form trade unions.

The right to housing

308. The State lays down in general terms the conditions necessary to give effect to the right to decent housing and promotes housing plans of interest to society, appropriate long-term financing systems and associative forms of implementation of these housing plans.

Tourist Inns programme

309. Since 2003 the National Government has been implementing the Colombian Tourist Inns programme, a project framed jointly by the Ministry of the Environment, Housing and Spatial Development, the Directorate of Tourism in the Ministry of Trade, Industry and Tourism and the Agrarian Bank of Colombia. The programme consists of promotion of local and regional tourism by developing the availability of lodgings in municipalities with natural tourist attractions. This involves the improvement or construction of rural housing, which is facilitated by a family rural housing subsidy paid by the National Government.

310. The concept of the Colombian Tourist Inns Programme is based on the consolidation of a sustainable development proposal in which the solution of the problem of housing of families living in rural areas is combined with a productive opportunity enabling those families to improve their economic condition precisely through the solution of the housing problem. The principal strength of the programme lies in the possibility it offers of creating productive housing. Although the programme is not designed specifically for the ethnic minorities, it does benefit especially the indigenous, Afro-American and Raizal groups, since in the places deliberately selected by the programme the majority of the population is usually indigenous or Afro-Colombian. The proposal being pursued through the tourist inns programme is one of the strategies with which the Government is furthering the policies of the National Development Plan by creating productive opportunities making possible a social revival in the countryside and conditions of a nature to encourage the country's original rural population to go on living there.

311. The programme is being financed with resources from the rural sectoral policy projects budget through the environment management component, which consists of projects to which the Government attaches special priority. In line with the national ecotourism policy, responsibility for which lies with the Ministry of the Environment, Housing and Spatial Development and the Ministry of Trade, Industry and Tourism, the programme gives priority support to municipalities in areas with links to the National Natural Parks System (which, moreover, usually include substantial population groups of ethnic origin). The fundamental idea is to create a supply of complementary tourist services in the park areas' zones of influence. One of the principal conditions which it is sought to meet through the Tourist Inns project is that of ensuring that the architectural standard of the projects is such as to enable the beneficiary families to enjoy decent housing which, in addition, offers tourists accommodation with private bath. Thus the projects prepared must give priority to use of local materials and building techniques and offer opportunities for cultural, environmental and economic sustainability.

312. The rural housing and tourist inns programme has had the following agendas:

- (a) Agenda 2003: in the first phase four projects were approved and resources totalling 915,108,000 pesos were allocated; the beneficiaries were 134 indigenous, Afro-Colombian and Raizal families. Projects were launched in Providencia, Nuquí and Bahía Solana in Chocó, together with a pilot project in Cabo de la Vela which sought to consolidate one of the most positive impacts proposed by the programme, namely the revival of the building tradition in the zone as a form of cultural expression;
- (b) Agenda 2004: the second phase consisted of implementation of projects in 15 localities in 12 municipalities in the country; the resources allocated amounted to 2,123,001,204 pesos, and the number of families benefiting was 429. As a result of the beneficial effects of the programme and the positive impact of projects such as that executed with the Wayúu indigenous community of Cabo de la Vela, the programme has become one of the Government's main strategies for the consolidation of rural community tourism and the strengthening of the national ecotourism policy;
- (c) Agenda 2005: Together with the Directorate of Tourism and with the cooperation of the Agrarian Bank of Colombia, progress was made in the implementation of the projects forming part of phase III of the programme; with the projects awarded during 2004 located in Silvia and Piendamó in Cauca; Juanchaco, Ladrilleros and La Bocana in the Pacific zone of Valle del Cauca; Restrepo in Meta; Moñitos in Córdoba; San Onofre in Sucre; Tenza in Boyocá and Villavieja in Huila ; and with the projects at Manaure and Cabo de la Vela in La Guajira, Taganga in Magdalena and Necoclí in Antioquia;
- (d) Agenda 2006: In 2006 the Caribbean zone, the area of the Los Nevados Natural National Park (NNP) and Amazonía were consolidated; projects were undertaken in zones of influence of the Corales del Rosario NNP, the island of Barú, the Isla de Salamanca NNP, Ciénaga de Zapatoza in Chimichagua, Cesar, and an ethnic ecotourism project in the indigenous community of Kankuama de Atanquez in the zone of influence of the Sierra Nevada de Santa Marta NNP.

313. In addition, in pursuance of Inter-institutional Cooperation Agreement No. 84 of 2005 between the Presidential Social Action Agency and the Ministry of the Environment, Housing and Spatial Development, since the end of 2005 technical advice has been provided for the drawing-up of rural housing and tourist inns projects in the four municipalities in the Sibundoy valley in Putumayo (San Francisco, Colón, Santiago and Sibundoy) and in 2006 in San José del Guaviare, Santa Marta and Necoclí (large numbers of the inhabitants of these municipalities belong to population groups of ethnic origin). It is also hoped to provide technical advice to at least 15 additional municipalities for the drawing-up of projects for the agenda of the Agrarian Bank, which is currently open to new items.

Measures taken for the award of public social housing contracts under equality of terms

314. Presidential Decree No. 4427 of 28 November 2005 provides that legally constituted community councils of Black communities may tender rural social housing plans for purposes of award of the family housing subsidy on the same terms as private bodies and regional entities.

Family housing subsidy for displaced population groups

315. It is important to remember that substantial numbers of displaced persons in Colombia are of Afro-Colombian origin. For this reason mention is made of this public policy, under which the National Government, through the intermediaries of the National Housing Fund and the Agrarian Bank, has devoted special attention to the displaced population groups registered in the Consolidated Registry of Displaced Population kept by the Office of the Presidential Adviser on Social Action and has established favourable conditions for access to urban and rural family housing subsidies.

316. Article 16 of Decree No. 951 of 2001 establishes that the geographical allocation of resources for the provision of the subsidy to displaced persons will be determined in line with the distribution coefficients to be established by the Ministry of Development for urban areas and the Ministry of Agriculture for rural areas, the following criteria to be complied with in all cases:

- a) Departments with the greatest numbers of displaced persons as recorded in the Consolidated Registry of Displaced Population kept by the Office of the Presidential Adviser on Social Action;
- b) Departments in which displacement has had the greatest impact in terms of the level of poverty there as shown in the NBI index (departmental index of unsatisfied basic needs) for the department concerned as calculated on the basis of the demographic projections of the DANE for the year of the application.

317. In this connection it is important to recall that the National Government, in accordance with the provisions of the above-mentioned decree, offers specific grants to provide housing subsidies for displaced groups; the allocation of the necessary resources depends on the demand arising within the groups concerned. It should also be emphasized that, in view of the vulnerability of displaced groups, special conditions have been laid down for them in the processes of application for and award of subsidies; for instance, the requirement of programmed saving is not applicable to them, and there are even special arrangements concerning the use of the subsidy, such as the purchase of housing requiring repairs, or renting.

Implementation of the national programme for the granting of subsidies in kind

318. In a search for other types of solutions differing from those traditionally developed to support housing policies, the Government is seeking, through this programme, to make land belonging to the National Housing Fund for social housing (VIS) available once it has been transferred to the fund by public bodies established at national level.

319. In view of the ethnic and cultural diversity of the country, the technical development programmes play an important coordinating role in the implementation of the housing policy. For this reason the Government has placed particular emphasis on these elements in the development of the policy. In line with the section on strengthening of and support for ethnic groups in the National Development Plan, efforts have been made to promote the use of alternative materials and building techniques traditionally used in the regions and to support housing as a cultural value in *campesino*, Afro-Colombian, indigenous and Raizal communities; this is being done within the Social Rural Housing and Tourist Inns Programme.

Award of land title

320. As regards award of title and the legalization of non-formal settlements, mechanisms are being designed and technical assistance is being given to municipalities for transfers of property under the National Government's asset management programme, which is being implemented through agreements with municipalities in which major settlement legalization proceedings are taking place; some of these involve a substantial ethnic element.

The right to public health, medical care, social security and social services

321. Social security is a compulsory public service, which will be provided under the direction, coordination and control of the State in accordance with the principles of efficiency, universality and solidarity and in the manner prescribed by law. The State, with the participation of private bodies, will gradually expand the coverage of the social security scheme, which will comprise the provision of services in the form established by law.

322. Act No. 100 (General Social Security Scheme) states that there are certain particularly vulnerable population groups which must receive support or partial subsidization to enable them to participate in the system. These "vulnerable" groups include the Colombian ethnic minorities (indigenous, Afro-Colombian and Roma) and other population groups such as pregnant and breastfeeding women, artists and athletes.

323. It should also be mentioned that the goal of the National Government for the four-year period 2006-2010 – which it has been steadily approaching – is the attainment of 100 per cent social security health coverage embracing all individuals without distinction on grounds of race or ethnic origin.

Indigenous peoples

324. In the light of the particular vulnerability of the ethnic minority communities as recognized in Act No. 100, Act No. 691 of 2001 (described in detail below), creating a special social security health scheme for the indigenous peoples of Colombia, was promulgated. The scheme is subsidized, and respect for and protection of the ethnic and cultural diversity of the indigenous

peoples must be ensured in the provision of the service. The Office of the Attorney-General of the Nation is the body responsible for control and verification to ensure that the services provided are in line with the cultural differences of the indigenous peoples within the sphere of action of the Ministry of Social Protection. The indigenous peoples have gradually been incorporated within the subsidized social security scheme without charge; they enjoy certain advantages over the rest of the poor population of the country in that under present legislation they are not subject to the inquiries of the Benefits Identification System or to the payments which other members of the General Social Security Health Scheme are required to make.

325. In addition, with a view to complying with Act No. 21 of 1991 ratifying ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries, a number of legislative instruments have been adopted, among them Act No. 691 of 2001 and Decision 244 of 2003 of the National Health and Social Security Council, which respectively permit the creation of administrative bodies in the subsidized scheme, managed by the traditional authorities of the peoples concerned, the responsibilities of which include certification of the census lists for purposes of membership of the subsidized scheme. Thus the indigenous health bodies administer resources and conclude service contracts with health-care providers created by the legitimate traditional authorities of the peoples concerned. The subsidized scheme covers approximately 90 per cent of the population; the Government has committed itself to achieve the goal of extending coverage to 100 per cent of the indigenous ethnic groups during its current four-year term.

Health and social security (policies on health of ethnic groups)

326. In addition to the aforementioned legal instruments establishing preferential treatment, and in consolidation thereof through regulatory and executory instruments, the Ministry of Social Protection is designing proposals and measures aimed directly at the strengthening of ethnic groups in the health sphere. The following deserve particular mention:

- (a) Proposals:
 - (i) Reduction of diseases prevalent among small children and preventable by vaccination;
 - (ii) Implementation of a sexual and reproductive health policy;
 - (iii) Prevention and control of vector-transmitted diseases;
 - (iv) Promotion of healthy lifestyles for the prevention and control of chronic diseases;
 - (v) Implementation of the mental health policy and reduction of the impact of the *violencia* on health;
- (b) Policy measures:
 - (i) Advice and technical assistance to territorial bodies such as traditional organizations and authorities;

- (ii) Establishment of databases on traditional organizations and authorities and of a bibliography on the subject of social protection for these groups;
- (iii) An analytical survey and study of the characteristics of the population, including the groups located in border areas and displaced groups;
- (iv) Restructuring and dissemination of the legislation in force concerning the rights and duties of ethnic groups;
- (v) Framing of proposals for public policies to improve the health conditions of ethnic groups; preparation of a proposal on health-care models for ethnic groups;
- (vi) Updating of the guidelines for the adaptation of the Basic Health-care Plan (PAB) to the situation of ethnic groups;
- (vii) Concertation with the indigenous peoples to establish regulations implementing Act No. 691 of 2001 providing for the participation of these peoples in the General Social Security Health Scheme. The subject-matter of the concertation would include proposals for the socio-cultural adaptation of the benefit plans for that community, and in particular the Compulsory Subsidized Health Plan (POSS).

Indicators of social security coverage among indigenous peoples

327. As a result of the favourable treatment accorded to the indigenous population under the National Constitution of 1991, Act No. 100 of 1993, Act No. 691 of 2001 and the various regulations and executory measures pertaining thereto, the indigenous population today enjoys positive benefits in the social security sphere. The following indicators exist in this regard:

328. In 2006 there were already 37 institutions providing health services approved for indigenous peoples.

329. In addition, in registrations with the subsidized scheme at the national level indigenous peoples have since 2004 been identified separately, and the financing of the scheme has been provided jointly by the territorial entities and the *resguardos*, the contribution of the latter being limited to a maximum of 10 per cent.

Membership of the subsidized scheme

Description	Unit of measurement	2002	2003	2004	2005-I
Registrations with the subsidized scheme at national level. Indigenous population identified separately only from 2004 onwards	Persons	ND (not disaggregated)	603 833	189 447	70 000 places accorded
Resources	Million pesos	ND	109 066	24 232	ND

Description	Unit of measurement	2002	2003	2004	2005-I
From 2004 onwards financing provided jointly by FOSYGA, territorial bodies and <i>resguardos</i> (contribution of 10%)	Percentage	100% FOSYGA	100% FOSYGA	66.5% FOSYGA	70% FOSYGA

FOSYGA (Solidarity and Guarantee Fund) is a national fund, attached to the Ministry of Social Protection, which subsidizes and finances the social security scheme in Colombia.

Source: Ministry of Social Protection.

330. The programme for older indigenous adults, which is financed with resources from the pension solidarity fund (FSP), has been paying direct and indirect allowances since 2003. A total of 23,949 elderly indigenous persons of both sexes have benefited from this programme.

Programme for older indigenous adults financed with resources from the Pension Solidarity Fund (FSP); subsistence sub-account

DESCRIPTION	Unit of measurement	2003	2004	2005 - I	Totals
Direct allowances: programme launched in 2003	Personas	2,821	3,450	3,482	9,753
Resources	Millon de Pesos	1,170	1,735	750	3,655
Indirect allowances (older indigenous adults)	Persons	n/a	n/a	14,196	14,196
Resources included in co-financing of <i>resguardos</i>	Million pesos	n/a	n/a	7,112	7,112
Total number of persons receiving direct or indirect allowances	Persons	2,821	3,450	17,678	23,949
Resources	Million pesos	1,170	1,735	7,862	10,767

331. Moreover, 49,479 indigenous children have benefited from the children's breakfasts provided by the Colombian Family Welfare Institute (ICBF).

Food for children (ICBF)

Description	Unit of measurement	2003	2004	2005 - I	Totals
Children receiving children's breakfasts	Persons	898	15,030	37,311	49,479

332. Within this health policy framework special support for the care of displaced indigenous population groups is provided by a group of institutions. Under the leadership of the Presidential Social Action Agency and the Ministry of Social Protection they conduct the following programmes: assistance to families in indigenous groups to promote social and cultural

strengthening within families; support by RESA (nutritional security) for families at risk; humanitarian and emergency aid provided by the Presidential Social Action Agency to indigenous individuals in particular areas such as accommodation, food and sanitary kits, habitat and cooking.

Forced displacement (Presidential Social Action Agency)

Description	Unit of measurement	2002	2003	2004	2005 - I	Totals
Care of families in indigenous groups for family social and cultural strengthening and with new modalities	Persons	53,665	45,478	59,286	67,513	225,942
Support by RESA (nutritional security) for families at risk	Persons	0	0	12,599	69,043	81,642
Humanitarian and emergency assistance by the Presidential Social Action Agency for indigenous individuals in the areas of accommodation, food, sanitary kits, habitat and cooking	Persons	634	623	882	277	2,416

333. There are currently 8,150 indigenous individuals on the books of the Consolidated Registry of Displaced Population; 2,518 have returned to their homes, and 25 communities have received support. The programme was launched in 2002.

Forced displacement (Presidential Social Action Agency)

Indigenous individuals on the Consolidated Registry of Displaced Population	8,150	Information consolidated by displacement of indigenous people individually or in groups
Return to indigenous homes individually or in groups	2,518	Consolidation by individual and group returns. Food aid, agricultural and fishing kits
Support for communities at risk; infrastructure and grants for indigenous schools (support already given or planned)	25	The programme began in 2002. A new agreement has been concluded providing for continuation of the same strategies. In 2005, 12 billion pesos were made available.

334. In 2004 two documents, entitled respectively “Inputs for the conceptualization and discussion of a social protection policy on health” and “The methodology of concertation for the design of a social protection policy in the health sphere for ethnic groups in Colombia”, were prepared and published, together with a conceptual and standard-setting database which is published on the web-page of the Pan-American Health Organization (PAHO).

335. During 2004 and part of 2005 meetings were held at national and regional levels to validate and adjust the methodology of concertation for policy design with the participation

of representatives of the different ethnic groups and the territorial bodies. At those meetings it was agreed that the representatives of each group should meet separately to compile the data obtained from the analysis and study of the features of the health situation with the assistance of the departmental and municipal health secretariats. The information collected in the different zones is transmitted to the Ministry of Social Protection, which, as the institution concerned, organizes it pending validation by the ethnic groups for purposes of subsequent adjustment and publication (analytical and feature-defining document).

336. As regards resources devoted to health, in the Cauca department 15 million pesos were allocated in 2004 for the strengthening of traditional medicine in the indigenous communities, and in 2005 ambulances of a value of 100 million pesos were given to them. In Cesar department refrigeration plant of a total value of 80 million pesos were provided for Sierra Nevada de Santa Maria. In La Guajira department ambulances were provided for the indigenous communities entailing expenditure of 80 million pesos in 2003, 393 million in 2004 and 101 million during the first half of 2005. The Magdalena department invested 286 million pesos in 2004 and 81 million during the first half of 2005 in the form of provision of ambulances and support for the IPSI network.

337. In addition, with a view to drawing up outlines for a differential policy regarding social protection for ethnic groups which had been displaced or were living in border areas, a study was carried out in 2004 to define the characteristics of the *violencia* situation, displacement and the health conditions of the ethnic groups situated at the borders with Venezuela, Brazil, Peru, Ecuador and Panama. A document containing this study is now available; the document also contains a bibliographic and standard-setting database, a draft of a theoretical approximation and conceptual framework and information on the diagnosis and definition of the characteristics of the population. This document is being revised by the Ministry of Social Protection and will shortly be transmitted to the beneficiary ethnic groups for study, verification, validation and adjustment.

338. In addition, within the policy framing strategy, and working on the basis of the policy of special treatment for displaced indigenous peoples, the Ministry of Social Protection has been working on the design of a document which will explain in simple terms the procedure to be followed by a displaced individual or ethnic group in order to be registered in the Consolidated Registry system. It would also help to disseminate knowledge of the rights and duties of the population groups concerned, which are deemed to be among the most vulnerable, and provide the information necessary permitting them to claim comprehensive protection and to become aware of the institutional measures to provide care and solutions to their problems. This procedure will be tested with a sample of displaced indigenous and Afro-Colombian persons in the city of Bogotá so that, once validated, it will provide an operational and methodological model for other cities in the country hosting displaced populations.

339. Likewise, as regards the Basic Health-Care Plan on public health measures – priority measures as defined by the nation and those adapted to conditions in a particular region or territory – it should be mentioned that where ethnic groups are involved concertation measures are required under section 11 of External Circular No. 18 of 18 February 2004, which states that “when there are legally recognized ethnic groups in a territorial entity the preparation of the Basic Health-Care Plan must comprise consultation and concertation processes” designed to secure “the ethno-cultural suitability of the measures to be taken”.

340. Thus in health matters the indigenous population has facilities for concertation which seek to ensure that before measures are taken in this area there must be prior consultation with their authorities and representatives. One of these facilities was established under Decree No. 1397 of 1996, which provides for participation by the Ministry of Agriculture and Rural Development, the Colombian Rural Development Institute (INCODER), the Ministry of the Interior and Justice, the Ministry of the Environment, Housing and Spatial Development, the Ministry of Finance and Public Credit, the Ministry of Mines and Energy, the Ministry of Social Protection, the Ministry of Education, the National Planning Directorate, the Presidential Adviser for Borders, the Presidential Adviser on Social Policy, the indigenous senators and members of the former Constituent Assembly, the Indigenous Organization of Colombia, the Indigenous Organization of the Peoples of Orinoquía and Amazonía and the Tairona Indigenous Confederation. The purpose of this workshop is to secure agreement between the indigenous peoples and the institutions of State on administrative and legislative decisions affecting the former and to examine the State's indigenous policy.

341. In addition, in the regulatory field the Ministry of Social Protection, through a standing committee established for the purpose, has been holding a series of meetings with representatives of the Indigenous Health Board with a view to proposing draft regulations relating to Act No. 691 of 2001 and consisting of a draft decision and a draft decree. The outcome of the meetings held during the months August-December 2004 and on 13 May 2005 was a draft of a regulatory decision laying down some guiding principles to govern the organization and functioning of the subsidized scheme for indigenous peoples; the draft was submitted for consideration by the National Social Security Council at its meeting on 14 October 2005. At that meeting the article concerning the minimum number of members was adopted and a suggestion was made for the amendment of the article concerning the Compulsory Subsidized Health Plan (POSS) for the indigenous peoples so that it would also cover matters relating to food subsidies, reception centres and the movement of patients.

The particular experience of the Embera de Pueblo Rico and Mistrato (Riscalda) indigenous communities with regard to the practice of genital mutilation

342. Regarding excision of the clitoris, practised in the Embera indigenous community, it was suggested that the matter should be covered in the Comprehensive Plan in a section dealing specifically with sexual and reproductive health and by a strategic activity of applied and participative investigation in order to establish whether the practice is an ancestral and historical one dating back to the beginning of time, with the aim in view of introducing change as part of an educational element concerning that practice, while respecting the autonomy and the cultural identity of the Embera Chami people.

343. The division responsible for indigenous and ethnic minorities in the Office of the People's Advocate, in coordination with the division on the rights of children, women and young persons, has been holding a series of meetings, always conducted within a framework of respect for ethnic and cultural diversity and for human rights, especially those of Embera children and women. As a result of previous inter-institutional measures, agreements have been reached between the representatives of the institutions of State and the Embera Chami communities of Pueblo Rico and Mistrató to clarify the procedures and supports designed to avoid recourse to the practice of excision.

Plans and programmes benefiting the Raizal population of the archipelago department of San Andrés, Providencia and Santa Catalina

344. In the health sphere, as part of the expansion of the coverage of the health scheme (FOSYGA resources), the Ministry of Social Protection has drawn up an agenda for the Raizal population which includes the following subjects:

- (a) Infrastructure (construction, adaptation, maintenance);
- (b) Endowment of the hospital and the health centre; implementation of the information system of the social security health scheme;
- (c) Training of the human resources and the community;
- (d) Health promotion of health; disease prevention; public health monitoring and control.

345. In pursuance of these activities the Departmental Health Secretariat of San Andrés, together with the National University of Colombia (Caribbean site), is submitting the findings of the epidemiological bulletin "Mortality, Birth Rates and Nutrition" in the archipelago department of San Andrés, Providencia and Santa Catalina for analysis and use by interested parties. This study is but a starting-point in the health sphere in the archipelago and the Secretariat's communication and information projects.

346. To facilitate monitoring and in pursuance of the targets in the departmental health field, and to identify the situation and trends in that field, the Departmental Public Health Secretariat in San Andrés is planning to provide health indicators disaggregated by age group, sex, year and type of scheme.

Recent policies for the Raizal population in the health sphere

347. Between 6 and 13 March 2006 a survey of vaccinations was conducted among 210 children between ages 0 and five in 30 districts of San Andrés. During this activity:

- (a) The vaccination booklets of boys and girls aged 0 to five were reviewed;
- (b) The scheme was extended to partially registered boys and girls;
- (c) 34 boys and girls, or 16 per cent of the target population, were vaccinated;
- (d) Coverage of infants less than one year old was extended (complete set for age) to 76.6 per cent;
- (e) It was established that 80 per cent of boys and girls aged one year old had received the triple vaccination;
- (f) It was confirmed that 85 % of boys and girls between ages one and five years had received a set of vaccinations adequate for their ages.

348. Between 8 and 10 March 2006 the Departmental Health Secretariat visited eight of the 16 women administrators of the subsidized scheme on the island of San Andrés. These visits were designed to undertake evaluations and provide technical advice and to conduct follow-up and monitoring of the activities and progress in the field of health promotion and prevention.

349. Between 6 and 10 March 2006 the Environmental Health and Control of Vector-transmitted Diseases Unit carried out a “verification of risk factors in the environment”. This task involved the establishment of the medical index by means of a careful inspection and evaluation of vessels containing water in order to localize the breeding-grounds of the vectors in 850 dwellings in the department of San Andrés. It was found that 244 dwellings, or 28.6 per cent of the total, tested positive for *Aedes aegypti*. The index was 10 percentage points lower than in the previous year; nevertheless, there was still a risk of dengue fever on the island.

Health policies for the Roma (or Gypsy) population

350. In order to bring the Roma population into the subsidized social security health scheme, and for purposes of utilization of the inquiry conducted by the Beneficiaries Identification System during 2004, a number of meetings were held with the participation of the PROROM organization, the Ministry of Social Protection and representatives of the Ministry of the Interior and Justice, the Office of the People’s Advocate and the Bogotá District Health Secretariat. These meetings revealed the need to prepare technical support to justify and present a proposal for an agreement on bringing the Roma population into the subsidized social security health scheme on the basis of the census lists.

351. On the basis of the agreements reached a document was prepared by PROROM. It underwent some amendments, on the basis of which the coordination unit of the Equity and Gender group in the Directorate-General for Social Promotion consolidated a technical document which, together with the draft agreement, an explanatory note and other legal texts, was submitted to the National Social Security Health Council for consideration and analysis. The outcome of these proceedings was the issue of Decisions 273 and 275 by the National Social Security Health Council and the admission, with effect from October 2004, of some 591 representatives of the Rom (Gypsy) people, out of the expected 1,700, into the subsidized scheme.

The right to education and training

352. Article 67 of the 1991 Constitution stipulates that education is a right of the individual and a public service with a social function and that through it access is sought to knowledge, science, technology and the other assets and values of culture. Education is free of charge in State institutions, without prejudice to the charging of school fees to those who can afford them. Every person has freedom of choice of occupation or trade.

Ethnic education policies

353. The Ministry of National Education has implemented and promoted an ethnic education policy in line with the provisions of the Political Constitution of Colombia, and in particular articles 7, 13, 246 and 330 and of the ordinary and special regulatory guidelines laid down in Act No. 115 of 1994 and Decree No. 804 of 1995 respectively. The public education service is

governed by this regulatory framework to ensure that it discharges its social function, meets the needs and interests of individuals, the family and society and at the same time establishes the mechanisms necessary to ensure that, in recognition of the country's ethnic and cultural diversity, the members of the different ethnic groups are given the opportunity to enter, remain in and advance within the education system under suitable conditions of quality, relevance and equity.

“Educational Revolution” Sectoral Plan 2002-2006

Description	Unit of measurement	2002	2003	2004	2005 - I	Totals
Registrations in basic and secondary education	Persons	0	0	175,268	342,187	517,455
Extension of coverage with FNR resources	Students	ND	ND	ND	5,011	5.011
Extension of coverage with additional resources from the NAL budget	Students	ND	ND	ND	11.,27	11,27
Beneficiaries of ICETEX credits from “Alvaro Ulcue” fund (MIJ)	Families	0	0	468	376	844
Paez Programme – National University – access to higher education for indigenous persons	Persons	0	56	136	111	303

Source: Ministry of National Education, 2006.

354. In general terms, the “Educational Revolution” sectoral plan 2002-2006 seeks to advance projects improving the relevance of education for the benefit of the most vulnerable population groups with a view to eradicating factors making for inequity, discrimination or isolation and thereby making progress towards the consolidation of Colombian identity based on recognition of multi-ethnicity and multiculturalism. The plan is based on the idea that an ethnic education peculiar to each community should be developed side by side with a common education for all Colombians in such a way as to expand dialogue among knowledge systems. Consequently this plan has been developed in accordance with three strategic lines of action:

- (a) Internal strengthening of ethnic populations through improved quality and coverage of the education system;
- (b) Optimization of the management of institutional education at the central and regional levels;
- (c) The promotion and dissemination of specialized multicultural publications facilitating dialogue among knowledge systems and favouring socialization of problems and alternatives present within the social, multi-ethnic and cultural complex which is Colombia.

Ethnic education indicators

Description	Unit of measurement	2002	2003	2004	2005 - I
Putumayo children benefiting	Students	0	0	0	1,408
8 national concertation boards on ethnic education	Persons	0	80	160	80
20 regional ethnic education boards working in concertation with local leaders	Persons	0	300	1,050	70
Advisory groups for preparation of development plans	Peoples	0	0	0	17
Training of indigenous leaders (PROEIB-ANDES MEN UNICAUCA)	Leaders	0	0	54	0
Support for Ethnic Education Forum	Teachers	0	0	50	14
Total resources allocated to Coverage and Quality 2004-2005	Million pesos	0	0	0	198,917

Source: Ministry of National Education 2006.

356. Statistical data on school attendance disaggregated by gender and by numbers of indigenous boys and girls in schools (no difference between ethnic education processes and official curricula) are given below.

School attendance among ethnic groups, 2003

Sex	Educational Level	Indigenous
Males	Attended	115,271
	Did not attend	29,059
	Total	144,330
Females	Attended	95,375
	Did not attend	42,988
	Total	138,363
Total	Attended	210,646
	Did not attend	72,048
	Total	282,693

Source: Office of the Attorney-General of the Nation, DANE: Quality of life survey, 2003.

357. As there is no information on students successfully completing courses at each level of education, actual school attendance rates cannot be calculated. Consequently we have taken the net and gross school attendance rates, the former representing the ratio of enrolled students at the

regular age to be studying at a particular level and the total numbers of persons who should be studying at that level and the latter the same ratio but taking into account the total of enrolments, including individuals outside the normal age bracket.

Children enrolled

Ethnic group	Population aged 5-15	Enrolments (ages 5-15)	Total enrolments	Net rate	Gross rate
Indigenous	242,984	187,945	211,075	77.3%	86.87%

Source: Office of the Attorney-General of the Nation, DANE: Quality of life survey, 2003.

Plans and programmes benefiting the population of the archipelago department of San Andrés, Providencia and Santa Catalina and the Raizal population in particular

358. An education agenda has been established which includes the following themes:

- (a) Implementation of multilingual education (Spanish, English and Creole) in departmental schools;
- (b) Professionalization and skills development in multilingual and multicultural training for teachers;
- (c) Construction and/or endowment of libraries for the promotion of reading and the improvement of educational standards in the department;
- (d) Awareness-raising and training in the management of renewable and non-renewable resources and identification of polluting agents and areas in the department;
- (e) Promotion and implementation of environmental culture by means of environment education projects in the schools of the department;
- (f) Promotion of science and technology;
- (g) Competitions on basic knowledge in the fundamental areas of education;
- (h) Adaptation, maintenance and endowment of official schools in the department. Support for the multilingual and multicultural project to be implemented by the collegiate inter-institutional committee.

Statistics on education for the Afro-Colombian and Roma (or Gypsy) populations

359. Members of the Afro-Colombian population have two courses open to them where education is concerned. On the one hand, the great majority of the Afro-Colombian school population is covered by the general plans and programmes of the Ministry of National Education without distinction based on race or ethnic origin. Thus a large majority of Afro-Colombian children study under the same conditions as Mestizos in the same age groups, and the difficulties they encounter are of a general character (problems of coverage, of local infrastructure, of remaining at school, etc.) rather than specific problems deriving from their

Afro-Colombian origins. However, Afro-Colombian groups in organized Black communities may benefit from ethnic education programmes in the same way as indigenous groups and receive traditional teaching in their own communities.

360. The educational levels of the Roma population vary considerably according to gender; in most families it is customary not to send girls to school, which makes for a high level of illiteracy among girls. Below is a comparison between the situation of the Roma and that of the other ethnic groups; it shows the importance of taking into account the high degree of vulnerability of the Roma people, who live mainly in urban areas – a factor which makes it even more difficult to ascertain their situation.

School attendance among ethnic minorities

Zone	Age group	<i>Indigenous</i>	Rom	Raizal	Afro-Colombianos	Total
Urban	Under 5	26.069	449	2.419	223.146	252.082
	7-17	104.036	456	7.918	693.250	805.660
	18 and over	269.792	9.687	15.045	1.338.652	1.633.177
	Total	399.897	10.592	25.382	2.255.049	2.690.919
Rural	Under 5	68.963		1.976	172.779	243.719
	7-17	178.658			428.155	606.813
	18 and over	284.005			565.047	849.052
	Total	531.626		1.976	1.165.982	1.699.584
Total	Under 5	95.032	449	4.935	395.926	495.802
	7-17	282.693	456	7.918	1.121.405	1.412.472
	18 and over	553.797	9.687	15.045	1.903.700	2.482.230
	Total	931.523	10.592	27.359	3.421.030	4.390.504

361. As regards attendance rates, as there is no information on students successfully completing courses at each level of education, actual school attendance rates cannot be calculated. Consequently we have taken the net and gross school attendance rates, the former representing the ratio of enrolled students at the regular age to be studying at a particular level and the total numbers of persons who should be studying at that level and the latter the same ratio but taking into account the total of enrolments, including individuals outside the normal age bracket.

Ethnic group	Population aged 5-15	Enrolments (ages 5-15)	Total enrolments	Net rate	Gross rate
<i>Indigenous</i>	242,984	187,945	211,075	77,3%	86,87%
Rom	456	456	456	100,0%	100,00%
Raizal	6,740	6,520	6,833	96,7%	101,38%
Afro-Colombian	951,776	809,853	900,697	85,1%	94,63%
TOTAL	1,201,955	1,004,774	1,119,062	83,6%	93,10%

Source: Office of the Attorney-General of the Nation, DANE: Quality of life survey, 2003.

The right to equal participation in cultural activities

362. As explained in greater detail in the section of this report concerning the framework of legal protection of ethnic rights, the State of Colombia recognizes and protects the ethnic and cultural diversity of the Colombian nation and promotes and fosters access to culture for all persons living in the country in conditions of equality of opportunity and without any distinction based on ethnic group, gender, etc. Within that framework the State has taken numerous measures to develop and promote cultural expressions and activities among its minority groups and their participation in the cultural media and channels of the majority.

Strengthening of cultures and identities

363. The Ministry of National Education and the Ministry of Culture have undertaken a number of joint activities aimed at preserving ethnic traditions such as the languages or the creation theories of certain groups. The activities undertaken relate specifically to:

- (a) The publication of the Teacher's Grammar for grades 1-5 in the Cofán indigenous language; it is used by 3,000 pupils in the indigenous communities of San Miguel and Valle del Guámez in the Putumayo department;
- (b) The design of ethnic education syllabuses for grades 1-5 for the indigenous communities in the area of the river Mirití, Paraná and Medio Caquetá in the Amazonas department. Coverage comprises 19 community schools and 874 pupils (boys, girls and adolescents).

Policies pursued by the Ministry of Culture concerning recognition of cultural diversity and the preservation of the cultural heritage of the indigenous communities

364. The Ministry of Culture seeks to protect, promote and guarantee access to cultural content for all the ethnic minorities by means of various strategies. In addition to its leadership of a National Council for Culture, a National Heritage Council and a National Arts Council, in which the ethnic communities are compulsorily represented, the Ministry directs the programming of the cultural content of the "Señal Colombia" public TV channel (which covers the entire country and includes specific items for indigenous and Afro-Colombian groups) and is pursuing various plans and programmes designed to ensure equality of access to cultural activities (both national

and specific to ethnic groups) for all the communities in the country. For instance, the Ministry of Culture is pursuing the following plans and programmes in this area:

365. “**Señal community, culture and diversity**”. Specifically, the Communications Directorate of the Ministry of Culture and the Ministry of Communications have been working on the installation and consolidation of indigenous transmitters. During the years 2002-2005, 22 transmitters were started up, reaching approximately 395,734 members of indigenous groups in 357 *resguardos* throughout the country. Under this programme items have been supplied for broadcasting through these transmitters (in 2003 it is estimated that 2,247 items were supplied).

Communications services for the indigenous population (by *resguardos*)
(Source: Ministry of Communications)

Description	Unit of measurement	2002	2003	2004	2005 - I	Totals
Social Internet Programme (TV centre)	TV centre	14	0	13	0	27
Rural Communities Telephone programme	Telephone posts	54	0	7	0	61
Number of transmitters	Transmitters	8	6	2	6	22

Projects for skills development in communication media

Description	Unit of measurement	2002	2003	2004	2005 - I	Totals
Advisory services on radio programming and production for indigenous transmitters under Minculture-Mincommunications agreement	Million pesos	0	29	0	0	29
National Culture and Communal Living Plan training to diploma level for the preparation of departmental culture and community living plans	Million pesos	0	0	0	3	3
Development of opinion programmes and broadcasting on citizen radios	Million pesos	0	0	0	21	21

366. The National Culture and Community Living Plan seeks to make use of the potential of culture in the construction of shared paths beginning with differences and thence promoting linkages in the cultural sector. The process starts with the training of culture managers so that they can design, manage and follow the implementation of culture and communal living projects. Methodologies which will permit monitoring and evaluation of the impact of these projects in the area of recognition of differences are also being developed. Leaders of indigenous communities in places such as Wayúu, Paez, Embera, U'wa, Guambiana, Nasa and Totoró have benefited under this plan.

367. The National Music Programme for Communal Living of the Ministry of Culture is designed to promote training in and the practice of music, and also to give the population enhanced opportunities of learning about and enjoying music through recognition of the diversity of regional expression and of community festivals, thus contributing to ethical and aesthetic nation-building. Although the plan is a general one covering the entire nation it gives priority attention to traditional music in regions in which communities wish to preserve, strengthen and disseminate their own forms of expression.

368. In addition, the participation of men and women artisans from different ethnic groups has been obtained for the training courses in technical assistance for handicraft production, and its linkages with sustainable production projects, with the participation of displaced indigenous individuals, and with attendance at festivals, the provision of co-financing resources and attendance at promotional events.

Support for productive development: December (handicraft workshops of Colombia)

Description	Unit of measurement	2002	2003	2004	2005 - I	Totals
Attendance at craft exhibitions	Communities	64	70	80	ND	214

Support for productive development (handicraft workshops of Colombia)

Description of project	Million
Colombian Pacific Coast project terminating with the First Pacific Fair	60
Project for the improvement of competitiveness in the handicraft sector	252
Project for the strengthening of handicraft activity in the municipality of Barrancas	90
Craft Workshops of Colombia (Min. of Commerce): National Programme of Production Lines in the Handicraft Sector. Project for the production of textiles for hammocks in La Guajira and <i>cañaflecha</i> textiles in Córdoba and Sucre (duration 2 years; completed)	2.681
Programme for the award of the quality seal for handmade goods to artisans working with the La Guajira project for the production of hammocks and textiles for hammocks	96
Income generation for displaced indigenous individuals in Bogotá, consisting of training workshops (various institutions)	50
Project entitled "Improvement of Competitiveness of handicrafts developed by the Indigenous Peoples of the Guainía department" (partially financed by the Arturo Calle Foundation; completed in July 2005)	60
Agreement on support for the Mixed Cultural Fund of Guaviare for handicraft skills development, consisting of technical assistance for product quality improvement	9

369. Finally, within the framework of protection of the intangible heritage, projects are under way for the compilation of an inventory permitting identification of the forms of expression that make up that heritage, their current state, the dangers to which they are exposed and their extent. This inventory is a fundamental tool for the design of public policies and plans of action for their strengthening and protection as well as that of a development plan to strengthen cultural

diversity. During the years 2003-2005 inventory projects were executed in 12 departments (Amazonas, Arauca, Caquetá, Casanare, Cauca, Guaviare, Guainía, Meta, Putumayo, San Andrés, Vichada and Vaupes).

370. In addition to the foregoing, Act No. 1037 of 2006 ratifying the Convention for the Safeguarding of the Intangible Cultural Heritage (pending automatic review of constitutionality in such cases) was recently adopted. Its text, and the Government measures which it promotes (for example, the recently created Intangible Heritage Group in the Ministry of Culture), may bring benefits to many communities wishing to have mechanisms for safeguarding their forms of expression.

371. With specific regard to the Afro-Colombian indigenous population in San Basilio de Palenque (Oral and Intangible Heritage of Humanity), the Ministry of Culture has devoted considerable effort to the preservation and just appreciation of its beliefs and values. At the same time it has sought in a responsible manner to ensure that the population's basic needs are satisfied. Thus, in full concertation with the population, in 2006 it drew up a 10-year Plan for the Safeguarding of Palenque, which combines measures to protect its forms of cultural expression with measures for the satisfaction of basic needs as requested by the local inhabitants.

372. In addition, for the Raizal and Roma populations the Diversity and Intangible Heritage Group in the Ethnic Culture and Regional Promotion Directorate in the Ministry of Culture is proceeding with the "Development of Awareness of Ethnic and Cultural Diversity" programme, which is designed to create information processes that will contribute to recognition of and respect for the ethnic and cultural identity of the Colombian nation.

373. The following activities are being conducted under this programme:

- (a) Pursuit of the "Colombia: different forms of being" campaign, which seeks to stimulate development through the mass media of awareness of the value of ethnic and cultural diversity among the citizens;
- (b) Design and distribution of booklets entitled "Long live diversity!", a publishing project seeking to promote among children and young people a knowledge of the many cultural sources existing side by side in Colombia. The Ministry of Culture has published 5,000 copies of four different books on spirituality and religious belief; these have been distributed to public libraries, departmental education secretariats, municipalities and departmental and municipal schools throughout the country;
- (c) Development of facilities in the academic world entitled "Encounters in diversity" which seek to stimulate reflection on the different cultures found in Colombia. So far, two series of conferences (16 sessions) have been held and two books of compiled papers published; this material has been distributed, in particular among public libraries, schools, teachers and grassroots organizations of the ethnic communities;
- (d) Production of materials for the support of awareness development among children and young people on the subject of ethnic and cultural diversity. This project, which has been developed with UNESCO support, is designed to produce printed and audiovisual material to facilitate knowledge of the many cultures which meet within

the country and for use as supporting material by schoolteachers in the development of their teaching programmes;

- (e) Dissemination and audiovisual exchanges within the “Times of diversity” project, which seeks to contribute to the recognition of the cultural and ethnic diversity of the Colombian nation through the creation of a permanent slot in regional television programmes; it is based on the importance of highlighting the riches of the many different cultural expressions which meet within the country.

Activities conducted by the Colombian Institute of Anthropology and History (ICANH)

374. ICANH is conducting research in the area of the ethnic diversity of the indigenous peoples which takes into account the situation of some of those peoples in Colombia in connection with the environment and relations among ethnic groups.

- (a) ICANH will take part in the seminar on environmental history at which subjects with a bearing on the territorial and environmental problems of the indigenous peoples will be discussed. There will also be a seminar on movements of indigenous groups and the environment at which the rights of indigenous peoples over biodiversity and the collective knowledge relating to that biodiversity will be discussed. At that seminar facilities will be established for an analysis of the current situation of the indigenous peoples with regard to the management of the environment in their territories;
- (b) ICANH is also conducting research into the impact of the constitutional recognition of multicultural and multi-ethnic reality on inter-ethnic relations between the indigenous peoples and the *colonos* in Amazonía;
- (c) ICANH was represented at the Citizens’ Boards for the Peace Agenda which met on 29 and 30 March 2006. In particular, it was represented on the board which discussed illicit crops and the peace agenda, at which it was proposed, as a minimum requirement for concertation, that small-and medium-scale coca growers should be decriminalized and released from penal sanctions, and also that the indigenous peoples should be given full recognition of the right to make traditional uses of the coca leaf;
- (d) The research project on “multiculturalism and conflict among ethnic groups in Putumayo” is seeking to broaden knowledge of the manner in which the *colonos* in this part of the country have built up their cultural identities in a context dominated by the demands of ethnic groups;
- (e) ICANH will participate in the advisory committee on the historical audiovisual project entitled “Comprehensive teaching for peace and respect for human rights” being promoted by the Office of the Vice-President of the Republic through the Spanish Cooperation Agency and the Research and Popular Education Centre (CINEP), aimed at contributing to the development of a culture of respect for human rights which would influence the construction of scenarios of communal living.

375. ICANH is conducting the following programmes on the population of African descent:

- (a) It will continue research into cultural questions concerning persons of African descent;
- (b) It will organize and participate in the commemoration of the abolition of slavery. An earlier event relating to the subject was the international colloquium held on 18 and 19 October 2001. At that meeting the different paradigms for the understanding of the socio-historic and contemporary dynamic of the peoples of African descent were presented and discussed. One of the main questions of central concern of the event will be that of understanding the strategies devised by the descendants of the slave-owners and of the slaves and between the Mestizos and the indigenous population in order to confront the challenge of discrimination. This is implicit in the question put in the colloquium entitled “How can discrimination in the regional contexts of the country be countered?”
- (c) It participates in planning and coordination activities with the directorate for Afro-Colombian communities in the Ministry of the Interior and is producing a report on the problems of Afro-Colombians which will serve as an input for policy design. Specifically, ICANH has undertaken, in coordination with the Social Studies Centre (CES) of the National University, to edit, from an academic perspective, a publication drawing conclusions from the different studies on the Afro-Colombian peoples.
- (d) At the same time it is conducting a number of surveys relating to the problems of the Afro-Colombian peoples, on which several books are available.
- (e) Participation in the work of the Chair of History, which covers the subject of the Afro-Colombian identity; the work will take place in the National Museum.

Activities conducted by the Caro y Cuervo Institute

376. The Caro y Cuervo Institute is an advanced study centre for cultural and academic research and training which manages and coordinates the development of plans, programmes and projects on philological, literary and linguistic subjects and the history of the book and reading culture with national and foreign institutes. It has an ethnographic museum and an indigenous linguistics department.

377. The indigenous linguistics department of the Caro y Cuervo Institute is the outcome of Decree No. 786 of 31 March 1944 introducing regulations pertaining to the Act establishing the Institute, which contained the stipulation that one of its functions would be “to study the languages and dialects of the aboriginal civilizations of Colombia”.

378. This work gained for the Caro y Cuervo Institute the award on 23 October 2001 of the Bartolomé de las Casas prize, which is awarded by the Spanish Secretariat of State for International Cooperation and Iberian America and the Casa de America, for its long experience in the study of the indigenous languages of Colombia and its valuable contribution to the transmission and presence of cultures.

379. The objectives of the department are:

- (a) To study and investigate the languages of the aboriginal civilizations of Colombia, to prepare modern grammars of those languages and dialects based on texts compiled in the places where those languages are spoken and, finally, to produce critical editions of grammars, vocabularies, catechisms and collections of sermons in the indigenous languages of writers of long ago;
- (b) To undertake an analysis and description of the phonetic, grammatical and lexical structures of the less studied languages, or those with relatively small numbers of speakers, and to compile samples of oral literature (myths, tales, legends, etc.);
- (c) To carry out ethnic education programmes and participate in the National Committee on Aboriginal Linguistics and the Committee for the Coordination and Adaptation of State Bodies, of both of which it is a member; it also participates in the periodic meetings of the Inter-institutional Committee on Indigenous Policy, which is chaired by the Indigenous Affairs Subdirector of the Ministry of the Interior or the Indigenous and Afro-Colombian Education Section of the Ministry of National Education;
- (d) To handle invitations from schools or cultural bodies to give lectures at special events and to advise students at various levels in basic and university education on their work and research on indigenous linguistics or related subjects, or to respond to the concerns of national or foreign researchers requesting advisory services, refinement of concepts, clarification of concerns or review of their drafts to obtain suggestions, etc.

Outstanding research into indigenous linguistics

380. During the years 1995-1997, as part of the Spanish studies for the Linguistic-Ethnographic Atlas of Colombia (ALEC), some research was carried out into the Uitoto, Miraña, Muinane and Tikuna languages in Leticia (Amazonas department).

381. The bibliography of indigenous languages of Colombia is currently being documented; between 1975 and 2001 there was cooperation with the UNESCO project "World Languages Report". Similarly, the indigenous linguistics department has undertaken to handle the model questionnaire, providing socio-linguistic information on over 60 indigenous Colombian languages. In addition, at the request of the Salibá indigenous population of Casanare, a Salibá-Spanish and Spanish-Salibá dictionary was prepared; it is now an essential tool for the teaching of the language in schools.

382. In the area of Muisca linguistics the following research projects, carried out by María Stella González de Pérez, "Approximation to the category of person in Muisca" (the linguistic research is under way) and "Muisca-Spanish dictionary", deserve particular mention. The Spanish-Muisca dictionary, an anonymous manuscript dating from the seventeenth century which forms part of the Chibcha dictionary and grammar, will be revised. This work is extremely useful to students of the Muisca language. The basic linguistic research for "The phonetic-

phonological system in the Muisca language” has been completed; its editing and final structuring are in course of completion.

Activities pursued by the National Archives with regard to access to culture

383. With the aim of protecting the cultural memory of the country, the National Archives (Archivo General de la Nación), a body attached to the Ministry of Culture, has been pursuing measures to create and disseminate the “Collection of Documents on Blacks and Slaves”. In addition, with financial assistance from York University in Canada it is proceeding with the restoration, microfilming and computerization of the Blacks and Slaves collection of documents in the National Archives. During the first phase of the project the resources were devoted to the restoration of damaged documents, the microfilming of 55 bundles of papers (about 55,000 folios) and the digitization of a like number of documents (110,000) in image form. Each bundle consists of some 1,000 folios; each one of the 55 bundles, containing papers dating from between 1550 and 1818, was transferred on to a roll of microfilm and a single CD-Rom.

384. In 2002, as a second stage in the project, Abdelaziz Abid, the Director of the UNESCO Memory of the World programme, arranged for and awarded the National Archives financial support for the publication of the documents of the collection on a Web page, adding the information on Blacks and Slaves kept in the archives of the Antioquía, Cauca and Boyacá departments. Some 157,000 images were compiled together with a descriptive catalogue. In March 2004 the Web page dedicated to the documents on the subject of Blacks and Slaves was officially inaugurated in the presence of the regional information directorate of UNESCO for Latin America and the Caribbean.

385. At the end of June 2005 UNESCO placed the Blacks and Slaves collection of documents on the register of the Memory of the World programme in response to the need to preserve the documentary heritage, entitled “Authentic memory of the world”, and to alert the public to its protection on account of its extreme fragility and the fact that, according to the United Nations, important elements are lost every day.

386. The year 2001 was the 150th anniversary of the abolition of slavery in Colombia. To commemorate that date an exhibition of documents, including testimony of both the process of slavery and its subsequent manumission, was organized at the headquarters of the National Archives. The Bogotá District Culture and Tourism Museum joined in this celebration, financing the construction of certain objects relating to slavery which were exhibited side by side with the exhibition of documents. In addition, files containing facsimiles of documents in the collection, with appropriate transcriptions, were manufactured for distribution in schools and colleges and among the general public. The exhibition was designed to be itinerant and has travelled to various parts of the country.

Concrete example of the work of the National Penitentiary and Prisons Institute to give access to culture to ethnic minorities

387. Following completion of the censuses of inmates of Colombian prisons (discussed under article 5, section (b), Security of the person) INPEC used the information gained to undertake a number of measures concerning inmates known as “groups in exceptional circumstances”.

388. Taking into account the data compiled on the prison population, emphasizing the budgetary problems affecting the country's prison system generally, and in line with the definition of vulnerability in the penitentiary and prison system, expressed in the following terms: "the set of identifiable, visible, specific and concrete actions and situations connected with the possibility of finding oneself in a situation of risk which leads to deterioration of the level of living of an individual or group and to a process of discrimination or violation of fundamental rights or unfair treatment according to the basic principles of equity and human dignity" (Lambuley, 2006), the Treatment and Development Subdirectorate of INPEC, through its Social Development Division, has considered it desirable to review the application of the term "highly vulnerable" to a specific group of inmates, bearing in mind that the conditions of overcrowding, confinement and the level of access to or availability of health services are, among other things, risk factors affecting the entire prison population, so that the definition of a greater or lesser influence of those factors on particular inmates must inevitably give rise to confusion.

389. INPEC has therefore established a new definition of "groups in exceptional circumstances", which seeks to highlight the fact that their specific characteristics of gender, ethnic origin, age, nationality or physical disability distinguish them from the rest of the prison population only inasmuch as they require attention and measures appropriate to their condition but no separate or assistentialist treatment. The aim is thus to promote the concept of inclusion. This implies the strengthening of inmates belonging to these minority groups in their existence as individuals, rather than in terms of the risks to which they are subject, with a view to enabling them to affirm themselves as persons capable of rebuilding their lives, strengthening positive experiences and demonstrating control over day-to-day conflicts – in other words, developing processes of autonomy.

390. With this in mind, the "care for highly vulnerable groups" procedure was recently renamed "social integration of groups in exceptional circumstances". Thus, with a focus on inclusion rather than assistance, and with the understanding of the necessary and beneficial adaptation to particular cultures, the measures required for these minorities have been designed in accordance with the following guidelines:

Social support

391. Within this process specific measures, framed in line with the provisions of national public policies, are being developed for each group designed to bring about their appropriate adaptation to the prison environment and promote their welfare and quality of life during their terms of imprisonment. This process should procure an initial adaptation to the conditions which imprisonment imposes on groups in exceptional circumstances and motivate strategies which will facilitate their social integration into the prison community.

392. Thus this component is the fundamental tool for promoting the culture of significant interactive networks, primarily in terms of a group in exceptional circumstances, but with a view to their integration into the rest of the prison population.

Multicultural meetings

393. These meetings will be organized as facilities for dialogue and transmission of learning, the latter being understood as the building-up of knowledge by bringing particular experiences,

viewpoints and forms of interpretation of reality into discussion. These facilities will be established by means of:

- (a) *Cultural intervention groups.* The purpose of these groups is, first, to preserve the beliefs, customs and values peculiar to the minority groups, and second, to promote radical change in views and perceptions of indigenous and Afro-Colombian individuals, older adults, foreigners, disabled persons and pregnant and breastfeeding women, forming a basis for respect for their differences;
- (b) *Intercultural exhibitions.* These are activities programmed once a year at a date to be fixed for the purpose in each unit. Their aim is to highlight the value and characteristics of each group, and all the inmates of the establishment may participate. It takes place in a location conducive to the sharing of lifestyles and achievements which the multicultural process can generate through the exhibition of the products obtained in the cultural intervention groups. Thus the exhibition seeks to strengthen the integration of the cultures meeting in the prison environment through the participation of persons and social organizations representing each minority, the aim being to foster individual and group reflection on the subject.

Life School

394. The general aim of the Life School is to foster a facility in which inmates belonging to groups in exceptional circumstances create significant affective networks in which they can live together, express their views and reflect on their day-to-day human existence.

395. It is planned as an alternative form of teaching which breaks away from the traditional educational paradigm and falls within a concept of education as “a process of joint construction of knowledge”; in this way “the educational dynamic” assigns priority to individual and group educational potentialities and promotes the development of human potential through self-reliance and personal and group empowerment.

396. This new proceeding has reached the final stage of approval by the Planning Office within the Quality Management System operated by the INPEC. It is hoped that implementation will begin in January 2008.

Pregnant and breastfeeding women

397. In addition to the above measures, action is being taken together with the Colombian Family Welfare Institute (ICBF) to provide special care for pregnant and breastfeeding women deprived of liberty. The measures involved are in the course of acquiring official status under cooperation agreement No. 181 ICBF-INPEC, and it is hoped that implementation activities and measures will be designed during the early months of 2008.

(g) The right of access to places and services

398. There is no legislation providing for distinctions regarding access to private places. The State does not yet possess sufficient statistics to evaluate the real impact of the right of access to places within the ambit of the private sector. However, it is to be hoped that the increasing

participation of the ethnic minorities in political life (generally in the public sector) will lead to similar proceedings and measures in the private sector.

399. It should, however, be pointed out that in Colombia property available for public use (natural parks, communal lands of ethnic groups, *resguardo* lands, the archaeological heritage of the State and other assets designated by law) are the property of the nation and are inalienable and not subject to any statute of limitation or distraint. Thus the law makes no distinction of any kind based on race concerning access thereto and enjoyment thereof .

F. Article 6

- (A) **Information on legislative, judicial and administrative measures to give effect to article 6, specifically with regard to the measures taken to ensure that these persons enjoy effective protection and remedies through competent tribunals in cases of discriminatory acts**
- (B) **Information on legislative, judicial and administrative measures permitting recourse to the tribunals and to seek just reparation for the commission of discriminatory acts**
- (C) **Information on the practice and decisions of the tribunals in cases of racial discrimination**
- (D) **Information on General Recommendation No. XXVI**

400. As stated earlier in this report, Colombia has a general legal structure protecting the rights of ethnic minorities in cases where discriminatory treatment occurs (Part II, B). There are therefore various mechanisms offering access to justice for both individuals and groups with the aim of ensuring a prompt response to complaints of discrimination lodged by any citizen. However, we repeat that there is no judicial remedy designed exclusively for protection against discriminatory treatment; the remedy for such treatment lies in actions relating to constitutionality, *tutela*, enforcement, established custom or actions under ordinary law.

401. In practice these remedies currently function satisfactorily for the protection of the rights of ethnic communities. The most important decisions of the Constitutional Court on the subject during the last 15 years are given below as examples (it should be observed at the outset that the precedents established by their decisions have been reiterated and consolidated in numerous other subsequent decisions):

Ruling	Right protected	Content
T-567-92	Protection of ethnic and cultural diversity	Establishes a constitutional duty to adopt appropriate measures in favour of groups that are marginalized or discriminated against
T-188-93	Right to life	The authorities must respect the principle of autonomy of the indigenous peoples, the right to peace and to life and must exercise the powers vested in them by the law to protect and defend those peoples
T-257-93	Collective ownership	A <i>resguardo</i> is not a territorial entity, but a form of collective

Ruling	Right protected	Content
		ownership of the land whereby the indigenous peoples have a right to participate in the use, administration and conservation of the natural resources existing on their lands
T-380-93	Collective ownership	The indigenous community is a subject of basic collective rights: to subsistence, to life and to collective ownership
T-405-93	Collective ownership	Affirms that the State, in exercise of its sovereignty, may enter into international agreements and treaties with the other governmental bodies and devise strategies for fulfilling its tasks of maintaining law and order, controlling drug trafficking and protecting all residents on its soil without distinction of social class, race, language or religion
C-058-94	Rights of indigenous peoples	Exempts indigenous people residing in their communities from compulsory military service
C-089-94	Participation in politics	Right of ethnic minorities to form political parties and movements
T-254-94	Autonomy	Gives constitutional recognition to ethnic and cultural diversity and endows the indigenous peoples with fundamental rights
T-342-94	Freedom of worship	The freedom, recognized in the Constitution, to profess and disseminate a religion, which implies the corresponding duty not to seek, by force or other reprehensible or illegitimate means, to impose a uniform religion or culture on the different sections of society, implies the right to profess and practice any other form of religious belief or worship
T-384-94	Right to equality	Any prohibition of the use of one's mother-tongue disregards the fundamental principles of the Political Constitution and provokes a lack of communication among indigenous groups and their members
C-104-95	Collective ownership	The right of collective ownership exercised on indigenous territories is of vital importance for the cultures and spiritual values of the indigenous peoples
C-394-95	Special jurisdiction	Establishes certain privileges relating to pre-trial detention of persons who have been public servants, officials who enjoy a legal or constitutional privilege, for the elderly and for indigenous individuals
C-139-96	Special jurisdiction	Analysis of article 246 shows the main elements of indigenous jurisdiction in our constitutional order
C-484-96	Special electoral constituency	The creation of a special constituency is an act that directly affects election results, since it modifies - to a greater or lesser degree - the shape of the political representation
C-535-96	Autonomy	The satisfaction of particular interests requires that the existence of different political choices in each locality be possible. This does not infringe the principle of unity, since each territorial entity forms part of a whole which recognizes diversity. The principles of unity and autonomy are not mutually exclusive; but they must be

Ruling	Right protected	Content
		harmonized
T-349-96	Protection of ethnic and cultural diversity	Considering that cultural survival is possible only with a high degree of autonomy, one may infer that it must be interpreted as a general rule as calling for maximum autonomy for the indigenous communities and, therefore, that restrictions should be limited to those essential kept down to the minimum essential for safeguarding higher-ranking interests.
T-496-96	Indigenous jurisdiction	From the constitutional recognition of the special jurisdictions derives the right of the members of indigenous communities to a system of justice of their own. It grants the right to be tried by their own authorities, in accordance with their rules and procedures, in their own territory, in order to guarantee respect for the individual's personal world-view
T-344-98	Indigenous jurisdiction	The National Constitution, in its article 246, governing special jurisdictions, expressly authorized the "authorities of the indigenous peoples" to exercise jurisdictional functions on two conditions: first, that those functions are exercised within the territory of the community concerned; and second, that the rules and procedures used for the purpose are not "contrary to the Constitution and the laws of the Republic". For this reason the Constituent Assembly left it to the legislature to determine, subsequently, "the forms of coordination of this special jurisdiction with the national judicial system
T-634-99	Autonomy	As in Western law it is a contradiction that land should be a subject of law, it must be inferred that the Constitution grants "rights" to the territory of the <i>resguardo</i> as an entity which in its identity is not only an integral part of the Colombian nation but is in addition a concept that also resides in culture.. Consequently the <i>resguardos</i> are something more than mere "land" and something less than "indigenous territories"; in other words, within the framework of constitutional philosophy these terms are not synonymous, even though they may coincide geographically in a law on territorial structuring. But it still cannot be said that a <i>resguardo</i> is a territorial entity. The particular nature of the <i>resguardos</i> affords a classification different from that of "land" or "territory"; hence the term "territorial jurisdiction" used in article 246 of the Constitution
C-169-01	Consultation of indigenous community	To speak of a genuine representative and participatory democracy presupposes that the formal and material structure of the system corresponds satisfactorily to the different forces which make up society and allows them all to participate in decision-making which affects them

Ruling	Right protected	Content
T-606-01	Collective ownership	The 1991 Constitution dealt with and accepted collective ownership of the <i>resguardos</i> and indigenous communal lands and in so doing recognized that they are inalienable and are not the subject of a sale or transaction. According to the Court's case law, the right to collective ownership of indigenous territories is of vital importance for the cultures and spiritual values of the indigenous peoples, not only because they are their main source of subsistence but because they constitute an integral component of their world-view, culture and religion. Thus the main element in the <i>resguardos</i> is the form of collective ownership.

Source: Ministry of National Defence, Human Rights Group, "Situación de derechos humanos de las comunidades indígenas en Colombia" (Human rights situation of indigenous communities In Colombia), first report, Jan.-Apr. 2002.

402. Finally, mention should be made of the recent decision of the Colombian Constitutional Court of 23 January 2008 declaring the Forestry Act (Act No. 1021 of 2006) without force on the grounds that there should have been consultations on it with the indigenous and Black communities in the country before its adoption (see above, Anti-discrimination Statute).

G. Article 7

Information on legislative, judicial and administrative measures to give effect to article 7

1. Education

403. In the area of training, the State of Colombia has been pursuing a number of activities order to avoid all discriminatory treatment. For example, as regards the armed forces, in 2003-2005 the Defence of Ethnic Minorities Division held 19 regional workshops for members of the security forces on the subject of law and legislation concerning ethnic, racial and linguistic minorities. These workshops, which cost some 5 million pesos each, were held in Valledupar (two workshops), Montería, Santa Marta (two workshops), Leticia, Popayán, Manizales, Riohacha, Puerto Carreño, Buenaventura, Quibdó, Cúcuta, Arauca, Pasto, Ibagué, Inírida, Florencia and San Andrés. During 2006 nine additional workshops were held in the instruction and training centres of the security forces.

404. As a preventive strategy regarding training, dissemination and promotional activity in the area of human rights and the special rights of the indigenous peoples, the Office of the Attorney-General of the Nation, through the Division for Prevention in the Sphere of Human Rights and Indigenous Affairs, is conducting seminar-type workshops for the traditional organizations and authorities of the indigenous peoples and for municipal and departmental authorities. These seminars seek to empower these communities by imparting knowledge of their constitutional and legal powers and rights. During 2006, nine workshops were organized, each of them attended by an average attendance of some 60 persons.

405. It is also extremely important to mention that today the constitutional provision requiring study of the Constitution in every sphere (both public and private) is now being complied with and implemented on a broad scale. Article 41 of the Constitution reads as follows:

“**Article 41.** In all public and private educational institutions the study of the Constitution and civic instruction shall be compulsory. In this way democratic practices will be promoted through the teaching of principles and the value of the citizens' participation. The State shall publicize the Constitution.”

406. The study of the Constitution, and particularly of fundamental rights, of its protective mechanisms, of the constitutional bloc and of the diverse and multi-ethnic features of the State, has been extended to all levels so that, in addition to the special training policies peculiar to certain entities of State, the teaching of human rights has now been extended to the majority of the country's educational centres – schools, technical institutions and universities, both public and private.

2. Culture: function of the institutions responsible for promoting equality and non-discrimination

(a) State institutions working to eradicate racial discrimination

407. There are ethnic departments in many of the entities and institutions of the State of Colombia; there is also a strong constitutional jurisdiction with responsibility for monitoring, preventing and punishing discriminatory practices. However, there are four bodies with precise functions concerned with preventing the appearance of any form of discrimination in the country. The first is the Ministry of Culture, one of the central objectives of which is the development of national culture and traditions, combating prejudices and promoting inter-ethnic and intercultural understanding, tolerance and friendship among the different groups in the country. The other three have more concrete functions in the prevention of discrimination, operating through the creation and implementation of measures of affirmative action. The three bodies are located in the executive branch of the public authorities (Ethnic Groups Directorate in the Ministry of the Interior and Justice) and in the bodies which form part of the Public Prosecutor's Office: the Office of the Attorney-General of the Nation and that of the People's Advocate, which serve as supervisory bodies.

The Ministry of Culture

408. According to the General Act concerning Culture (No. 397 of 1997) the Ministry of Culture is the body that regulates culture. It is responsible for designing, coordinating, implementing and overseeing State policy on the subject in line with development plans and programmes.

409. The Ministry of Culture also presides over the National Council on Culture, which is the supreme body representing cultural interests; representation of members of both the indigenous communities and the communities of persons of African descent is obligatory.

410. Thus, as the body determining central policy and holding the chairmanship of the National Council on Culture, the Ministry of Culture has the task of, inter alia, ensuring the adequate

safeguarding and protection of the cultural expressions of Colombians and a constructive intercultural dialogue which respects differences. Within this framework it today discharges a primordial role in the avoidance and prevention of discriminatory phenomena by means of plans and programmes which proclaim, commend and propagate the cultural diversity of the country. The following is a brief outline of its main lines of activity in this field:

411. **The National Plan for Culture and Communal Living:** this plan, as explained earlier (see under art. 5, sect. 6: The right to equal participation in cultural activities) has two lines of action. Under the first, the State endeavours to train managers for communal living, i.e., persons trained to transmit the values of tolerance and intercultural respect; under the second, the State encourages the creation of a multicultural facility for participation and the dissemination of ideas and learning through the creation of community broadcasting stations in which population groups can reveal their values and expressions and which communicate directly with the citizens.

412. The “**Señal Colombia**” public television channel: this channel has a slot in the schedule reserved exclusively for cultural programming. Through this channel Colombians receive broadcasts of documentaries, elements of folklore, information programmes, etc, that deal with the various forms of cultural expression existing in the country.

413. The **National Plan on Music for Communal Living:** this plan is designed to promote music training and practice and to provide the population with increased opportunities to learn about and enjoy music, by recognizing the diversity of forms of regional expression and community festivals, thus contributing to ethical and aesthetic nation-building. Although the plan is a general one covering the entire nation it pays priority attention to traditional music in regions in which communities wish to preserve, strengthen and disseminate their own forms of expression.

414. The **Programme for the protection of the heritage and national memory.** As part of the programme for the protection of the heritage and national memory, the Ministry of Culture has established a group specializing in the non-material and intangible heritage with the aim of recording, inventorying, promoting and safeguarding the country’s forms of cultural expression, especially those at greater risk of disappearance owing to their local or minority character. The Ministry declares certain intangible forms of expression to be of cultural interest and attaches a value to them, making them deserving of preferential treatment by the State in order to prevent their disappearance. Examples of particular importance are the Palenque de San Basilio, the carnivals of Barranquilla and Pasto and the traditional medical lore preserved in some indigenous communities. The Ministry has also been promoting Colombia’s adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage, which has been approved by the Congress of the Republic and is awaiting the final ruling on constitutionality from the Constitutional Court.

415. The **National Concertation Programme.** This programme finances cultural activities throughout the country without restrictions based on content or subject to criteria of any kind. It seeks to award resources in a manner designed to enable different private not-for-profit bodies and institutions to present, develop and propagate their cultural activities.

416. The **National Incentives Programme.** This programme finances fellowships, bursaries, prizes and distinctions for artists and cultural managers in the country. More specifically, the

Ministry has created a special prize for educational experiments that promote diversity and intercultural dialogue. This prize has been awarded for two currently running educational experiments which promote the recognition, and enhance the value, of ethnic and regional cultures and promote exchange and interaction of those cultures under conditions of equity.

417. The **National Reading and Libraries Plan**. In general terms this plan seeks to stimulate reading habits among Colombians and create facilities for reading. In response to demand for bibliographical endowments in line with diversity criteria, under the third phase of the National Reading and Libraries Plan, directed by the National Library of Colombia, 220 municipalities have been provided with bibliographical material by Afro-Colombian authors. To that end, 2,760 volumes, covering 37 titles, were purchased. In addition, under the Books Act, 220 volumes (5 titles) of Afro material were purchased and distributed to 36 institutions (public libraries) throughout the country.

418. The **Ethnic Culture and Promotion Programme**: as stated earlier (see under art. 5, sect. 6: The right to equal participation in cultural activities), the Diversity and Non-material Heritage Group in the Ethnic Culture and Regional Promotion Directorate in the Ministry of Culture is carrying out the “Development of Awareness of Ethnic and Cultural Diversity” programme designed to create information processes which will contribute to recognition of and respect for the ethnic and cultural identity of the Colombian nation. It has been conducting a wide range of activities, of which a few examples may once again be mentioned here: the “Colombia: different forms of being” campaign; the design and distribution of booklets entitled “Long live diversity!”; the development of facilities in the academic world entitled “Encounters in diversity”; the production of materials for the support of awareness-raising among children and young people regarding ethnic and cultural diversity; and dissemination and audiovisual exchanges under the “Times of diversity” project.

419. Since 1997, with the creation of the Ministry of Culture, the State of Colombia has been endeavouring to move forward with assessing its cultural riches at their true value. It has empowered other bodies to handle related subjects, but in distinct spheres, such as making of proposals for affirmative action (Ethnic Groups Directorate in the Ministry of the Interior and Justice) and control of and possible administrative and quasi-judicial sanctions against discrimination (Attorney-General’s Office and the Office of the People’s Advocate).

The Ethnic Groups Directorate in the Ministry of the Interior and Justice

420. Under article 16 of Decree No. 200 of 2003, the Ethnic Groups Directorate in the Ministry of the Interior and Justice is responsible for the following functions:

- (a) To promote and publish studies and research concerning ethnic groups, in coordination with the Legal Order Directorate and the bodies and organizations with an interest in the subject, with a view to determining the possible social, cultural and environmental impact of the different activities to be undertaken in those communities, in accordance with the law;
- (b) To promote the settlement of disputes concerning collective ownership, usufruct, use of land or natural resources and the practice of traditional production methods in accordance with the legal provisions on the subject;

- (c) To coordinate on an inter-institutional basis the holding of consultations with ethnic groups on the projects which may affect them, in accordance with the law;
- (d) To keep a register of traditional indigenous authorities recognized by their respective communities, associations of indigenous authorities, community councils and the grassroots organizations of Black communities;
- (e) To assist the Office of the Presidential Adviser on Ethnic Diversity with training programmes on ethnic and cultural diversity, public management and subjects of interest relating to ethnic groups generally;
- (f) To handle petitions and consultations on matters falling within its competence;
- (g) To support the activities of the study centre of the Ministry;
- (h) Other functions corresponding to the nature of its work.

421. In discharging these functions the Ethnic Groups Directorate has set itself the following objectives:

- (a) To complete the basic catalogue of indigenous and Afro-Colombian rights and to make headway on the legal processes concerning the Roma and Raizal groups;
- (b) To stimulate concertation facilities and mechanisms for participation by ethnic groups;
- (c) To implement the first experiments with the indigenous territorial entities, in accordance with the Basic Act on Spatial Organization;
- (d) To design the component of protection of human and collective rights specifically for ethnic groups within the framework of the national human rights policy;
- (e) To implement a programme of strengthening for the authorities and governments of the ethnic groups, to promote and assist the formulation of the long-term development plan for Afro-Colombian communities;
- (f) To assist in completing the process of titling of *resguardos* for indigenous communities and of collective territories for Black communities in the Pacific region;
- (g) To implement a training programme for public officials on the rights of ethnic groups;
- (h) To assist departmental territorial bodies in assuming functions and making the necessary administrative adjustments for the provision of care to ethnic groups.

422. The main activities conducted by the Ethnic Groups Directorate are:

Prior consultation in Colombia

423. The State of Colombia, following the guidelines laid down in ILO Convention No. 169, is developing prior consultation processes as an essential prerequisite for the implementation of projects, legislative proposals or administrative acts having an impact in areas with an indigenous presence. The general aim of the prior consultation process is to ensure the availability of a concertation facility whereby the ethnic groups in the area affected by a project, work or activity and the enterprise in charge can communicate directly on the effects and impacts to which those activities may give rise, and devise and reach agreements that would mitigate and/or compensate for those effects.

424. The law has provided for two types of consultation depending on the time at which it takes place: one is for projects requiring an environmental permit, such as projects for the supply or use of natural resources, while a different type is required for projects not requiring environmental permits, such as seismic prospection in the hydrocarbon sector.

Procedure where a permit is required

425. Article 76 of Act No. 99 of 1993, as regulated by Decree No. 1320 of 1998 – which is primarily based on articles 40(2), 330 and 332 of the Political Constitution of Colombia – establishes the procedure to be followed where a prior environmental permit is required. The decree establishes specific rules governing consultation of the indigenous and Black communities concerning the use of natural resources within their territories.

Procedure where a permit is not required

426. In cases in this category, prior consultation is governed in its essentials by Act No. 21 of 1991 (ILO Convention No. 169) and Decree No. 4331 of 2005, which define the powers of the Ethnic Groups Directorate. These include the right to coordinate the prior consultation processes among the institutions concerned. There is no procedure established by law for consultations of this kind; consequently, in the light of the different experiences conducted throughout the country under the leadership of the Ethnic Groups Directorate, it has been possible to formulate a model for consultation on projects not requiring environmental permits.

Certification of presence of indigenous communities

427. Article 3 of Decree No. 1320 of 1998 provides that: “When the project, work or activity is to be undertaken in untitled zones inhabited on a regular and permanent basis by indigenous or Black communities likely to be affected by the project, the Ministry of the Interior shall be responsible for certifying the presence of such communities in the zone directly concerned by the project or work and identifying the people to which those communities belong, their degree of representation and their geographical location.”

428. In order to be able to produce expeditious and accurate certification of the presence of indigenous or Black communities in a project area, the following steps are taken to compile information on the subject:

429. *Recognition and identification of an indigenous community:* in view of the large numbers of self-styled indigenous communities, the Ethnic Groups Directorate conducts ethnological

studies based on elements such as geographical location, ethnic characteristics and identification of members and authorities, in order to determine whether or not they are truly indigenous.

430. *Compilation of a database.* In order to maintain a reliable database the Ethnic Groups Directorate performs a number of procedures and measures designed to organize the information received with a view to issuing certificates on the presence of legally recognized indigenous groups in project areas which have not been officially designated as *resguardos*.

431. *Compilation of data:* existing data on indigenous communities in already recognized communities is updated. The communities themselves and their authorities assist in this task, as do municipal and Government authorities. The material consists primarily of census data, title deeds issued by the appropriate authorities, ethnic identification and geographical location. The measures taken are:

- (a) Confirmation of the existence of indigenous communities in project, work or activity areas. This implies:
 - (i) Examination of the application and annexes (maps, geographical data);
 - (ii) Determination of origin, datum Bogotá (2' per point);
 - (iii) Determination of geographical coordinates by planimetry (map coordinates) and determination of origin;
 - (iv) Georeferencing of the vertices and vectors of the block or area of the project;
 - (v) Identification of the territorial entity and the indigenous communities affected;
 - (vi) Validation of information not already georeferenced contained in relevant databases and tables;
- (b) Verification of data on communities and authorities by means of property deeds in order to determine whether the indigenous communities are recognized or not. This step explains the need for ethnological studies to determine whether they are indigenous communities within the meaning of the law;
- (c) Consolidation of information on indigenous groups recognized by the Directorate;
- (d) Consolidation of information on the basis of institutional information established by INCODER on *resguardos*;
- (e) Consolidation of information on legal representatives of *resguardos* and communities on the basis of title deeds submitted by communities and municipal and departmental authorities;
- (f) Digitalization of maps and census data;
- (g) Issuance of certificates concerning communities that may be affected or confirming the absence of communities.

Participation of indigenous or Black communities in the conduct of ethnographic studies

432. Article 5 of Decree No. 1320 of 1998 reads as follows:

“The person responsible for the project, work or activity who is required to carry out prior consultations shall prepare the environmental studies with the participation of representatives of the indigenous or Black communities.

(...)

“The person responsible for the project, work or activity shall, on submission of the environmental studies, confirm the form and procedure in which he or she has included the representatives of the indigenous and Black communities in the preparation of those studies, to which end they must have received invitations in writing.

“If he or she has received no reply from the indigenous peoples or Black communities within twenty (20) days following dispatch of the invitation, the person responsible for the project, work or activity shall inform the Ministry of the Interior and Justice, who shall, within ten (10) days of receipt of the communication, ascertain whether the representatives of those communities wish to participate and shall so inform the person responsible.

“In the event that the representatives of the indigenous and/or Black communities decline to participate or fail to reply within the above-mentioned periods the person responsible shall prepare the environmental study without their participation.”

433. During this phase the Directorate gives advice and assistance for the socialization of the activities to be carried out in order to ensure that the communities understand the scope of those activities and their rights in the proceeding. This enables the enterprise to conduct the field work with awareness of the customs and traditional practices comprised in each culture and with the aim of culminating in a meeting for formal completion of the consultation that affords coherent agreements on mitigation and compensation measures in the project in order to give effect to ILO Convention No. 169 and the Political Constitution.

Consultation meeting

434. The Ethnic Groups Directorate serves as guarantor at the meeting for formal completion of the consultation process, ensuring that the rights of the indigenous or Black communities are not infringed.

435. The importance of the Ethnic Groups Directorate as a guiding element at these meetings has become apparent, dealing as it does with valid representatives of the indigenous or Black communities which have conferred on them the right to participate, and providing appropriate clarification in response to their proposals and requests, thus facilitating concertation between the parties.

436. With particular regard to this paragraph, the Ethnic Groups Directorate has complied with its constitutional, international and case-law obligations on the subject of prior consultation in the different areas, the need for which it now appreciates, both for the eradication of illicit crops and for prospection for hydrocarbons.

Draft outlines of public policy on indigenous peoples

437. The Ethnic Groups Directorate has been endeavouring to advance, in agreement with the communities, in the process of formulating a remodelled public policy on indigenous peoples. It is hoped that these policy outlines, since they have been formulated collectively, will be reflected in the next development plan in a manner that makes for continuity in the exhaustive formulation of a comprehensive public policy on the indigenous peoples of Colombia and its subsequent implementation.

438. The outlines for a general policy are based on an understanding of the realities of the indigenous peoples and seek to bring about the necessary institutional changes and adjustments in the State by setting priority targets and lines of action.

Objectives

439. The objectives are as follows:

- (a) General objective: formulate the outlines of a public policy concerning the indigenous peoples of Colombia.
- (b) Specific objectives:
 - (i) Organization of existing information (analyses, surveys, development plans, etc);
 - (ii) Preparation of a preliminary analysis of the condition of the indigenous peoples;
 - (iii) Proposal of outlines for policy based on the main problems identified as affecting the indigenous peoples in each macroregion;
 - (iv) Drafting of proposed outlines for a public policy for the indigenous peoples with the active participation of the actors involved and concerned;
 - (v) Application of the principles of prior consultation in the process of design of the outlines for a public policy for the indigenous peoples;
 - (vi) Inclusion in the next National Development Plan of the outlines for a public policy framed in concertation with the indigenous peoples.

Principal themes

440. Although public policy for the indigenous peoples must be unitary, for methodological reasons it must focus on the following aspects for purposes of its construction, formulation, implementation, evaluation and follow-up:

- (a) **Territory.** The policy guidelines coming under this heading must match the needs, demands, traditional practices and risks of the indigenous territories. This component includes matters pertaining to biodiversity, the environment and natural resources;

- (b) **Identity.** Under this heading a response must be given to needs in the sociocultural sphere, such as education per se, culture, health, housing, basic sanitation and healthy recreation;
- (c) **Socio-economic sphere.** This heading includes management and control of the environment and of natural resources, production approaches, forms and strategies and the organization of the economy, food self-sufficiency and the use of natural resources;
- (d) **Autonomy, self-government and participation.** From a self-government perspective, this line of policy comprises the development of administrative autonomy in connection with public resources and social control in accordance with customs and traditional practices. The development of the indigenous peoples' own justice systems, the strengthening of their own organizational and institutional structures and compliance with and application of international standards concerning full protection of their rights.
- (e) **Prior consultation.** This is a theme of great importance which cuts across the others. Emphasis will be placed on this aspect in the development of the different stages in the construction of the policy.

The Division for Preventive Action on Human Rights and Ethnic Affairs

441. The functions of the Division for Preventive Action on Human Rights and Ethnic Affairs, as laid down in Decree No. 262 of 2000, are as follows:

- (a) As part of its preventive and management control function, intervention with the public authorities whenever necessary to defend the rights of the ethnic minorities (art. 24);
- (b) Ensuring compliance with regulations and judicial decisions concerning the protection of the rights of ethnic minorities and their traditional territories (art. 26);
- (c) Intervention in administrative and police measures of concern to the ethnic minorities when necessary to defend the legal order, fundamental rights and guarantees or public assets (art. 26),
- (d) Taking popular, conservation, compliance and other measures conducive to ensuring the defence of the legal order and especially fundamental guarantees and social, economic, cultural, collective or environmental rights and the rights of ethnic minorities (art. 26);
- (e) Intervention in proceedings and with administrative and police authorities to defend the rights of ethnic minorities, workers or pensioners (art. 27);
- (f) Acting in civil and agrarian proceedings before the Civil and Agrarian Chamber of Cassation of the Supreme Court of Justice, intervening where necessary to defend the rights of ethnic minorities (art. 31); in proceedings on family matters before the Civil and Agrarian Chamber of Cassation of the Supreme Court of Justice, intervening

where necessary to defend the rights of ethnic minorities (art. 32); and in labour proceedings before the Labour Chamber of Cassation of the Supreme Court of Justice, intervening where necessary to defend the rights of ethnic minorities (art. 33);

- (g) Likewise, the regional, district and provincial divisions must intervene with the public authorities where necessary to defend the rights of ethnic minorities (arts. 75 and 76).

442. In implementation of the terms of reference outlined above, the Division for Preventive Action on Human Rights and Ethnic Affairs has taken a number of specific measures, namely:

- (a) *Adoption of a preventive policy in the sphere of human rights* by drafting a document entitled “The preventive function of the Attorney-General of the Nation in the field of human rights”;
- (b) *Monitoring compliance with international conventions and treaties on human rights and IHL*. The Division performs management control and supervisory tasks directed at various public bodies urging them to comply with the provisions relating to rights contained in the different international instruments on human rights, IHL and special rights of indigenous peoples incorporated in domestic law, particularly in matters relating to ILO Convention No. 169, ratified by Act No. 21 of 1991 [and of other ethnic minorities];
- (c) *Enforced displacement*; the Public Prosecutor’s Office has urged institutions, and particularly Social Action, to comply with the national care scheme for displaced populations and to adopt special care programmes for members of indigenous peoples which take into account their particular cultural, social, economic and ethnic features.

The Defence of Indigenous Groups and Ethnic Minorities Division

443. The Defence of Indigenous Groups and Ethnic Minorities Division is attached to the Office of the People’s Advocate, which itself forms part of the Public Prosecutor’s Office. Its task is essentially to oversee the promotion, exercise and dissemination of human rights in accordance with the provisions of articles 282 and 283 of the Political Constitution. In the exercise of its powers, the Office created the Defence of Indigenous Groups and Ethnic Minorities Division as a mechanism to promote the exercise of the human rights of the indigenous peoples and the other ethnic minorities and to prevent violations of their rights. Its specific functions are therefore as follows:

- (a) To conduct continuous evaluations of the human rights situation in the country as it concerns the indigenous peoples and ethnic minorities;
- (b) To advise the People’s Advocate on matters concerning ethnic minorities and to keep the Office informed on the progress of legislative proposals in that field;

- (c) To establish continuous communications with governmental and non-governmental organizations for the protection and defence of human rights in matters relating to ethnic minorities;
- (d) To provide specialized assistance to those communities by measures of the following types: mediation in disputes; follow-up on agreements concluded between ethnic groups and the State; a standing presence in vulnerable regions; and advisory services to the different ethnic groups;
- (e) To provide the other agencies of the department with sufficient information for the discharge of their functions in the area of care for members of ethnic groups and to develop appropriate technical guidelines.

444. In addition to the bodies already referred to, mention should also be made of important institutions that contribute to the prevention of all discriminatory treatment (such as ICANH, the Caro y Cuervo Foundation, the National Archives and the National Library, already mentioned) and of specific measures taken by the majority of bodies at national and local levels which have recognized the importance of the ethnic variable and have taken steps to quantify it, enhance its value and protect it adequately.

445. Finally, a major reorganization of the institutional structures relating to ethnic diversity in Colombia is planned. Various options are open for this reorganization: one is that of the consolidation over the coming years of the Office of the Presidential Adviser on Ethnic Diversity; another, which appears more likely to become a reality, is the creation of independent directorates for indigenous and Afro-Colombian peoples in the Ministry of the Interior to replace the currently existing subdirectorates, with the enhanced competence which that separation implies.

3. Information: communication media

446. To supplement the existence of programming slots dedicated to culture and cultural diversity on the public TV channel “Señal Colombia” (mentioned earlier under article 5, section 6, and article 7, paragraph (b)), the National Television Commission, an autonomous body responsible for the operation and regulation of television in Colombia, has taken important measures to publicize events occurring within minority groups in the country.

Policies and action taken by the National Television Commission in connection with ethnic groups

447. The Television Act (No. 182 of 1995) stipulated that television is a public service intrinsically linked to the national culture. It has sought to develop these subjects in line with the aims and principles established for the service, regardless of whether the latter is provided by the State, private individuals or organized communities.

448. To that end, the Television Act stated that the aims of the television service are: to train, educate, provide accurate information objectively and provide wholesome entertainment. In the pursuit of these aims it seeks to meet the social goals of the State, promote respect for fundamental guarantees, rights and duties and other freedoms, reinforce the consolidation of

democracy and peace and foster the dissemination of human values and cultural expressions of a national, regional and local nature. These aims will be achieved in accordance with the following principles: (a) impartiality of information; (b) the separation of opinion and information, in accordance with articles 15 and 20 of the Political Constitution; (c) respect for political, religious, social and cultural pluralism; (d) respect for the honour, reputation and privacy of persons and for the rights and freedoms recognized by the Political Constitution; (e) the protection of children, young persons and the family; (f) respect for the values of equality enshrined in the Political Constitution; (g) the pre-eminence of public over private interests; (h) the social responsibility of the communications media.

449. In addition to the foregoing, the legislature adopted Act No. 335 of 1996 reforming the organization of television in Colombia. Among other things, it established (in paragraph 2 of article 20) that the State has a duty to guarantee permanent access by ethnic groups to use of the Electromagnetic Spectrum and the public services of telecommunications and mass communication media of the State, the creation of their own communications media in their different modalities. At the same time the legislature affirmed that both the General Education Act (No. 115 of 1994) and the General Culture Act (No. 397 of 1997) provided that the State guaranteed to ethnic and linguistic groups, Black and Raizal communities and indigenous peoples the right to preserve, enrich and disseminate their identities and cultural heritage, to transmit knowledge thereof in accordance with their own traditions and to enjoy an education which secures those rights.

450. For the above reasons, and with the aim of guaranteeing ethnic and cultural rights and their full development, the Television Development Plan 2004-2007, adopted by the National Television Commission by Decision 1013 of 2003, provided for the launching of a project entitled "Ethnic groups, democratization and television coverage", which stated that those population groups could enjoy the benefit of compensatory mechanisms which would allow them to gain access to the service, make critical use of the medium and avail themselves of the strategies and tools necessary to stimulate their own production based on the elements making up their world-view and identity as a people.

451. In addition, in Decision 1014 of 2003 the Commission adopted the CNTV strategic plan, a planning instrument which envisaged implementation of the project entitled "access to television for minorities and special population groups".

452. Thus, through Circular 027 of 2006 the Commission called on operators and service providers, in the name of the principle of social responsibility of the media, to refrain from all acts of intimidation, segregation, discrimination or racism.

453. In the light of the constitutional and legal developments mentioned earlier, the National Television Commission, after open consultation with all concerned, issued Decision 01 of 20 May 2005 guaranteeing access to the public television service for ethnic groups. The decision specified the mechanisms through which ethnic groups may gain access to the national, regional and local services, stating in particular that five per cent of the programme time of the national public channel would be devoted to those population groups. In addition, the possibility of developing training activities was introduced within the framework of the development of affirmative action and the implementation of positive differentiation criteria.

454. The main measures taken to achieve participation by ethnic groups on television are:
- (a) Elaboration of ethnic policies and projects in the Television Development Plan 2004-2007 and the CNTV Strategic Plan 2003;
 - (b) Elaboration and issuance of Decision 01 of 2005 regulating the participation of ethnic groups in television; allocation of five per cent of programme time, 2004;
 - (c) Elaboration of the University and Ethnic Television project, 2006;
 - (d) Organization of the workshop on ethnic television projects, held in coordination with RTVC and the Ministry of Culture, 2006;
 - (e) Production and broadcasting of institutional messages promoting respect for ethnic diversity, 2002;
 - (f) Academic surveys with the Chocó Technical University in Quibdó, Tadó and Istmina, 2004;
 - (g) Currently under way: research projects with indigenous groups in Nariño and with Afro-Colombians in Chocó, 2007. Convention 055 of 2006 – Colciencias;
 - (h) Inclusion of the ethnic perspective in the plans for the University Channel, Pacific University, 2006;
 - (i) Allocation of slots to the “La Tribuna de las Negritudes” programme, Colombia Etnica, 2005;
 - (j) Support for the pilot ethnic television project of the Kankuamo indigenous *resguardo*, the first indigenous television channel in the country, to be inaugurated before the end of this year. The provisional measures ordered in the ruling of 5 July 2004 by the Inter-American Court of Human Rights will have been implemented; 2007;
 - (k) Implementation of project 800100.3 (Ethnic groups and the gender perspective in television) is envisaged for 2007;
 - (l) At present, progress is being made with the elaboration of a cooperation agreement with the Ministry of Culture to encourage television production by ethnic groups.

III. REPLIES TO THE RECOMMENDATIONS RECEIVED

455. A considerable proportion of the institutional replies to the recommendations addressed to Colombia by international organizations have been included in the earlier parts of this report.

456. However, an effort will be made in this part of the report to mention the specific measures taken in response to each of the recommendations, referring back to those parts of the report in which the measures are described in detail. The points covered will include not only the recommendations of the Committee on the Elimination of Racial Discrimination but also those of the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen. As regards the methodology of the replies, each recommendation will be stated first, to be followed in the next paragraph by the reply of the Government of Colombia.

A. Recommendations made by the Committee following the consideration of the ninth periodic report

457. The recommendations made by the Committee on the Elimination of All Forms of Racial Discrimination at its 55th session, held on 20 August 1999, after consideration of the ninth report of Colombia, are to be found in document A/54/18 (paragraphs 454-481).

1. Follow-up on general recommendations

It is recommended that legislation be enacted, at the earliest possible opportunity, that explicitly and comprehensively implements the obligations under articles 2 and 4 of the Convention.

458. Although the criminalization of racism has not been approached explicitly in the terms set forth in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, it is worthwhile mentioning the important step forward made in this area with the adoption of Act No. 599 of 2000 establishing a new Penal Code, which entered into force on 31 July 2001. That instrument includes some cases of increases in penalties where racial considerations are involved; it also identifies offences of a racial character occurring during an armed conflict. It is hoped that these advances will contribute to the prevention and repression of the forms of behaviour described in the Convention and promote advances in other areas not covered by that instrument.

459. Chapter II of the Penal Code, which establishes criteria and rules for the determination of penalties, in article 58 (Aggravated penalties), paragraph 3, makes reference to cases “where the punishable act arises from motivations of intolerance and discrimination on grounds of race, ethnic group, ideology, religion or beliefs, sex or sexual preferences, or any sickness or disability on the part of the victim”. In Book II (Special part; concerning individual crimes and offences), Title II (Crimes against persons and property protected by international humanitarian law), single chapter, article 143 (Acts of racial discrimination) reads as follows: “Anyone who, during and in pursuit of armed conflict, practices racial segregation, or inflicts inhuman or degrading treatment based on other unfavourable distinctions entailing an insult to personal dignity, with regard to any protected person shall be liable to imprisonment for five to ten years and disqualification from exercising public functions for five to ten years.”

460. It should be emphasized that the People's Advocate has since 2003 been pressing for the elaboration and discussion of a draft law penalizing all forms of discrimination specifically covering the postulates of the Convention on the Elimination of All Forms of Racial Discrimination and the follow-up to the Durban Conference. As already mentioned several times throughout this report, this draft law is at present proceeding through the Congress of the Republic with serial number 68/07/Senado (there are also explanations in Part II: A. General information and 3.(b): Legislative framework relating to ethnic groups).

The Committee requests that the State party include in its next report information about the implementation and impact of the measures recently announced to promote respect for human rights within the military, in connection with the implementation of the Convention.

461. The measures recently adopted by the State of Colombia under Act No. 48 of 1993, which were aimed at promoting respect for human rights in the military, are of a general nature and seek to have an impact on all of Colombian society. The National Government understands that in the fight against racism it is of fundamental importance to take measures designed to make society as a whole aware of the serious effects of this problem. It is also to be emphasized that, with regard to indigenous and Afro-Colombian communities, the High Command of the Armed Forces and the National Police has given instructions designed to promote conditions and thinking which will interpret the peculiar situations and circumstances which make these population groups some of the most vulnerable in the face of the *violencia* situation prevailing in the country (these instructions are derived from Ministry of National Defence directives 07 and 016; see above under article 5, in section B)

The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 during the fourteenth meeting of States parties to the Convention.

462. Colombia ratified these amendments by Act No. 467 of 1998 "By which approval is given to the amendment to the eighth article of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination", adopted in New York on 15 January 1992.

It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some of the members of the Committee requested that the possibility of such a declaration be considered.

463. For the time being, the decision is not to make the declaration in question, which implies that national mechanisms exist which guarantee the right of any individual or group discriminated against to lodge a complaint with judicial bodies (see above, paras. 86 et seq). At the same time, it is of the utmost importance to promote recourse to these national judicial remedies (such as proceedings under *tutela*) where cases of discrimination occur, given that in Colombia complaints on these grounds are infrequent. It is therefore not necessary to create a new mechanism; rather, the systematic use of the existing guarantees should be promoted.

2. Follow-up on recommendations concerning indigenous peoples

The Committee recommends that the State party implement affirmative and effective measures to ensure increased employment opportunities for minority and indigenous communities in

both the public and private sectors and to advance the social, political, economic and educational status of historically marginalized communities.

464. In response to the problems arising with regard to employment opportunities, although these are of items of considerable importance on the agenda of the National Government, they do not affect only the population groups exposed to racial discrimination. Colombia is implementing macroeconomic and legislative strategies to reduce the levels of unemployment in the country. In addition, it has encouraged communities to undertake sustainable development projects in keeping with their lifestyles with the aim of creating more opportunities for the national population. In this connection, it is important to mention the Tourist Inns Programme, which was explained earlier under article 5 in section (f) (3).

The Committee recommends that in the next report State entities working with indigenous populations should produce and make use of statistics disaggregated by ethnic group, so that they can focus their work more effectively. It is recommended that they should work out a suitable methodology in cooperation with academic and research institutions.

465. The State of Colombia has made substantial progress in promoting awareness of the importance of introducing the ethnic variable into all its public policy measures.

466. Of particular importance is the work of the National Administrative Department for Statistics (DANE), which proposed the collection of reliable quantitative data on ethnic matters in an official and generalized manner in the 2005 national census. The methodology of quantification and the details of the conduct of the census were explained earlier (see above under art. 1).

467. In addition, the Office of the Public Prosecutor, INPEC, the National Police and a number of other official bodies have understood the need to introduce the ethnic variable into the measures they take.

As part of the plans for free education for all - which the State is under an obligation to provide - the bilingual and intercultural education programme should be reinforced in indigenous areas, and the role of private educational establishments should always be limited to supplementing the work of the State.

468. The State of Colombia is conducting a number of programmes which are in line with this recommendation. Specific information will be found in the sections on ethnic education (see under art. 5, sect. (e)(5): Ethnic education policies) and those on the strengthening of culture and identity, information programmes geared to ethnic groups and their recognition in society as a whole, policies on recognition of cultural diversity and preservation of the cultural heritage of the indigenous communities (see under art. 5, sect. (e)(6) and art. 7, sect. (b)).

The Government's plans to provide health service coverage to the entire indigenous population should embrace and protect traditional medicine and its practitioners within the indigenous communities.

469. The State of Colombia is pursuing measures in this area; in this report they are described under the headings of health and social security - health policies for ethnic groups (see under

art. 5, sect. (f)(4). Information is also given on the policies of enhancement of the value of traditional learning being pursued by the Ministry of Culture (see under art. 5, sect. (f)(6). Finally, it is worth recording that the State aims at achieving total coverage, without distinction, by the subsidized social security health scheme by 2010.

The Committee urges the State party to take comprehensive steps to protect the security and promote the well-being of Colombia's large internally displaced population, consisting mainly of persons of the indigenous communities and, as a matter of extreme priority, to guarantee the security of indigenous community leaders and human rights defenders across the country who have sought to protect the rights of those communities.

In the first place the displaced indigenous population, and women and children in particular, should be accorded priority attention by the State and international organizations.

470. The Presidential Social Action Agency, through the Guidelines for Differential Care for the Indigenous Population, deals specifically with this population group. Also, under the Humanitarian Care for Relatives of Victims of Violence programme, all requests for assistance received from relatives of indigenous individuals who have suffered violent deaths are met. For example, in pursuance of these guidelines the State is at present elaborating a municipal operational plan for humanitarian assistance to the indigenous population in the town of Tierralta (Córdoba).

471. Mention must also be made once again of the ETNOCRER programme of the Ministry of the Interior and Justice, which is designed to protect ethnic community leaders whose personal safety is under threat (see in Part II under art. 5, sect. (b)).

In addition, with regard to the displaced population, it is vital to secure food supplies for indigenous communities, and in particular for the displaced populations in conflict zones, and to ensure the free passage of food aid to the neediest groups.

472. The National Comprehensive Care Scheme for the Displaced Population (SNAIPD) was established by Act No. 387 of 1997. In accordance with the provisions of Presidential Decree No. 489 of 11 March 1999, the Act provides that in all cases of large-scale displacements of families or individuals emergency humanitarian aid shall be provided in coordination with the indigenous authorities and the Office of the People's Advocate. Humanitarian measures have been taken to assist populations displaced or threatened with displacement. The Mixed Committee for Assistance to the Embera Katio village in Alto Sinú has been constituted. The indigenous communities on the Sinú, Verde and Esmeralda rivers were given priority and included in the Care for Communities at Risk project (PACR) of the Ministry of the Interior and Justice, the Office of the Vice-President of the Republic, Social Action, the Office of the People's Advocate and the Attorney-General's Office.

3. Follow-up on recommendations concerning Afro-Colombians

Recognizing that many Afro-Colombians live in extreme poverty in urban slum areas, the Committee recommends that the State party take steps to address de facto racial segregation in urban centres. The Committee also requests additional information in the next periodic report on housing patterns in urban areas and on legislation that may address discrimination in the housing sector.

473. This is a subject which has been approached with steadily increasing interest by the different bodies of State with competence in this area. In the particular case of the Afro-Colombian population, awareness of the difficult situation they face in the large towns is growing. This has given rise at the national level to the consolidation of a number of studies comprising ethnic variables in the housing sector conducted by the Ministry of the Environment, Housing and Spatial Development. The Government also hopes that the information yielded by the population census, which contained variables relating to ethnic groups, will give rise to additional studies facilitating the collection of relevant information on improvements in the quality of life of these groups, including aspects relating to housing. Mention should also be made of the Tourist Inns programme (explained under article 5, section (f)(3)). In addition, at local level mention should be made of studies designed to obtain information on the true situation of the Afro-Colombian population; one example is the process of ascertaining their living conditions which is being pursued in Bogotá D.C. by the Social Studies Centre of the National University of Colombia at the request of the Capital District.

B. Recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

1. Recommendations concerning human rights

On the subject of protection of indigenous and human rights defenders, programmes should be set up in conjunction with civil society organizations and human rights defenders active in indigenous affairs, as a means of joining forces to ensure the attainment of the Government's laudable aims in terms of the promotion and protection of the human rights of indigenous people.

474. The Presidential Programme on Human Rights and International Humanitarian Law, the Ministry of the Interior and Justice (more specifically, the Ethnic Groups Directorate) and the Ministry of National Defence are pursuing activities within plans of action on human rights in municipalities and departments; these activities involve the active participation of civil society. Furthermore, the basic and upgrading training courses for officers, NCOs and private soldiers include the subject of human rights and international humanitarian law; in addition, non-formal education courses on the subject are being given at all times. In a like manner, action is taken through training days devoted to human rights and indigenous legislation.

475. These activities are conducted within the framework of implementation of the policy of decentralization regarding human rights and the care project for communities at risk. Furthermore, under an agreement with the Office of the People's Advocate, the Ministry of Defence has since 2003 been developing a specific training programme on indigenous law and legislation designed for members of the armed forces and the police serving in areas with

indigenous populations. Up to 2005, 19 workshops of this kind took place; a further 9 were held in 2006.

The Special Rapporteur suggests that, since the State and the armed groups have an obligation to comply at all times with international humanitarian law and to respect human rights, a broad-based independent commission be established to ensure full compliance.

476. The Presidential Programme on Human Rights and International Humanitarian Law, the Ministry of the Interior and Justice (more specifically, the Ethnic Groups Directorate), the Ministry of National Defence and the Ministry of External Relations ensure that the security forces are under continuous training in respect for human rights and compliance with the provisions of international humanitarian law. Breaches of these provisions give rise to penal and disciplinary sanctions. An analysis of the complaints received by the Attorney-General's Office during 2005 has established that, out of the total number of members of the security forces (350,000), complaints were lodged against less than 0.56 per cent of its members and that proceedings were begun against less than 0.13 per cent. Training work in the security forces will also continue under the agreement between the Office of the People's Advocate and the Ministry of Defence. The National Commission on Human Rights of Indigenous Peoples will be strengthened. It must nevertheless be recognized that, in contrast, the actions of the illegal armed groups show a constant and total disregard for the protection due to the civilian population.

The Special Rapporteur recommends that priority be given to the indigenous peoples' demand that all the armed groups respect their neutral and demilitarized zones. Indigenous peace zones, free from all military operations and subject to international supervision, should be created as a matter of urgency.

477. The Presidential Programme on Human Rights and International Humanitarian Law, the Ministry of the Interior and Justice (more specifically, the Ethnic Affairs Directorate) and the Ministry of National Defence do not accept the use of the generic term "armed groups" as including the security forces; the latter are not an actor in the conflict but the legitimate force of the State. As regards the presence of military units in indigenous territories, it has to be borne in mind that, under the mandate conferred on them by articles 217 and 218 of our Constitution, the security forces are obliged to establish their presence at any location in the national territory in order to ensure the peace and tranquillity of the inhabitants thereof. In order to ensure that the military and police authorities in each region maintain respectful and flexible communications with the indigenous authorities, the Ministry of Defence issued Circular No. 151 of September 2004 ordering the military and police units in each region in which indigenous communities are located to designate points for liaison or contact with the indigenous authorities concerned. In this way flexible mechanisms will be established for communication between the security services and the indigenous peoples in order to create facilities for direct dialogue.

The Special Rapporteur recommends that indigenous people should continue to be excluded from the draft law on compulsory military service. Congress should not approve any law limiting or restricting the autonomy and freedoms of social and human rights NGOs.

478. The Congress of the Republic and the Ministry of Defence have publicly reaffirmed their determination to continue to extend this benefit to indigenous people. The draft laws adopted to amend Act No. 48 of 1993, which governs the performance of military service, have not sought

to abolish the exemption of indigenous people. Consequently the situation as established in Act No. 48 remains unchanged.

479. However, the Ministry of Defence has been applying the ruling of 10 December 2003 of the Administrative Tribunal of Cudinamarca concerning the performance of military service by indigenous individuals. The tribunal concluded that, although the exemption was designed to protect collective rights, it did not debar each indigenous individual from choosing whether or not to perform military service. “Although it is true that exemption from military service is a collective legal condition of the communities, it is equally true that performance of military service may be applied for by each of its members without such application implying disregard for the autonomy enjoyed by the communities to take decisions regarding their members. Exclusion of young indigenous individuals who desire of their own free will to join the armed forces and perform military service, or to remain in the armed forces, implies the sacrifice of fundamental rights of the persons concerned, which is not possible within the constitutional framework in force in Colombia”.

The Special Rapporteur recommends that schemes for children and youngsters such as the network of informers, the introduction of peasant soldiers and the “soldiers for a day” programme should be discontinued.

480. The Ministry of Defence observes that this recommendation is not applicable, since these programmes form an integral part of the policy of defence and democratic security. It must be borne in mind that these programmes are entirely voluntary for indigenous people and pursue no aim other than that of strengthening security for the benefit of all.

The Special Rapporteur recommends that the State should promote and extend the coverage of alternative sustainable development projects, under development plans drawn up by the indigenous communities, and to that end should request the fullest possible international cooperation.

481. The Ethnic Groups Directorate of the Ministry of the Interior and the territorial entities (municipal and departmental), as part of the provision of support and impetus to the development plans of indigenous peoples - who are linked to the General Participations System (Act No. 215 of 1981) - allocate resources through municipal and departmental authorities for this purpose. There are also similar programmes supported by the Colombian International Cooperation Agency (ACCI). Mention should also be made of the Tourist Inns programme (explained under article 5, section (f)(3) and the special plans for the safeguarding of the intangible cultural heritage (mentioned under article 5, section (e)(6), etc.

2. Recommendations concerning legislation

The Special Rapporteur recommends that regulatory legislation giving full and effective application to the constitutional provisions on the human rights of indigenous peoples be passed as soon as possible.

482. The Congress of the Republic and the National Government are working on regulations to accompany Act No. 715 of 2001 (General Participations System), Act No. 685 of 2001 (Mining Code), Act No. 691 of 2001 (Social Security Health Scheme) and Act No. 756 of 2002

(Royalties). Follow-up on the draft laws concerning indigenous ethnic groups which are currently before the Congress of the Republic is effected through the Ethnic Groups Directorate. In addition, as already mentioned, the Office of the People's Advocate is steering forward an ambitious draft law in the Congress of the Republic prohibiting all forms of discrimination.

The Special Rapporteur recommends that any draft legislation, draft constitutional reform or other initiative which introduces into the law provisions that violate indigenous peoples' rights or the principle of diversity be withdrawn.

483. The Congress of the Republic and the Ministry of the Interior and Justice (more specifically, the Ethnic Groups Directorate) state that none of the draft laws devised by the National Government and presented in the National Congress infringe the rights of the indigenous peoples. The draft laws presented by the National Government which are binding on the indigenous peoples are reviewed by the Legal Order Directorate and the Ethnic Groups Directorate in the Ministry of the Interior and Justice.

The Special Rapporteur recommends that the other branches of government should fully respect the powers of the Constitutional Court, and refrain from limiting the scope of the amparo procedure, which is one of the principal mechanisms for the defence of indigenous peoples' human rights.

484. The National Government replies that it respects the decisions of the judicial and supervisory authorities and the constitutional provisions established to protect human rights.

3. Recommendations concerning gender, children and women

The Special Rapporteur recommends the establishment of an effective mechanism for the protection and promotion of the rights of Colombia's indigenous women, with the aim of forestalling violations of their fundamental rights and promoting their active involvement in decisions affecting their lives and their active development within their communities.

485. Since 2004, the Office of the Adviser on Equality for Women and the Ethnic Groups Directorate have been conducting activities favouring indigenous women. Examples are the organization of meetings of indigenous women and indigenous organizations (ONIC, AICO, OPIAC); research to document the situation of ethnic groups in the country ("Gender and ethnic groups" and "Current situation regarding recognition of the rights of indigenous women in Colombia"), conducted by three laboratories for indigenous women in the regions and one in Bogotá, which coordinates regional activities concerning the role of women and their relationships with the communities; and a publication entitled "Indigenous Women's Review". This information is provided in greater detail in the section on the special situation of women (Part II. A. General information, sect. (c)).

The Special Rapporteur recommends that existing programmes on the provision of basic social services be extended so as to improve the situation of indigenous women and children in rural areas, and in particular displaced women and children, with regard to health and education.

486. As mentioned earlier in connection with the special situation of women, children and refugees and displaced persons, Acción Social, the Office of the High Counsellor for Women, the Colombian Family Welfare Institute (ICBF) and the Ministry of Social Protection have special programmes providing differential treatment to women and children belonging to ethnic minorities, especially those displaced by the *violencia*. In addition, the programmes being executed benefit from the participation of territorial entities, institutions in the health and education sectors endeavouring to improve access to food and strengthen the socialization of the practice of traditional medicine and community self-government and organization.

The Special Rapporteur recommends that no indigenous people should be detained by the armed forces unless a warrant for their arrest has been issued by a competent judicial authority. The duties of the military and the judiciary should be kept strictly separate, including in conflict zones. In addition, prosecution services should investigate and apply the law in all complaints concerning abuses and violations committed against members of indigenous communities by members of the armed forces or the police.

487. The Ministry of Defence, the Office of the Public Prosecutor and the Attorney-General's Office have repeatedly stated that military and judicial functions are kept strictly separate. No citizen may be detained by the military forces unless a prior warrant for that person's arrest has been issued by the competent authority. However, the Constitution and the law authorize detention without an arrest warrant in cases of *flagrante delicto*. In either case, the person making the arrest must place the detainee at the disposal of the competent authority within the established time limit. If the conditions are not satisfied a complaint on the subject may be addressed to the different supervisory bodies. Moreover, all acts relating to administrative, preventive or *flagrante delicto* detention involving members of the security forces must be carried out within the framework of and in compliance with the Constitution and the national legislation in force.

488. Furthermore, as mentioned earlier, the Office of the Public Prosecutor has begun to incorporate the ethnic variable in all its activities and measures.

The Special Rapporteur recommends that the relevant State bodies should apply, with immediate effect and without exception, the precautionary measures established by the Inter-American Commission on Human Rights for various indigenous peoples.

489. The Ministry of External Relations is working with the inter-institutional groups formed to handle cases and is actively and effectively responding, taking the precautionary or provisional measures established by the Inter-American Commission on Human Rights for the various indigenous peoples. It has also formed inter-institutional groups to assist each of the indigenous groups benefiting from measures taken within the Inter-American human rights system, such as the Kankuamos, the Pijai, the Wiwa, the Embera Katió, the Embera Chami and the Wayúu.

The Special Rapporteur recommends that the Anti-Terrorist Statute should under no circumstances be invoked against any indigenous people charged with an offence as a result of involvement in legitimate action to resist, oppose or protest against violations committed against them by any armed group.

490. This recommendation does not apply, since the Anti-Terrorist Statute has been declared without force by the Constitutional Court.

5. Recommendations concerning the environment and sustainable development

The Special Rapporteur recommends that, except where expressly requested by an indigenous community which has been fully apprised of the implications, no aerial spraying of illicit crops should take place near indigenous settlements or sources of provisions.

491. The Anti-Narcotics Police, the Office of the Public Prosecutor, the Ministry of the Environment and the State of Colombia as a whole are obliged to comply with ruling SU – 383 of the Constitutional Court, which requires consultations to be undertaken in indigenous *resguardos*. So far consultations have been held with indigenous authorities and representatives in the departments of Guaviare, Norte de Santander and Magdalena. There are plans to hold consultations in other regions of the country; the National Narcotic Drugs Directorate has set aside resources for the purpose.

The Special Rapporteur recommends that no investment or infrastructure projects, harvesting or mining of natural resources or new production projects should be encouraged without full and legitimate prior consultation and the involvement of the indigenous peoples. An agreed approach to the consultation process should be worked out.

492. The Ministry of the Environment and the Ethnic Groups Directorate are working with indigenous organizations and peoples in a number of ways to work out approaches to consultation relating to prospecting for and exploitation of natural resources. The National Hydrocarbons Agency, together with the National Indigenous Organization of Colombia (ONIC), completed the project entitled “The views of the indigenous peoples and organizations vis-à-vis oil policies in Colombia” during 2005. For the year 2006 the Agency had resources available for undertaking other activities with regional and grassroots organizations designed to achieve consensus on processes that which would afford improvements in consultation proceedings.

C. Insufficiency of resources to implement the recommendations

493. The present Government is implementing the following basic policies: democratic security; reducing State expenditure; increasing State revenue; and social and economic revival. During the last few years some 66 per cent of the annual budget has been allocated to the implementation of the policy of social revival; in that area the priority items of expenditure are social protection, health care and education. This pattern of budget allocation contributes to the implementation of the Durban recommendations on access to the public education system, the comprehensive health-care system and to medicines for persons infected with HIV/AIDS.

494. The foregoing notwithstanding, budget allocations do not permit full coverage of the recommendations on full access to public services in the home, property and the eradication of poverty.
