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on Civil and
Political Rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Fifth periodic report

Colombia*

[14 August 2002]

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INTRODUCTION

1. The Government of Colombia submitted the fourth report on the implementation of the International Covenant on Civil and Political Rights on 9 July 1996. The text thereof was published by the United Nations in documents CCPR/C/103/Add.3 and HRI/CORE/1/Add.56.
2. The Human Rights Committee considered that report at its 1568th, 1569th, 1570th and 1571st meetings, held on 31 March and 1 April 1997, and made observations and recommendations at its 1583rd meeting, held on 9 April 1997, which was published in document CCPR/C/79/Add.76 dated 5 May 1997.
3. The National Government and the Office of the Vice-President of the Republic, in its capacity as the body responsible for coordinating the management and implementation of Government and State policy concerning the promotion and guaranteeing of and respect for human rights, and all the other national and local bodies whose energies have of necessity been devoted to the study and implementation of their tasks and commitments, submit this **Fifth Report to the Human Rights Committee on the International Covenant on Civil and Political Rights**, which provides information on the progress made, the obstacles encountered and the challenges facing Colombia in this field.
4. In the midst of difficulties and restrictions, and notwithstanding realities within the country, progress has been made in the different spheres of political action. However, work has hardly begun on certain tasks, and much still remains to be done.
5. Colombia is a social and democratic State governed by the rule of law. As an ultimate objective, but also as a measure (and also a boundary-mark) of management of the State and society, the Constitution contains the Charter of Rights and Duties. That Charter defines the classical freedoms of the democratic tradition in the form of powers granted to the citizens which they can invoke against any arbitrary acts committed by bodies of State. Similarly, together with civil and political rights, and in response to the dictates of public morality in the world of today, it defines economic, social and cultural rights in the form of institutional aims and values establishing rights and duties for the State and for its citizens.
6. In that context the State of Colombia has a comprehensive commitment to protect and implement fundamental rights.
7. The commitment of the State of Colombia to provide complete protection of human rights is not confined to the domestic scene. As a State recognized as forming part of the concert of nations, that commitment also applies vis-à-vis the international community. Colombia is a party to the multilateral treaties and covenants on human rights which, expanding on the Universal Declaration of 1948 and as a collective response of humankind to the barbarity of the Second World War, laid down the moral, legal and political foundations for the world-wide order of the second half of the 20th century. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (both created within the United Nations system), and also the American Convention on Human Rights, the framework of regulation of the Organization of American States system, are only a few of the most important treaties ratified by Colombia and creating obligations for us as a State vis-à-vis the world.
8. However, the Charter of fundamental rights, which constitutes the body of ethical and legal rules governing the country's internal ordering, and the multilateral human rights instruments to

which Colombia is a party do not form a heterogeneous and disjointed structure. The Constitutional Court has rightly ruled that the precedence of the international human rights treaties ratified by Colombia in the domestic order, referred to in article 93 of the Political Constitution, has to be made compatible with the requirements of article 4, which lays down the principle that the Constitution takes precedence over all other types of legislation, so that both conform to what is known as the “constitutionality block”.

9. However, between social, political, economic and cultural realities and the duty of full achievement of human rights there is always a gap, the size of which depends on the level of development and the particular situation in each country. Thus these rights are not merely a standard achieved which must be protected, but also to a considerable degree a multiple aim to be achieved and a collective aspiration to be satisfied.

10. In Colombia there are aspects of reality which have considerably restricted both the possibility of fully enjoying these rights and the ability of the State to guarantee them. The most critical aspect of contemporary reality is unquestionably the internal armed conflict. The increasing generalization, fragmentation and debasement of that conflict are the principal source of violations of fundamental rights and a constant factor making for institutional instability.

11. Peace and human rights precondition one another. Peace is a precondition for a full and integral applicability of human rights. A certain measure of achievement of these rights and the observance of minimum humanitarian standards in the conflict help to pave the way for the achievement of peace by negotiation. Thus the government of Andrés Pastrana, in response to the will of the people as expressed through the ballot box, has from the very beginning set as its priority concern the establishment of conditions of a nature to bring about a negotiated end to the conflict.

12. Since the armed actors in the internal conflict - and specifically the guerilla and self-defence groups - have degraded the conflict, dehumanizing it and increasingly involving the civilian population, the State has further developed its policy vision and its plan of action in the field of human rights, adopting a position vis-à-vis international humanitarian law which takes into account article 3 common to the 1949 Geneva Conventions and Protocol II of 1977 additional to those Conventions. That article lays down a humanitarian minimum standard to be observed by all parties to a conflict and, since it forms part of *jus cogens*, it also forms part of the “constitutionality block” as defined by the Constitutional Court. The need to humanize the conflict was also an essential point in the negotiation agenda which the Government proposed to the insurgent groups within the framework of the peace process.

13. Since Colombia is a State which has accepted commitments vis-à-vis the international community, its policy structure has been formulated within the framework of a vision of human rights for which the State is responsible, both internally and externally. The assumption of this burden is a duty which the Government accepts and respects. However, the Government also considers that efforts should continue to complement the conventional understanding of human rights, according to which only the State can violate them, should be completed by a reading of international humanitarian law, since all the armed actors engaged in conflict have the capacity to commit war crimes. This is not an attempt to elude the duties of protection and the responsibilities incumbent on the State; it is an attempt to assign more objectively and rigorously responsibility for serious violations of human rights and international humanitarian law occurring

within the framework of the armed conflict among the different subjects and imputable institutions.

14. However, human rights are not solely a matter for the State. The system of rights, duties and responsibilities which make up those rights, and which provide ethical and legal criteria for collective action, imply the existence of solidarity networks and systems of continuing communication and cooperation between the State and society. Consequently human rights policy has not been restricted to definition of a series of tasks incumbent on the State. The design and opening of channels of communication between the State and the non-governmental human rights organizations also form part of that policy. .

15. Thus the foregoing are the central premises of the human rights and international humanitarian law policy which we are implementing.

16. The search for solutions to the problems of human rights and international humanitarian law has been a constant subject of concern within the most recent governments. In view of the period covered by this report, our analysis will be concentrated on the last two governments.

17. The report consists of six chapters, dealing respectively with the following subjects: basic information on Colombia; the results of the policy of the Colombian Government on the promotion, guarantee and protection of human rights and international humanitarian law and the search for peace during the period 1996-2002; the humanization of the armed conflict and the search for peace; the Office of the People's Advocate, 1992-2002; a factual description of the situation regarding violence, human rights and international humanitarian law in Colombia; and, finally, the substantive provisions of the International Covenant on Civil and Political Rights.

I. BASIC INFORMATION ON COLOMBIA

1. Land and people

18. Colombia is the most northerly country in South America and the fourth largest, comprising an area of 1,141,748 sq. km.

19. The frontiers of Colombia are those established in international treaties approved by Congress and duly ratified by the President of the Republic and those defined in arbitration awards to which Colombia is a party.

20. In addition to the mainland territory, the San Andrés archipelago, Providencia, Santa Catalina and the island of Malpelo, as well as the islands, islets, cays, promontories and sandbanks forming part thereof form part of Colombian territory.

21. The subsoil, the territorial waters, the contiguous zone, the continental shelf, the exclusive economic zone, the airspace, the segment of the geostationary orbit, the electromagnetic spectrum and the zone in which it is active form part of Colombia in accordance with international law or, in the absence of international instruments, with Colombian law.

22. The country is divided into territorial units - departments, districts, municipalities and indigenous territories. The law permits the designation of regions and provinces established under the terms of the Constitution and the law as territorial units.

23. Colombia consists politically of the following departments:

<i>Name</i>	<i>Area (sq. km.)</i>	<i>Capital</i>	<i>Name</i>	<i>Area (sq. km.)</i>	<i>Capital</i>
Amazonas	109,665	Leticia	Huila	19,890	Neiva
Antioquia	63,612	Medellín	Magdalena	23,188	Santa Marta
Atlántico	3,388	Barranquilla	Meta	85,635	Villavicencio
Arauca	23,818	Arauca	Nariño	32,268	Pasto
Bolivar	25,978	Cartagena	Norte de Santander	21,658	Cúcuta
Boyacá	23,189	Tunja	Putumayo	24,885	Mocoa
Caldas	7,888	Manizales	Quindío	1,845	Armenia
Caquetá	88,965	Florencia	Risaralda	4,140	Pereira
Casanare	44,640	Yopal	San Andrés y Providencia	44	San Andrés
Cauca	29,308	Popayán	Santander	30,537	Bucaramanga
César	22,905	Valledupar	Sucre	10,917	Sincelejo
Córdoba	25,020	Montería	Tolima	23,562	Ibagué
Cundinamarca	24,210	Bogotá	Valle del Cauca	22,140	Calí
Guajira, la	20,848	Riohacha	Vaupés	65,268	Mitú
Guainia	72,238	Puerto Infrida	Vichada	100,242	Puerto Carreño
Guaviare	42,327	San José			

24. The departments are themselves divided into municipalities. The municipality is the basic unit in the political and administrative structure of the State. There are currently 1,098 municipalities.

25. Colombia is at the same time a country of regions. There are five macro-regions: Costa Atlántica, Chocó biogeográfico (or Pacific region), Orinoquía, Amazonía and the Andean region. They display great cultural diversity.

1.1. Principal ethnic characteristics

26. Colombia is a crossroads at which a great variety of cultures have interacted with one another. It is a *mestizo* country made up of indigenous groups, whites, blacks and mulattos. It combines the traditions of the American, European and African peoples. It is a rich and varied country with mixtures and reciprocal influences, all of which determine its multiethnic and multicultural character.

27. In Colombia there are currently three major ethnic and social groups which stand apart, both geographically and culturally, from the major part of the population, namely the Afrocolombian communities, the indigenous peoples and the grassroots communities of San Andrés y Providencia. Recently the Rom or Gypsy peoples were recognized as a separate group.

28. According to the 1993 census the population comprised 33,109,233 inhabitants. Out of the total population covered by the census, 532,233 persons considered themselves as belonging to an indigenous group, while 502,343 persons identified themselves as members of the Black ethnic group. These groups constituted respectively 1.6% and 1.5% of the total population.

29. From the results obtained it is clear that the number of persons considering themselves as forming part of the Afrocolombian group is not in line with reality in the country. According to the National Development Plan - Change to Construct Peace- that group makes up 10% of the total population. Likewise, according to estimates made by some academicians and leaders in the communities concerned (including the Study Commission which, under the terms of article 57 of Act No. 70 of 1993 and at the request of the National Department of Planning,, drew up the Afrocolombian Development Plan, 1998-2002, this group makes up 25% f the total population of the country, without regard to the numbers of persons identifying themselves with that group.

30. For this reason the National Administrative Department of Statistics (DANE), in the light of the experience accumulated in 1993, plans to obtain data on all the ethnic groups in the country (including the Afrocolombian population) in the census scheduled for October 2003 by including a new question and by implementing a strategy of training and extension work which will yield results closer to reality. The next question (which will be question 35 on the census form) will be phrased as follows:

35. The respondent considers him(her)self:

Black, Afrocolombian

Member of Grassroots Archipelago group

Gipsy, Rom

Indigenous

Other

36. The most recent estimates indicate that there are at present approximately 1 million members of indigenous groups living in Colombia. They belong to 82 peoples and constitute approximately 2% of the total population, estimated at 42,321,386 persons.

1.2. Languages

32. Colombia recognizes Spanish as its national language; in addition, the country has a wealth of languages among its indigenous communities. Sixty-four languages, belonging to 22 indigenous families of languages, have been identified (Chibcha, Arawak, Caribe, Macro-Tukano, Witoto, Sikuani, Quechua, Kamsa, Kofan, Nukak-mahu, Bora, Saliba and Puinabe, among others). Some indigenous communities have lost the use of their original languages and now speak Spanish. The 1991 Constitution, in its article 10, establishes the languages and dialects of the ethnic groups as official languages in their respective territories and directs that education should be bilingual in communities with their own linguistic traditions; in addition, education programmes adapted to the ethnic characteristics of the different communities (ethno-education) are being implemented.

33. The grassroots communities of San Andrés y Providencia form part of the Afro-Anglo-West Indian culture; they use English as a standard language and Criollo-Sandresano in the

home. In the Carib areas in continental Colombia the inhabitants of San Basilio de Palenque speak Palenquero (the other Criollo Afrocolombian language). The remainder of the population of African descent speak Spanish with marked dialect and regional features. The Rom or Gypsy groups of Eastern European origin speak their own language (Romany).

1.3. Religions

34. The 1991 Constitution established freedom of worship; thus every individual has the right to profess his religion freely and to disseminate it individually or collectively.

35. To help to safeguard this right, a Subdirectorate for Freedom of Worship and Religion has been established in the Ministry of the Interior. According to the Public Registry of Religious Groups kept by that unit, there are at present nearly 1,000 organizations of this type in Colombia.

2. General political structure

36. The Constitution (in Title V, articles 113 ff: Concerning the Organization of the State) establishes the three branches of public power (legislative, executive, judiciary) and requires them to cooperate in harmony to achieve the aims of the State. The supervisory organs, such as the Public Ministry, the Office of the Controller-General of the Republic, the Bank of the Republic and the Electoral Organization function autonomously.

2.1. The legislative branch

37. The bicameral Congress of the Republic amends the Constitution, adopts legislation and exercises political control over the government and the administration. Its functions are defined in title VI of the Constitution (articles 132-187). The senators (elected by national constituency) and representatives (elected by regional constituency) are elected for four-year terms; they represent the people and have political responsibility towards society and their electors. There are also special constituencies for indigenous groups, ethnic and political minorities and Colombians living outside the country. Congress meets in ordinary session twice a year (20 July - 16 December and 16 March - 20 June).

38. The meetings and functioning of Congress are regulated by Acts Nos. 3 and 5 of 1992. Articles 55, 56 and 57 of these regulations establish the Legal Commission on Human Rights and Hearings; its duties include the defence of human rights, bringing proceedings to obtain penal and disciplinary sanctions in cases of violations of fundamental rights and the organization of special meetings to hear the views of citizens and organizations of civil society on draft laws and legislative acts.

39. For the functioning of Congress each chamber elects standing committees as determined by law to give first readings to drafts submitted to them for consideration.

40. Laws approved by Congress, following discussions in the competent committees of the Senate and the House and in plenary sittings of those bodies, may refer to the subjects mentioned in article 15 of the Constitution. Once a draft law is brought before Congress it must be published officially before it is taken up by the competent committee in each house. The President may make objections to a proposal once approved or sanction its entry into law by his signature.

41. Article 164 of the Constitution requires Congress to give priority to examination of bills for the approval of treaties on human rights submitted to it by the government for consideration.

42. Under Article 152 of the Constitution, Congress, by means of statutory instruments the proceedings in respect of which comprise requirements stricter than those for ordinary laws (such as approval by an absolute majority of the members of Congress, completion of proceedings in a single legislative session, prior review by the Constitutional Court for constitutionality), regulates subjects on which the relevant Acts has already been passed. The subjects in question are:

- fundamental rights and duties of individuals and procedures and remedies for their protection (Act No. 133 of 1994 concerning freedom of worship);
- the administration of justice (Act No. 270 of 1996);
- the organization of and rules governing political parties and movements; the status of the opposition and electoral functions (Act No. 130 of 1994: “Statute of political parties and movements” and Act No. 131 of 1994: “Programme Vote”);
- institutions and machinery for citizen participation (Act No. 134 of 1994: “Mechanisms for citizen participation”);
- states of emergency (Act No. 137 of 1994: “Statute of states of emergency”).

2.2. The executive branch

43. The President of the Republic is the Head of State of Colombia, the head of government and the supreme administrative authority. His functions are specifically defined in article 189 of the Constitution. The Ministers and heads of administrative departments direct and control the public administration; their numbers and designations are fixed by law.

44. The governors of departments and mayors of municipalities are elected directly by the people. Public establishments, control bodies and State-owned enterprises and commercial establishments form part of the executive branch.

45. The President of the Republic is elected for a four-year term by the citizens in direct elections. Election is achieved by an absolute majority of the votes cast in a direct and secret ballot. A second ballot may be held if the absolute majority required in the first is not obtained; only the two candidates who obtained the largest numbers of votes in the first ballot are allowed to participate in the second. The candidate who obtains the majority of the votes cast will be declared President.

46. The *Vice-President* is elected by popular vote; voting takes place together with that of the candidate for the Presidency. His function is to replace the President in the event of the latter’s temporary or total incapacity. The President assigns at his choice a task in the executive branch to the Vice-President; for instance, President Andrés Pastrana entrusted Vice-President Gustavo Bell with the direct supervision of the President’s Programme for the Promotion, Respect and Safeguarding of Human Rights and the Implementation of International Humanitarian Law and the President’s Programme to Combat Corruption; subsequently, in addition to these functions, he was appointed Minister of Defence - a post he still occupies.

47. *The administrative function is defined in article 209 of the Constitution as being in the service of the general interest, applying the principles of equality, morality, efficiency, economy, speed, impartiality and publicity through decentralization, delegation and deconcentration of functions.*

48. *The public force consists of the military forces and the national police (articles 217 ff.). The former consists of the army, the navy and the air force; it has the duty of ensuring the defence of the sovereignty, independence and integrity of the territory and the constitutional order.*

49. *The national police is an armed body of a civilian nature and a national character; its primary duty is to maintain the conditions necessary for the exercise of public rights and freedoms and to ensure that the inhabitants of Colombia can live together in peace (article 218 of the Constitution).*

2.3. The judicial branch

50. *The judicial branch forms the subject of title VIII of the Constitution. It consists of three jurisdictions - ordinary (civil, criminal and labour); contentious administrative; and constitutional.*

51. *The public administration of justice renders independent and autonomous decisions. It consists of the Constitutional Court, which is responsible for the maintenance of the supremacy and integrity of the Constitution; the Supreme Court of Justice, which is the highest court of ordinary jurisdiction (criminal, civil and labour chambers); the Council of State (the highest court dealing with administrative disputes and the Chamber of Consultancy and the Civil Service); the Higher Council of the Judicature (the supreme administrative and disciplinary organ of the judicial branch); the Office of the Public Prosecutor of the Nation (the Public Prosecutor, designated prosecutors; arts. 279 ff. of the Constitution) , and the Higher Judicial District Courts (usually located in departmental capitals, circuit and municipal court judges).*

52. *The law governing the administration of justice was approved by Act No. 270 of 1996 and amended by the Constitutional Court (ruling C-037 of 5 February 1996). Article 230 of that Act provides that judges shall be subject only to the authority of the law in arriving at decisions.*

53. *There is also a special system of administration of justice for indigenous peoples, which is provided for in article 246 of the Constitution.*

2.4. Supervisory bodies

54. *The functions of the Public Ministry are exercised by the Attorney-General of the Nation, the People's Advocate, designated attorneys and agents of the Attorney-General's Office attached to the jurisdictional authorities, municipal representatives and other officials designated by law. This department is responsible for the protection and promotion of human rights, safeguarding the public interest and supervising the official conduct of persons performing public functions (article 118 of the Constitution).*

55. *Decree No. 262 of 2000 fixes the structure and organization of the Office of the Attorney-General and covers the functioning of divisional offices. The latter have preventive duties and are concerned with management control; discipline; the safeguarding and defence of human rights;*

and intervention with the administrative and judicial authorities, in accordance with the Constitution and the law, on the instructions of the Attorney-General under the powers specified in article 7 of the Decree.

56. The divisional offices perform the following functions in the area of human rights:

- promotion with the judicial and administrative authorities of implementation of national standards and international treaties on human rights and international humanitarian law;
- handling, in accordance with international treaties and through the Ministry of Foreign Affairs, petitions and complaints concerning violations of human rights from Colombian nationals detained, on trial or sentenced in foreign countries;
- replying to requests for information on the human rights situation in the country;
- keeping an up-to-date record of acts constituting violations of human rights and serious breaches of international humanitarian law;
- taking cognizance of, and handling with the competent Colombian authorities, petitions addressed to the office of the Office of the Attorney-General requesting him to seek from foreign governments the protection of the fundamental rights and safeguards of individuals, and especially minors, of Colombian nationality;
- receiving and transmitting to the competent authorities complaints from national or international bodies or individuals concerning violations of human rights and international humanitarian law and following up on the handling thereof;
- monitoring the defence of fundamental rights within public or private bodies, especially in prisons, judicial institutions, police offices and institutions for detention on psychiatric grounds to ensure that individuals are treated with the respect due to their dignity and that they are not subjected to cruel, inhuman or degrading treatment and receive appropriate legal, medical or hospital assistance;
- monitoring implementation of the law and of judicial decisions concerning the protection of the rights of ethnic minorities and their traditional territories;
- intervening in the proceedings of administrative authorities and the police in matters of concern to members of ethnic minorities when necessary to defend the legal order, fundamental rights and guarantees or public assets;
- other functions as assigned or delegated by the Attorney-General.

57. In accordance with decision No. 17 of the Office of the Attorney-General, his office contains the following divisions:

- Human Rights Division;
- Armed Forces Division;

- National Police Division;
- Judicial and Administrative Police Division;
- Judiciary Monitoring Division;
- Monitoring of Autonomy, Decentralization and Rights of Territorial Entities Division;
- Preventive Action in the Field of Human Rights and Ethnic Affairs Division.

58. The Office of the Attorney-General is organized within the country in regional, departmental, district, metropolitan and provincial divisions. It has established permanent offices on human rights which are open 24 hours a day, 7 days a week.

59. As regards the protection of human rights, the department intervenes in judicial proceedings to guarantee due process and the fundamental rights of the accused, the victims and society; it monitors the conduct and exercise of their functions by public servants and applies disciplinary sanctions; it investigates complaints by citizens with a view to imposing disciplinary sanctions on public servants and may, by virtue of its judicial police functions, transmit evidence collected to prosecutors and judges acting in the relevant criminal proceedings. In that connection the department guarantees and ensures that investigations based on complaints of violations of human rights are conducted independently of any possible government influence.

60. The *Office of the People's Advocate* was established, in pursuance of article 283 of the Constitution, by Act No. 24 of 1992 as a body forming part of the Public Ministry. It performs its functions under the supreme direction of the Attorney-General and is essentially responsible for the promotion, exercise and publicizing of human rights (article 9 of Act No. 24/92). In view of the nature of the functions performed by this body, which has been in existence for 10 years, its functions will be described in detail, together with the progress made since it began its work, in a later chapter.

61. The Office of the Controller-General of the Republic is responsible for overseeing fiscal management and monitoring administrative performance.

3. Forms of democratic participation

62. Article 103 of the Constitution establishes the mechanisms by which the people can participate in the exercise of their sovereignty. These consist of the vote, the plebiscite, the referendum, the consultation of the people, the open council meeting, the legislative initiative and the removal of officials.

63. Act No. 134 of 1994, establishing the statute of mechanisms for citizen participation, regulates the legislative and normative initiatives of the people: the referendum; consultation of the people at national, departmental, district, municipal and local levels; removal of officials; the plebiscite and the open council meeting. It also lays down the basic rules for democratic participation by civil organizations.

64. The regulations governing these mechanisms do not constitute an obstacle to the development of other forms of participation by the citizens in the political, economic, social,

cultural, university, trade union or associative life of the country or the exercise of other political rights not mentioned in that Act.

3.1. The people's initiative addressed to public bodies for the adoption of laws or regulations

65. It is the political right of any group of citizens to submit a proposal for legislation to Congress, for an ordinance to a departmental assembly, for an order to a municipal or district council or a local administrative body or for a decision to the corporation of a territorial unit in accordance with the laws governing them, according to the case; such proposals are discussed and subsequently approved, amended or rejected by the public body concerned.

3.2. The referendum

66. This is a summons to the people to approve or reject a draft item of legislation or an amendment to an item already in force. A referendum may be held at national, regional, departmental, district, municipal or local level.

67. *Referendum on repeal.* A referendum on repeal is the submission of an item of legislation, an ordinance, an order or a local decision, or a part thereof, to the consideration of the people for decision on whether or not it should be repealed.

68. *Referendum on approval.* A referendum on approval is the submission of a proposed item of legislation, an ordinance, an order or a local decision or a popular initiative which has not been adopted by the public body concerned to the people for decision whether it should be approved or rejected in whole or in part.

3.3. Removal of officials

69. Removal of officials is a political right by means of which the people can terminate the mandate it has conferred on a governor or a mayor.

3.4. The plebiscite

70. A plebiscite is a pronouncement by the people, summoned for the purpose by the President of the Republic, approving or rejecting a particular decision of the Executive.

3.5. The popular consultation

71. Popular consultation is an institution whereby a question of a general nature concerning a matter of national, departmental, municipal, district or local importance is submitted by the President of the Republic, a governor or a mayor, according to the case, to the people for consideration and a formal pronouncement on the subject.

72. In all cases the decision of the people is binding.

73. When the subject of the consultation is the desirability of convening a constituent assembly, the questions will be submitted to the people by means of an Act adopted by Congress.

3.6. The open council meeting

74. An open council meeting is a public meeting of a district or municipal council or a local administrative body at which the inhabitants can participate directly to discuss matters of interest to the community.

75. As regards voting, reference to voting and elections is contained in chapter 1 of Title IX ("*Concerning elections and their organization*") of the Constitution.

4. External relations

76. Article 9 of the 1991 Constitution recognizes the right of self-determination of peoples as one of the foundations of Colombia's international relations. This implies that the Government of Colombia assumes political and legal commitments vis-à-vis the international community to support peoples seeking to exercise their right of self-determination in accordance with the United Nations Charter.

77. The President of the Republic, as Head of State and of government and supreme administrative authority, is responsible for the conduct of international relations, appointing diplomatic and consular agents, receiving such agents and concluding treaties or conventions, which will be submitted to Congress for approval, with other States or entities in international law.

78. To be valid, treaties must be approved by Congress. However, the President of the Republic may bring into provisional force treaties of an economic or commercial nature concluded within an international organization where the treaties in question so provide. In such cases, as soon as a treaty comes into provisional force, it must be submitted to Congress for approval. If Congress does not approve it, its application is suspended.

79. The Advisory Committee on External Relations is an advisory body to the President of the Republic; its composition is fixed by law.

80. The State promotes the internationalization of political, economic, social and ecological relations on bases of equity, reciprocity and national interest. It also promotes economic, social and political integration with other nations, and particularly with the countries of Latin America and the Caribbean, by the conclusion of treaties establishing supranational bodies on a basis of equity, equality and reciprocity; these even include treaties for the creation of a Latin American community of nations. Direct elections for the constitution of the Andean Parliament and the Latin American Parliament may be introduced by law.

81. The Ministry of External Relations is the body which proposes, orientates, coordinates and implements the country's foreign policy under the direction of the Head of State and administers the Republic's external services.

82. Colombia is an important actor on the international scene on account of its geographical position, its free-trade-oriented policies in the field of promotion of international trade, the active participation of private enterprise in the country's development, the increasing diversity of its imports and exports and its abundant natural resources. In this context Colombia's foreign policy is one of seeking to promote, strengthen and consolidate international autonomy, cooperation and

support for international peace and security and backing for multilateral integration and concertation and economic and social development.

83. The globalization process and the progress made with the different systems of integration are bringing foreign and domestic policies into an increasingly close relationship with one another. This relationship between external affairs and domestic matters is a decisive factor, and one of growing importance, in international relations today.

84. Diplomacy for Peace is an element in this new situation. It refers to the action and the decision taken by the Colombian Government to present to and share with the international community a clear and objective vision of the conflictual situation in the country and the need to seek to bring it to an end. Consequently, and within the framework of the principle of non-intervention which forms part of Colombia's foreign policy, Diplomacy for Peace seeks to secure the political and economic support needed to ensure success of these efforts to end the conflict, which the President of the Republic has designated as a national priority.

85. In the course of the development of its Diplomacy for Peace policy the Colombian Government has received expressions of support and a desire to cooperate from the international community and the multilateral organizations.

86. In addition, under Decree No. 2105 of October 2001, a Directorate for Human Rights and International Humanitarian Law has been established within the Ministry of External Affairs with the following functions:

- to advise the Vice-Minister for Multilateral Affairs and, through him, the Minister, on the framing and implementation of Colombia's foreign policy in the area of human rights and international humanitarian law;
- to promote and develop the strategies necessary for consideration and handling of matters relating to human rights and international humanitarian law in the international field;
- to collect and classify information on human rights and international humanitarian law;
- to reply to questions put to it by the Minister, the Vice-Ministers and the other departments of the Ministry, particularly on the formulation of positions and instructions involving matters relating to human rights and international humanitarian law;
- to maintain continuous consultations with the Diplomatic Academy to ensure that the dynamic aspects of activities in the fields of work within its competence on the international scene are appropriately and adequately reflected in the training programmes and activities conducted in the Academy;
- to participate in the processes of consultation and dialogue being conducted by the national authorities with foreign governments and international organizations in the field of human rights and international humanitarian law;

- to transmit to the competent authorities of State requests for urgent action addressed to the Colombian Government by international organizations for the protection of human rights in the face of threats or special risk situations, to follow up on the measures taken in the light of those threats or situations and to submit periodic reports as appropriate;
- to coordinate the handling of individual cases involving possible violations of human rights which have been reported at international level and transmitted to the government by international protection organizations and defining the guidelines to be kept in mind in proceedings of particular legal importance;
- to act as technical secretariat to the Committee of Ministers created by Act No. 288 of 1996;
- to coordinate the consideration given to complaints transmitted by the Office of the United Nations High Commissioner for Human Rights in Colombia and concerning possible violations of human rights or breaches of international humanitarian law;
- to support the process of analysis and follow-up on recommendations made by international human rights organizations;
- to coordinate internally and among the institutions concerned the preparation of and backup for the periodic reports which Colombia is required to submit by virtue of the ratification of international human rights instruments;
- to send delegations on missions and, where appropriate, represent the Government of Colombia at hearings and sessions of international human rights organizations under the guidance of the Minister and/or the Vice-Minister for Multilateral Affairs;
- to provide general information on the *preparation* of complaints relating to possible breaches of international humanitarian law;
- other tasks assigned to it or which by their nature are related to the foregoing.

5. Human rights

87. Title II of the Constitution (“*Concerning rights, guarantees and duties*”) devotes 5 chapters and 85 articles to the protection, promotion and defence of human rights as follows:

Chapter 1: Concerning fundamental rights arts. 11 - 41);

Chapter 2: Concerning economic, social and cultural rights (arts. 42 - 77);

Chapter 3: Concerning collective rights and the environment (arts. 78 - 82);

Chapter 4: Concerning the protection and application of rights (arts. 83 -94);

Chapter 5: Concerning duties and obligations (art. 95).

5.1. Colombian government policy in the field of human rights and international humanitarian law

88. On 12 August 1999 the National Government adopted a “Policy of Respect for and Promotion and Safeguarding of Human Rights and the Implementation of International Humanitarian Law” with the following objectives:

Respect

89. In fulfilment of its constitutional and legal obligations and the ethical imperatives which guide its actions, which are based on respect for the dignity of the individual, one of the objectives is to work to ensure respect for the human rights of every person living in the country. This objective gives meaning to its mission of protection of the rights and freedoms of every individual and is a central pillar of the policy’s legitimacy.

90. Violations of human rights are particularly serious if a State official has participated in them in any manner. Although the participation of State officials in such activities has considerably reduced in recent years, in view of the situation described earlier, vigilance cannot be relaxed in such a sensitive area.

91. Consequently its objective is to maintain, strengthen or create, according to the case, suitable mechanisms for the effective and expeditious supervision of the conduct of State officials who, on account of their duties or functions, are more likely to become involved in actions which may infringe or violate fundamental rights.

Promotion

92. It is a policy objective that the fundamental rights of Colombian citizens should be publicized, known, understood and assimilated by all the inhabitants of the country. By knowing and living them, they will come to understand the importance of both respecting the rights of others, and seeing that they are respected, and standing up for their own.

93. Another objective is to work, in association with social organizations, to design a set of shared ethical principles on a level with current morality which will permit the sharing of the essential values characteristic of a modern and democratic society. The practical acceptance of those values will strengthen tolerance and respect for fundamental rights.

Safeguarding

94. This objective comprises the duty to safeguard the exercise of fundamental rights in two separate but complementary areas. The first relates to of protective measures taken by the authorities and designed to deal with cases of threats to or violations of fundamental rights; the second is concerned with the creation or restoration of the necessary conditions for the full attainment of fundamental rights (especially those relating to social security, labour, education and health on the one hand and peace and a healthy environment on the other). As regards the former, the authorities have an obligation to prevent violations of fundamental rights in cases of direct threat or affecting vulnerable groups (human rights advocates, trade union members, minors, ethnic minorities, disabled persons).

95. They also have an obligation to take effective action in cases where violations have occurred, conducting investigations in due time and taking corrective measures or inflicting sanctions as appropriate.

Handling of consequences

96. Independently of the persons responsible for cases of violations of fundamental rights, it is a policy objective to establish specific mechanisms to handle the consequences to which such violations give rise.

97. Thus there are general regulations and special mechanisms designed to repair damage incurred and a government programme to look after groups of displaced persons, providing immediate assistance in meeting their particular needs and promoting their relocation.

Humanization of the conflict

98. The Government has stated that one of the priority themes in a peace process, while agreements consolidating it are being arrived at, is the humanization of the conflict and complete respect for international humanitarian law.

99. All the armed participants in the conflict have the inescapable obligation to comply with the rules regulating internal armed conflicts and to respect the fundamental rights of all persons not participating in the hostilities.

5.2. The President's programme for human rights and international humanitarian law

100. The President's Programme for the Promotion, Respect and and Safeguarding of Human Rights and the Implementation of International Humanitarian Law was established by Decree No. 127 of January 2001. Responsibility for the programme was assigned to the Administrative Department of the Office of the President. It operates under the direct supervision of the Vice-President of the Republic.

101. The functions of the *President's Programme for the Promotion, Respect and Safeguarding of Human Rights and the Implementation of International Humanitarian Law* are as follows:

- to assist the President of the Republic in the promotion and coordination of measures designed to guarantee the adequate protection of human rights and the implementation of international humanitarian law;
- to propose to the National Government measures which could be taken in order to guarantee throughout the country respect for and adequate protection of human rights and the implementation of international humanitarian law after analysis and evaluation of the general situation in that field;
- to promote the necessary measures, to be taken by the authorities, to avert situations which may give rise to violations of human rights and international humanitarian law;
- to coordinate, promote, stimulate, participate in and follow up on the tasks which the different government departments are or should be performing in the field of human

rights and the implementation of international humanitarian law in accordance with government policy on the subject;

- to coordinate its work with that of the State entities concerned with the protection of human rights and the implementation of international humanitarian law;
 - To report (where the documents are not restricted) on complaints submitted to any public or private body alleging violations of human rights and to take the measures and conduct the proceedings within its competence necessary to combat impunity in cases of this type;
 - to receive, transmit and follow up on complaints and petitions submitted by citizens and relating to the implementation, protection, safeguarding and effectiveness of fundamental human rights by the different organs of public administration;
 - in coordination with the Ministry of External Relations, to establish contacts with the human rights bodies of the United Nations and the OAS and other international public-law institutions concerned with the situation of Colombia in this field, and also national and foreign non-governmental organizations with an interest in the subject;
 - to inform on and promote the analysis and investigation of the implementation of the recommendations on human rights made by international public bodies; to participate in the preparation of reports to those bodies; and to ensure that those reports present the human rights situation as experienced in the country and the measures being taken by the Government to deal with that situation;
 - to participate in the meetings and work of the Government Commission on Human Rights and to follow up on the national plan of action in that field;
 - to promote cooperation between State and government on the one hand, and civil society, on the other, for the promotion of and respect for human rights and the implementation of international humanitarian law;
 - to report to the President and Vice-President of the Republic on the matters for which it is responsible;
- to perform other tasks assigned to it by the President or the Vice-President of the Republic.

6. Organization of elections

102. Title IX of the Constitution (articles 258 ff.) deals with elections and their organization. It provides for the direct election by the citizens of the President, Vice-President, senators, representatives, governors, deputies, mayors, municipal councillors and members of local administrative boards.

103. A governor or mayor once elected is committed to a mandate corresponding to the programme he proposed on standing for election. This “programmatic vote” is regulated by Act No. 134 of 1994 as a participation mechanism whereby the citizens who vote in the elections for governors and mayors impose on the candidate elected, as a mandate, the implementation of the programme of government which he presented as an integral part of his registration as a

candidate. There is a procedure for removal of the official concerned in the event of failure to do so.

6.1. Basic statute of political parties and movements

104. The statute of political parties and movements is laid down in Act No. 130 of 1994, which stipulates that all citizens have the right to form political parties and movements, that these have legal personality and that they may nominate candidates for any elective office. The State will finance political parties and movements which have legal personality or are represented in Congress (Act No. 130 of 1994, art. 12). Under the terms of article 13 of the same Act electoral campaigns are also financed.

7. The National Economic and Social Policy Council (CONPES)

105. This body is the highest national planning authority. It acts as an advisory body to the Government on all matters connected with the economic and social development of the country. To that end it coordinates and guides the bodies within government responsible for economic and social management by studying and approving documents on the development of general policies submitted to it at its meetings.

106. The CONPES operates under the authority of the President of the Republic. Its membership consists of the Ministers of External Relations, Finance, Agriculture, Development, Labour, Transport, Foreign Trade, the Environment and Culture, the Director of the DNP, the senior managers of the Bank of the republic and the National Federation of Coffee Planters, the Director of Black Community Affairs in the Ministry of the Interior and the Office of the Counsellor for Women's Equality.

107. The Social CONPES functions in the same way as the CONPES, but its membership is different. It is chaired by the President of the Republic and comprises the Ministers of Finance, Health, Education, Labour, Agriculture, Transport and Development, the Secretary-General of the Office of the President and the Director of the National Planning Department.

108. The National Planning Department acts as the executive secretariat of the CONPES and the Social CONPES and as such is the body responsible for coordinating and submitting all documents for discussion at meetings.

109. Particular mention should be made of the following documents concerning civil and political rights:

- 310.4. Guidance to public bodies concerning collective agreements, 2001
- 310.0. Report on progress with the National Development Plan, 1999
- 311.5. Budget allocations by sector for the implementation of the Plan of Action for preventive measures and care in the area of forced displacements.
- 316.9. Policy towards the Afrocolombian population, 2002.

II. RESULTS OF THE POLICY OF THE STATE OF COLOMBIA IN THE FIELDS OF PROMOTION, GUARANTEE AND PROTECTION OF HUMAN RIGHTS, THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW AND THE SEARCH FOR PEACE, 1996-2002

110. The State of Colombia is working for the promotion and guarantee of and respect for human rights. It is conscious of the grave implications of the internal armed conflict - a conflict which has deteriorated and in which the civilian population has become the principal target of armed groups operating outside the law - for the exercise of those rights. Although the achievements in the field of human rights are important and valuable, the Government recognizes the need to achieve further improvements and at the same time to concentrate efforts on bringing the conflictual situation to an end. To attain this goal it has for three and a half years been seeking a political solution to the internal armed conflict; regrettably, it has not received any positive response from the insurgent groups.

111. The following describes the principal results of State policy in the field of human rights during the period covered by the present report (1996-2002).

1. Relations with the international community

112. Notwithstanding the complexity of the events which the country has known in the field of public order, successive governments, aware of the importance of the cooperation of the international community in overcoming these problems, have undertaken fully to accept the scrutiny of international human rights organizations and of national and international non-governmental organizations and to promote the development of the international instruments on these subjects.

113. During the administration of President Ernesto Samper, concrete expression to this policy line was given by the establishment in Colombia of an Office of the United Nations High Commissioner for Human Rights. The Government invited the United Nations High Commissioner for Human Rights to establish an office in Colombia; that office began its work in April 1997.

114. In accordance with the commitments accepted in the Agreement on the Establishment in Colombia of an Office of the United Nations High Commissioner for Human Rights, signed on 29 November 1996, the then Office of the Presidential Adviser on Human Rights was designated as the liaison body responsible for communication by the Government with the Office on all matters connected with its activities. In addition, a *Presidential Directive* was issued in May 1997 laying down the parameters for the cooperation and support to be provided by all the bodies of the executive branch of government to ensure the success of the work of the Office, and inviting all State bodies not forming part of the executive branch to cooperate in a similar fashion.

115. An additional agreement concluded between the parties expressed a common intent to increase the number of Office experts to 12 with the aim of increasing the working capacity of the Office and strengthening its capacity to provide advice.

116. The mandate of the Office, consisting of observation of the situation regarding human rights and international humanitarian law and the provision of advice on the subject to the Colombian authorities, places it in a favourable position to make an effective contribution to the

search for solutions in this field and to offer the international community a full and balanced picture of the complex situation in Colombia.

117. During the period which has elapsed since its installation the Office has played a part of considerable importance in the creation of a favourable climate for the constructive reception of the contributions of the international community by means of continuing and high-profile discussions with all the State bodies with competence in this field and with a wide range of sectors in society.

118. In addition, the previous administration introduced legislative measures designed to bring domestic legislation into line with the precepts of international humanitarian law and human rights instruments; among these, mention deserves to be made of the ratification in December 1997 of the Inter-American Convention to Prevent and Punish Torture and the approval in December 1995 of accession to Protocol II additional to the Geneva Conventions.

119. The Government has invited and received visits from various rapporteurs and working groups from the United Nations and the Inter-American Commission on Human Rights. The Government has also studied the recommendations made by the international human rights bodies on the policies and measures to be adopted in the field of promotion and protection of human rights.

120. For that purpose a commission was set up in 1995 consisting of the ministers and heads of government agencies with responsibilities in this area. The commission undertook the analysis of the themes and proposals of major concern to the international community and took measures to contribute to the strengthening of the governmental agenda. It held monthly meetings with the Office of the United Nations High Commissioner for Human Rights in Colombia in order to maintain continuing dialogue on the latter's observations, criticisms and recommendations.

121. For its part, the government of President Andrés Pastrana Arango has sought to broaden and consolidate its relations with the international organizations concerned with the subject of fundamental rights, within both the United Nations system and the inter-American regional system.

122. To that end visits by experts and rapporteurs from the United Nations Human Rights Committee have been received. In 2001 visits were effected by the rapporteurs on the subjects of human rights defenders and violence against women, and invitations have been sent to the Special Rapporteurs on Extrajudicial, Summary or Arbitrary Executions, on Freedom of Opinion and Expression and on Enforced or Involuntary Disappearances.

123. In addition, at the invitation of the National Government, the Inter-American Commission on Human Rights (IAHCR) made an on-site visit to Colombia. In its final Press release it recognized the efforts and the progress made, notwithstanding the complexity of the situation, by the current Administration. Among other things the IAHCR stated that it *“would like to underscore the willingness of President Pastrana's administration to work with the Commission, which in many cases has helped to save lives and has promoted the legitimacy of the values of the rule of law. Specifically, that willingness is reflected in programmes to protect human rights defenders, trade unionists, and journalists and the promotion of justice administration efforts.”*

124. Special mention must also be made of the procedure, conducted within the inter-American system of protection, to seek an amicable settlement of the case of the Unión Patriótica (Patriotic Union), which had been reported to the IAHCR and which had given rise to a major problem of inter-institutional coordination involving agencies of government and the State as well as petitioner organizations and political parties (Patriotic Union and Communist Party of Colombia). This procedure, begun in 1999, led to the creation of a specific programme for the protection of the members and survivors of these political parties, which were registered with the Ministry of the Interior, the establishment of a database on victims belonging to the Patriotic Union and the setting up of over 20 investigatory sub-units in the Office of the Public Prosecutor of the Nation.

125. The Government of Colombia and the UN decided to extend for a further year the presence of the Office of the United Nations High Commissioner for Human Rights in Colombia and agreed on the establishment of auxiliary offices in Cali and Medellín in addition to the headquarters in Bogotá; these offices are already operational. The agreement, signed on 31 December 2001 by Guillermo Fernández de Soto, the Minister for External Relations, and Mary Robinson, the High Commissioner, allows the expansion of the presence of the Office in Colombia and seeks to increase the levels of cooperation and advisory services of the Office with the different bodies - governmental, State and non-governmental - present in the life of the country.

126. In addition, the new structure of the Ministry of External Relations includes a newly-created Directorate for Human Rights and International Humanitarian Law which is concerned exclusively with the international commitments of the Colombian State in these areas of vital importance. The inclusion of the subject of international humanitarian law in the new structure will enable the Chancellery to promote measures for the application of humanitarian standards within the domestic order at legislative and administrative levels and in the education and training fields.

127. As regards the Intersectoral Standing Committee on Human Rights and International Humanitarian Law, the Chairman of which is the Vice-President of the Republic, and its Technical Group¹, established in February 2000 during the administration of President Pastrana, the functions of that body include the preparation of a National Plan of Action on Human Rights and International Humanitarian Law in accordance with the guidelines laid down at the 1993 Vienna Conference. In that context the President's Programme for Human Rights has begun the preparation of such a plan within the framework of a cooperation agreement with the United Nations Office mentioned earlier.

128. During the second half of last year the Intersectoral Committee and its Technical Group worked intensively, in coordination with the Office of the United Nations High Commissioner for Human Rights in Colombia, on the review of the confidential recommendations which that Office had addressed to the Government in July 2001.

129. Concrete results were obtained in a number of important areas, such as the allocation of special resources to the Office of the People's Advocate (Public Defender's area) and the Ministry of the Interior (Protection Programmes), the resumption of the periodic meetings of the

¹ Consisting of high-level representatives of the Office of the Vice-President, the Ministries of the Interior, External Relations, Defence, Justice and Labour, the Public Prosecutor of the Nation, the Attorney-General of the Nation and the People's Advocate.

Criminal Policy Council, the approval by the National Congress of treaties which the Government wishes to ratify (in particular, the Inter-American Convention on Forced Disappearance of Persons, the stimulation and evaluation of a number of scenarios for interinstitutional work, the identification of progress made and obstacles in key areas of the humanitarian and human rights agenda, etc.

130. At the subregional level, on 26 July 2002 the Presidents of Bolivia, Colombia, Ecuador, Peru and Venezuela, meeting as the Andean Presidential Council, signed the Andean Charter for the Promotion and Protection of Human Rights.

131. This is an initiative taken in fulfilment of the mandates of the Act of Carabobo, of 24 June 2001, and the Declaration of Macchu Picchu, of 24 June 2001, concerning democracy, the rights of indigenous peoples and the fight against poverty, whereby the Presidents of the Andean countries requested the Andean Council of Ministers for Foreign Affairs to prepare a draft Andean Charter for the Promotion and Protection of Human Rights that would set forth the principles and central issues of community policy on the subject.

132. Account was also taken of the recommendations of the Andean Subregional Seminar "Democracy and Human Rights" held in Quito in August 2000 at the request of the United Nations, concerning the drafting of an Andean Charter for the Promotion and Protection of Human Rights and cooperation to strengthen the observance of human rights in the Andean region.

133. The Andean Presidential Council entrusted the Ecuadorian Ministry of External Relations with the discharge of that mandate; and, with the cooperation of the Andean Commission of Jurists, a process of consultation was undertaken in each country on the draft Charter; the Government of Colombia took an active part in that process. The organs of the Andean Community, and in particular the Court of Justice of the Andean Community and the Andean Labor Council, and representatives of civil society in the five Andean countries, also took part.

134. Thus the Andean Presidential Council decided jointly to proclaim the principles, objectives and commitments of the Andean Community regarding the promotion and protection of human rights and to consolidate and promote Andean unity on a basis of recognition of the diversity of their territories, peoples, ethnic groups and cultures and in the firm conviction that democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

135. Included in the document was a commitment to help build a world both supportive and respectful of human diversity based on the promotion and protection of human rights and the fostering of political, social and economic development in their countries, the focus and ultimate goal being the welfare of the human being.

2. The struggle against all the outlawed armed groups

136. The Government is aware of the persistence and seriousness of the breaches of international humanitarian law being committed by the insurgent and self-defence groups which have played a considerable part in the deterioration of the situation in Colombia and are preventing nationals from enjoying their full rights, and it is continuing to face up to those groups.

137. The misnamed “paramilitarismo”, consisting of illegal self-defence groups, has emerged in the country as a reactive phenomenon; it takes the concrete form of an illegal and often savage response to the guerilla movement by different groups and sectors in society.

138. The phenomenon of “private justice” has brought with it a radical debasement of the armed conflict with the use of methods such as massacres, serial killings, forced disappearances and torture. These practices have given rise to a spreading of forced population displacements, large-scale land concentration processes and the suppression of legitimate social demands. Similarly, the phenomenon of “private justice” has created a general climate of extreme intolerance and has been a factor in the spread of corruption among some State agents, who bow to pressures exercised by these groups and in some cases, by acts or omissions, actually help them.

139. As regards the attitude of the State towards the self-defence groups, it must be emphasized that that phenomenon has no relation to any institutional policy. It should be mentioned that the high commands of both the military and the police have issued many written and verbal instructions condemning these groups and that high- and middle-ranking officers have taken active measures to isolate the personnel under their orders from all links with these groups.

140. In the course of actions against “paramilitarismo” during 1997 and the first quarter of 1998, over 230 individuals presumed to have links with self-defence groups were captured and 48 killed.

141. The *operational results* obtained by the Public Force reveal a substantial improvement in the struggle against outlawed armed groups; positive results have been achieved in campaigns against both subversives and self-defence groups.

142. In 2001 the campaign of the State against the self-defence groups was stepped up considerably in comparison with previous years. Captures of individuals belonging to these illegal organizations by the Public Force as a whole increased by over 200%; in 2001, 992 individuals were taken prisoner as against 327 in 2000. The numbers killed increased by 26% - 92 in 2000, 116 in 2001. In the campaign against the subversive groups 1,028 individuals were killed - 6% more than in 2000 (970). Thus the rising trend in the number of kills, which had begun in the mid-1990s, was maintained. The number of individuals taken prisoner increased from 1556 in 2000 to 1766 in 2001 - an increase of 13%.

Operational results

Year	No. of individuals	Captures	
		Self-defence	Subversives
1995	1 251	18	1 233
1996	1 792	6	1 786
1997	1 433	100	1 333
1998	1 517	300	1 217
1999	1 522	286	1 236
2000	1 883	327	1 556
2001	2 148	992	1 766
Total	11 546	2 029	10 127

<i>Year</i>	<i>No. of individuals</i>	<i>Killed</i>	
		<i>Self-defence</i>	<i>Subversives</i>
1995	626	-	626
1996	753	2	751
1997	781	5	776
1998	763	34	729
1999	853	35	818
2000	1 062	92	970
2001	888	116	1 028
Total	5 726	284	5 698

Source: Ministry of Defence.

Processed by the Monitoring Centre of the President's Programme for Human Rights and International Humanitarian Law, Office of the Vice-President of the Republic.

143. **Work of the judicial branch.** Positive results have also been observed in the management of the competent State bodies in the judicial branch in the punishment of violations of human rights and breaches of international humanitarian law committed by outlawed armed authors. It is well known that large numbers of breaches of international humanitarian law committed by members of outlawed armed groups are being brought before the courts as a result of the consistent referral of the principal investigations to the Human Rights Unit of the Office of the Public Prosecutor and the intense activity of that unit. In addition, the satellite offices of that unit, located in Neiva, Cali, Villavicencio and Medellin are now in full operation. At the end of 2001, two additional satellite offices came into operation in the city of Medellin, and during this year others will be established in Cúcuta, Bucaramanga and Baranquilla, in that order.

144. On 2 February 2002 there were in force 263 arrest warrants, 226 precautionary measures and 115 indictments issued against individual members of subversive groups by the Human Rights Unit of the Office of the Public Prosecutor. On the same date there were 520 arrest warrants, 722 precautionary measures and 418 indictments in force against members of self-defence groups.

145. When measured by trends in the numbers of measures taken against members of subversive and self-defence groups during the period beginning in December 1999 and ending on 2 February 2002, the efficiency of the judicial branch is rising. The number of precautionary measures ordered against members of subversive groups increased by 352%, the number of indictments issued by 130% and the number of warrants for arrest by 237%, while as regards members of self-defence groups the number of precautionary measures ordered increased by 76%, the number of indictments issued by 81% and the number of warrants for arrest by 45%.

146. The determination of the State to press forward with investigations into cases of breaches of international humanitarian law is reflected in the increase in the number of decisions involving members of subversive groups, bearing in mind the fact that when the unit was first established it concentrated particularly on consideration of cases of violations of human rights involving members of self-defence groups and State agents. It should be noted that, notwithstanding the successes of the Public Prosecutor's Office, the outlawed armed groups are expanding rapidly

and that in this situation the capacity of the Colombian machinery of justice remains insufficient in spite of the substantial improvements made.

147. Currently a technical support structure is being designed for the National Centre for Coordination of Campaigns against Self-Defence Groups. That body is responsible for coordinating activities being conducted against those groups by the military, police, judicial and civil authorities of the State in order to provide them with machinery for the centralization of efforts and the necessary coordination with the Risk Evaluation Committees in the protection programmes attached to the Ministry of the Interior, the Early Warning System and the Departmental Committees for the Care of Displaced Populations.

148. During the last 7 years the Public Force has captured 2,092 members of illegal self-defence groups in Colombia and has killed 282 during the last 5 years. During 2001, 10 leaders and 590 rank-and-file members were taken prisoner. The Public Force is also implementing orders for the capture of members of these groups at commando, battalion and brigade levels, thus demonstrating the absence of any links between the self-defence groups and the military. Internal control and disciplinary measures have also been taken to detect links between individual members of the personnel and those organizations. The campaign against the self-defence groups has been reinforced by a strengthening of the human rights culture, the application of international humanitarian law and the securing of the support of the population and the international community.

149. Since January 2001 a financial strategy has been in effect, designed to dismantle the sources of finance and support for these groups. It consists of the identification, tracking, freezing and confiscation of their bank and other financial assets belonging to these organizations. To that end the Unit for the Extinction of Ownership and Against Money Laundering in the Office of the Public Prosecutor and the Intelligence and Financial Administration Unit in the Ministry of Finance work in a coordinated manner and exchange information.

150. Proceedings are currently being taken in the ordinary courts against leaders and members of self-defence groups and against individuals and public officials, both civil and military, who by act or omission have provided aid or cooperation of any kind.

151. As regards disciplinary inquiries relating to links between State agents and illegal self-defence groups, on 30 July 2001 there were 38 inquiries being pursued relating to direct participation, 49 to omissions, 2 to support and 1 to toleration. The current status of these inquiries on the same date was: 61 at the preliminary inquiry stage, 1 under appeal and 8 at the formal inquiry stage.

152. In addition, the Government, as part of the peace process talks with the FARC, has sent several invitations to that insurgent group to study a document issued by a committee of prominent personalities and containing recommendations for the treatment of "paramilitarismo".

3. The campaign against abduction

153. To combat the practice of attacks against personal freedom, which are widely engaged in by the guerilla in the form of hostage-taking, a National Fund for the Protection of Personal Freedom (Fondelibertad), attached to the Ministry of Defence, is now functioning, together with the National Council for Action to Combat Abduction and Other Attacks against Personal Liberty (CONASE). The operational aspect of the campaign against abduction is the responsibility of the

28 Grupos de Acción Unificada para la Libertad Personal (Unified Action Groups for Personal Freedom - GAULAS), which consist of members of the national police and the military and are ordained by the Administrative Security Department (DAS) and the Technical Investigation Section (CTI) of the Public Prosecutor's Office.

154. The measures to prevent the crime of abduction consist of direct repressive and dissuasive action against the perpetrators and educational measures for actual and potential victims; the latter are conducted with the participation of the community or association to which the person concerned belongs at national or regional level. Work is proceeding on prevention and on promoting awareness of the need to report among the citizens.

155. Care is provided for victims in the form of counselling for the families of abducted persons and the provision of legal advice to those concerned.

156. Follow-up and impetus is being directed at the investigations into abductions being undertaken by the different State agencies and in particular those being conducted by the different GAULA groups.

157. Training focussed on criminal and criminalistic investigation, human rights and international humanitarian law is given to officials of the DAS and the CTI and to members of the police and the army assisting the GAULAS. It also includes the promotion of prevention mechanisms, publicization of cases of disappeared persons, the dissemination of standards and the National Data Centre.

158. The National Fund for the Protection of Personal Freedom (Fondelibertad) is responsible for administering the resources allocated for the campaign against abduction and extortion. The budget allocation for Fondelibertad was 5 billion pesos annually from 196 to 2001; in the year 2000, under Presidential management, an additional 15 billion was provided. Ninety% of the resources are destined for the foundation and functioning of GAULAS.

159. Special mention must be made of the important work done by the GAULA groups in reducing the numbers of abducted persons in 2001. In that year the number of cases of abduction was reduced by 18% (from 3,706 persons abducted in 2000 to 3,041 in 2001) and the rise in the total number of victims which had continued since 1995 was reversed. This change is due to a considerable degree to the increase in the numbers of persons rescued or forcibly freed by the GAULAS. According to the National Data Centre of the Ministry of Defence (Fondelibertad), out of every 100 persons abducted in 2000, 18 were rescued; in 2001 the proportion increased to 23%; in 2001, too, 143 victims of abduction were forcibly freed - an increase of 205% over the figure for the previous year.

160. In January 2002, with the aim of combatting abduction, the Government approved Act No. 733 increasing the penalties for abduction, extortion and terrorism in cases involving minors, senior citizens and persons who for reasons deriving from their functions have become principal targets for this violation of human rights.

4. Strengthening of the commitment of the armed forces in the campaign against outlawed armed groups

161. The State of Colombia has recognized that some of its agents commit violations of human rights. However, it must be emphasized that the commitment of the Public Force to respect for human rights is steadily increasing. In fact, the numbers of acts against citizens committed by agents of the State have steadily decreased during the last few years, while during the same period such acts committed by guerilla and private justice groups have shown an opposite trend.

162. With the above in mind wide-ranging training and instruction programmes on human rights and international humanitarian law, principally designed for the armed forces, the national police and the Administrative Security Department have been developed.

163. In 1994 the Advisory Office on Human Rights and Political Affairs of the National Ministry of Defence was established. This body has been working on the promotion, protection, defence and dissemination of human rights and international humanitarian law. During the previous administration *Ministry of Defence Standing Directive No. 24 of 5 July 1995* was published developing government policy in the field of human rights and laying down the guidelines necessary for the preparation of a broad programme of training in human rights and international humanitarian law for the members of the Public Force, civilian personnel attached to it and officials of the military criminal courts.

164. The police and the military, in agreements concluded with the Office of the Presidential Adviser for Human Rights, have developed a plan for a *new educational model* for the Public Force designed to remedy shortcomings and make the training programmes more effective.

165. It is worth mentioning that under the present Government the armed forces have been developing an ambitious *modernization programme* to improve efficiency and legitimacy designed within a framework of strict observance of human rights and international humanitarian law. The institutional and budgetary resources have been directed towards improving military capacity, professionalization and the reform of the military criminal justice system. With these ends in view Act No. 522 of August 1999 was approved introducing the new Penal Code of Military Justice and, pursuant to the powers granted to the President of the Republic in this connection, the Labour and Disciplinary Reform of the Public Force and the decrees regulating it, and in particular Decrees 1790 and 1797 concerning the retirement of commissioned and non-commissioned officers, irrespective of length of service, and the inclusion within the disciplinary code as especially serious offences particularly grave violations of human rights.

166. Under Presidential Directive 01 of 17 August 2000 the Commander-in-Chief of the Armed Forces and the Director-General of the Police were ordered to give full implementation to the provisions of military justice and to the case-law of the Constitutional Court concerning the competence of the ordinary courts to hear cases of violations of human rights.

167. As a result of the holding of nearly 2,000 courses and the training of over 100,000 members of the armed forces in human rights during the last 5 years and the work of the 181 offices for human rights and international humanitarian law situated in all the units of the Public Force, the reduction in the numbers of complaints and of legal proceedings opened against members of the Public Force and relating to violations of human rights and international humanitarian law has

been consolidated, and, according to the results of surveys, Colombian citizens are developing an increasingly positive view of the Public Force.

168. Between 12 January and December 2001 the Office of the Divisional Disciplinary Prosecutor for the Defence of Human Rights reported that 19 members of the armed forces had been sanctioned and 7 acquitted. During the same period the Office received 502 complaints against agents of the State alleging violations of human rights; of these, 163 resulted in the opening of legal proceedings. Between 1995 and 12 December 2001, the numbers of complaints against members of the Public Force for violations of human rights received by the Office of the Public Prosecutor of the Nation fell from 3,000 to 502 - an impressive reduction of 87%. Likewise, the number of cases sent for trial decreased from 258 to 163 - a reduction of 55%. Of the 10,423 complaints against members of the Public Force concerning violations of human rights received by the same Office during the years 1995-2001, 1,308 were considered by that supervisory body to have sufficient merit to justify the opening of preliminary investigations.

169. The number of complaints received by the Office concerning violations of human rights committed by members of the Public Force declined from 3,000 in 1995 to 289 up to June 2001.

170. The formal indictment of members of the Public Force for violations of human rights is a rare occurrence. Since 1995 and up to July 2001, 118 members, out of a force which today has over 277,000 members, were formally indicted by the Office of the Public Prosecutor of the Nation.

**Disciplinary inquiries conducted by the Office of the Divisional Disciplinary Prosecutor
for the Defence of Human Rights concerning human rights defenders,
trade union leaders and members of indigenous groups**

<i>Act/victim</i>	<i>Place and date</i>
Homicide: Enrida and Fredy Arias, (members of indigenous group)	Valle Dupar, César, 16 October 2000
Threats against members of ANTHOC National, Health Institute, Ruth Alzate Ledesma and, Gloria E. Romero	Medellin, Antioquia, 7 August 2001
Threats against Martha Nidia Ascuntar, Achicanay, member of the Committee for, Solidarity with Political Prisoners	
Threats against Pablo Javier Arenales, member of CREDHOS	
Breach of international humanitarian law: Homicide: dancer Haquelino Jarupia, Embera-Katio village	Tierralta, Córdoba, 12 June 1998
Disappearance: Jairo Bedoya Hoyos, (supporter of indigenous rights)	Medellín, Antioquia, 2 March 2000

<i>Act/victim</i>	<i>Place and date</i>
Homicide: William Badjikora, (indigenous)	Teorema, Norte de Santander, 14 September 2000
Disappearance: Roberto Cañarte, Montealegre, member of SEMBRAR	Bugalagrande, Valle, 29 June 2000
Homicide: trade union member Javier, Jonás Carbono Maldonado	Via Cartago, Baranquilla, 14 June 2000
Homicide: Dizu Apollinar (indigenous)	Santander de Quilichao (Cauca), 9 July 2001
Homicide: José Angel Domico (indigenous)	Montería, Córdoba, 6 March 2001
Threats against Alejandro de la Hoz, Oviedo (trade unionist)	Barranquilla, Atlántico, January 2001
Disappearances: Blanca and Pablo Domico, (indigenous)	Riosucio, Chocó, 31 August 2000
Homicide: Mario Alejandro Echavarría, Restrepo (trade unionist)	Bogotá D.C., 3 March 2000
Homicide: José Darío Hoyos (trade unionist)	Bogotá D.C., 3 March 2000
Assault and beating of indigenous members, of CRIC	Pereira Risaralda, 21 March 2001
Violation of international humanitarian law, committed against inhabitants of inga indigenous, community	Santiago, Putumayo, 29 May 1998
Homicide: Segundo Nazate	Pasto, Nariño, 7 November 2000
Homicide: 44 members of CUT trade union	
Threats against members of CUT trade union	
Threats against members of FECODE trade, union (Aguiles Portilla)	
Threats against Gerardo Ernesto Parrado, Carrillo, representative of Guayabetal	Guayabetal, Cundinamarca, 16 January 2000
Multiple homicide: Santiago Pernia Domico	Tierralta, Córdoba, 28 October 2000
Massacre: Andrés Pushiana and Juvenal, Pushiana (indigenous),	Maicao, Guajira, 13 May 2000
Threats against Omar de Jesús Noguera and, Diego Quiguanes González (trade unionists)	Calí, Valle, 19 September 2000

<i>Act/victim</i>	<i>Place and date</i>
Threats against members of UNEB (National Union of Bank Employees)	Fusagassugá, Cundinamarca, 1 August 2001
Disappearance and homicide: Virgilio, Cárdenas Peris (indigenous)	San Andrés de Córdoba, 31 October 1997
Disappearance: Robinson Taborda, Tuberquia and Carlos Andrés Taborda	Ituango, Antioquia, 4 September 2000
Homicide: Libardo de Jesús Usme Salazar, (trade unionist)	
Threats against the Ubate Monroy family	Bogotá, 21 June 1999
Breach of international humanitarian, law: uwa indigenous community	Sacama, Casanare, 27 May 1999
Threats against Alirio Uribe and Reynaldo, Villalba, members of the College of, Advocates	Bogotá, D.C.
Multiple homicide: César and Victor Manuel, Villazón (indigenous)	Valledupar, César, 16 October 2000
Disappearance: Reinaldo Yagari Yagari 18 September 2000	Segovia, Antioquia, 18 September 2000
Threats against Elizabeth Morales Mora, representative of Pasca	Pasca, Cundimarca

Source: lists of the Office of the Public Prosecutor of the Nation.

171. The government has accepted the offer of training for the military and officials of the military penal justice system, made by the Office of the United Nations High Commissioner for Human Rights, concerning the proper interpretation of military penal provisions and its direct incidence on the reform of the ordinary penal justice system.

5. Stimulus to the administration of justice and campaign against impunity

172. The previous administration developed a policy the principal aim of which was to give priority impetus to the investigation of certain particularly atrocious cases of violations of human rights. To that end, and with the mediation of the *Inter-American Commission on Human Rights*, proceedings were begun to seek amicable settlements of seven cases concerning massacres, disappearances and other grave violations of human rights. This mechanism offered an opportunity to combine the efforts of international organizations, government and State agencies and the representatives of victims to combat impunity and to mitigate the grave consequences of those violations for the individuals affected and for society.

5.1. Cases being dealt with, or in the course of amicable settlement, before the Inter-American Commission on Human Rights

173. The following are the cases before the Inter-American Commission for Human Rights which have been taken up in pursuance of this policy.

5.1.1. The Trujillo case

174. In the Trujillo case the government proposed the establishment of a commission of inquiry into the facts, consisting of government officials and members of civil society. That commission reached conclusions on the responsibility of the State and of the presumed perpetrators and made recommendations concerning compensation of the victims. On receiving the report of the commission the President of the Republic recognized the responsibility of the State for these regrettable incidents and the other conclusions and recommendations of the commission.

5.1.2. Roison Mora and Faride Herrera

175. On 27 May 1998 the Government and the petitioners in the cases of *Roison Mora and Faride Herrera*, which were brought before the Inter-American Commission on Human Rights, accepted the first amicable settlement in the history of the relations between the Government of Colombia and that intergovernmental human rights body.

176. In addition, at the initiative of the government, *Act No. 288 of 1996* was adopted specifically authorizing the government to pay compensation ordered or recommended by the Inter-American Commission on Human Rights or the United Nations Human Rights Committee.

177. The committee of ministers set up under that Act to lay down guidelines for compensation payments had by July 2002 issued 34 decisions, benefiting 200 *individuals*, relating to cases of violations of human rights, of which the Trujillo case mentioned earlier was one.

5.1.3. The search for an amicable settlement in the case of the Patriotic Union

178. Among the cases brought against the Government of Colombia currently before the Inter-American Commission on Human Rights, particular mention should be made of the progress being made in the search for an amicable settlement in Case No. 10227 concerning the Patriotic Union (Unión Patriótica) and the need for compensation in the cases in which the Commission had ruled that the State was responsible (Act No. 288 of 1996). The proceedings directed to that end began in 1997 with the setting up of a mixed committee consisting of representatives of the petitioners and officials of the Government and the supervisory bodies.

179. As part of the solution the Government, under Decree No. 978 of 1 June 2000, established a special programme of complete protection for the members of the Patriotic Union (UP) and the Communist Party of Colombia (PCC). That programme is coordinated by the Ministry of the Interior and has special features adapted to the nature of the case.

180. The arrangements made also include special impetus given to the inquiries into acts of violence committed against members of the UP and the CCP being conducted by the Public Prosecutor's Office and the Office of the Attorney-General, each of which has established within its structure special sub-units to investigate individual cases on the basis of uniform criteria and taking into account the particular circumstances of each case. The process of reaching an

amicable settlement also includes the establishment of a database on each of the individual cases being dealt with having any relation to the UP and the PCC; that database is now complete and comprises 1,445 individual cases.

181. The second stage in the process was the beginning of the work of a working group with the task of determining the truth, the legal position and the compensation due. This working group was presented by the Government in September 2001.

182. The Government has reaffirmed to the Inter-American Commission on Human Rights its determination and unswerving will to advance with these proceedings, which are of the utmost importance for the State of Colombia, within the framework of the mechanisms already created or which may be decided upon, in the discharge of its duties under the Constitution, the law or agreements.

5.1.4. Villatina: an example of an amicable settlement

183. On 29 July 2002 the Colombian Ministry of Foreign Affairs and two non-governmental organizations - the Interdisciplinary group for Human Rights and the Colombian Commission of Jurists - signed the text of an amicable settlement in the case of *Villatina*, which had been reported to the Inter-American Commission on Human Rights (ICHR), a body of the OAS.

184. The origin of the case was the killing, on 15 November 1992, by a group of policemen of Johanna Mazo Ramírez (aged 8), Johnny Alexander Cardona Ramírez (aged 17), Ricardo Alexander Hernández (aged 17), Giovanni Alberto Vallejo Restrepo (aged 15), Oscar Andrés Ortiz Toro (aged 17), Angel Alberto Barón Miranda (aged 16), Marlon Alberto Alvarez (aged 17), Nelson Duban Flóres Villa (aged 17) and Mauricio Antonio Higueta Ramírez (aged 22) in the Villatina Caycedo district of the city of Medellín.

185. In March 1993 proceedings were initiated before the OAS with the submission of a complaint to the ICHR concerning the arbitrary execution of the young people concerned and the failure of the judicial system to take due action. In September 1995 representatives of the government and the victims met with a view to smoothing the way towards an amicable settlement and decided on the creation of a Committee to Give Impetus to the Administration of Justice. Subsequently, in February 1996, the parties decided on the creation of a committee to follow up on the recommendations of the Committee to Give Impetus to the Administration of Justice.

186. On 2 January 1998 the Government of Colombia recognized its international responsibility in the *Villatina* case before the Inter-American Commission on Human Rights. On 29 July 1998 the President of the Republic publicly recognized that responsibility and delivered to each of the families of the victims a document constituting a deed of moral reparation and compensation.

187. Since the commitments entered into within the framework of the amicable settlement were not given concrete effect within the stipulated period, on 5 October 1998 the amicable settlement proceedings were declared closed, and on 16 November 2001 the ICHR approved a report (123/01) giving its conclusions and recommendations on the case.

188. On 26 February last the petitioners and the government met to discuss the possibility of resuming the amicable settlement proceedings in order to give effect to the commitments entered

into by the State in the earlier proceedings and to the recommendations contained in report 123/01 and decided to go ahead with the proceedings once the areas of work to be undertaken had been defined.

189. As a result of that meeting and the desire of the parties to reach an amicable settlement, an agreement was eventually signed laying down commitments regarding recognition of responsibility; the right to justice; individual compensation; social compensation in the forms of education and health; construction of a commemorative monument; and implementation of a new production project which would be operative and profitable.

190. The signature of this agreement - the second to be recorded in Colombia since the ratification of the American Convention on Human Rights in 1973 - is an important contribution to the full compensation of the victims of violations of human rights and provides a mechanism for the promotion in future years of the diligent, prompt and effective conduct of judicial inquiries needed to prevent cases of this kind from remaining unpunished.

5.2. Military penal justice

191. In pursuance of the *1997 ruling of the Constitutional Court* specifying the scope of the competence of the military courts, a considerable number of cases have been transferred, on application by the Office of the Attorney-General, from the military to the ordinary criminal courts.

192. In September 1997 the government submitted to Congress a draft of an Act to reform the Code of Military Penal Justice. The proposal was finally approved and adopted in the form of Act No. 522 dated 12 August 1999. In this connection reference is made to the corresponding results for the period 1998-2002 described below.

5.3. National Network for Communications on Human Rights

193. The previous administration, with the assistance of the Government of the Netherlands and with the participation of the Office of the Public Prosecutor, the Attorney-General's Office and the Ombudsman, created a systematized network for the exchange of human-rights information among State and government agencies.

194. That network has served to transmit complaints and reports concerning cases of human rights violations and infringements of international human rights law from different parts of the country to the competent authorities responsible for investigating them and bringing charges. It has also been instrumental in monitoring penal and disciplinary action in connection with those complaints and reports.

195. During its initial phase, the project linked 150 points for receiving complaints in 42 municipalities in 21 departments with high rates of human rights violations; a database containing nearly 3,000 cases of alleged human rights violations; and a database with 2,500 entries containing information concerning unidentified corpses (N.Ns) and disappeared persons.

5.4. Other activities

196. In President Andrés Pastrana's administration, a series of mechanisms - some of a mixed coordinating nature, facilitating the participation of organizations of human rights defenders, trade unions, and social and political movements - designed to strengthen the administration of justice in cases identified as grave human rights violations and infringements of international humanitarian law were brought into operation. The need to address a series of physical and geographical situations, the gravity of which calls for an institutional strengthening in the difficult circumstances caused by the escalation of the armed conflict, has led to the creation of other coordination bodies.

197. The Special Committee for Initiating Investigations of Human Rights Violations, during the first phase of its work, initiated 35 cases on which the following results had been obtained by October 2001: 44 decisions to prefer charges; 36 conservation measures, six sentences; 18 dossiers of disciplinary charges and 12 decisions to apply sanctions. In October and November 2001, in a joint operation with the Office of the United Nations High Commissioner for Human Rights, the final touches were put to the definition of the selection criteria for cases to be pushed forward, and more rigorous mechanisms for their follow-up were established. It was also decided to take up 48 additional cases.

198. The bodies operating at the national level are the working group concerned with the search for an amicable solution to the case of the Patriotic Union and the inter-agency commissions concerned respectively with the search for disappeared persons and the protection of the human rights of workers and indigenous peoples.

199. The Working Group concerned with the search for an amicable solution to the case of the Patriotic Union - the second phase of the proceedings before the Inter-American Commission on Human Rights - is making progress with the establishment of mechanisms geared to the prevention of further human rights violations, including truth, justice and reparation. To that end it is preparing a project that would meet those needs with funds drawn from the general national budget and from international cooperation.

200. Regarding the commission concerned with the protection of the human rights of workers, there is a proposal under study for strengthening it as an anti-impunity instrument by establishing a special subcommission to investigate cases of grave human rights violations committed against workers. At the same time, with a view to assisting in legitimizing the activities of trade unions, their leaders and their members, the Draft Communications Strategy envisaging a large-scale media campaign is currently under review.

201. The purpose of the commission concerned with the search for disappeared persons, created under Act No. 589 of 6 July 2000 (which established as a crime, inter alia, the forced disappearance of persons), is to support and promote the investigation of that crime, with full respect for the respective competence of the institutions concerned and the rights of the accused, and to devise plans for the search for disappeared persons, evaluate and support the implementation of those plans and to set up working groups for specific cases. In its efforts to support and promote the mechanisms created by law, the commission has embarked on a study for the regulation of the Urgent Search Mechanism created under article 13 of the Act. It is also working on the definition of the Committee's role regarding the confidentiality of the pre-trial proceedings and in the management of resources for the creation of an institutional support

office. The commission has assigned the task of encouraging searches in recent forced disappearance cases to a working group comprising some of its own members.

202. There are a further nine inter-agency commissions already addressing a vast array of special regional situations in: Arauca, Caribbean Coast, Colombian Massif, Barrancabermeja, Santander and Norte Santander (Catatumbo), Paz Communities, Upper Naya Valley, Sumapaz and the coffee-producing zone.

203. The creation of these regional commissions is in keeping with the identification of specific dynamics and needs regarding prevention and the protection of human rights and the encouragement of criminal and disciplinary investigations in cases of human rights violation, and also with the national authorities' eagerness to support and assist the territorial agencies, promoting local and regional authorities' awareness and their involvement in dealing with those problems, as well as the social and human rights organizations' participation in surmounting them. The existence of these points of contact between the authorities and the social organizations is instrumental in reducing existing mistrust and in establishing concerted public policies suited to regional and local circumstances.

204. The President's Programme on Human Rights and International Humanitarian Law, supported through international cooperation, prompted the investigation of some 100 additional cases: of 64 investigations, 75% are at the instruction stage and the remainder at the initial investigation stage, with the following judicial rulings: 122 persons implicated, 42 implicated without conservation measures, 27 decisions to bring charges, 67 actual arrests and 17 persons declared absent.

205. At the same time, in order to expedite the application of justice, the Office of the Public Prosecutor is running a Witness and Victim Protection Programme, which allocated 822 million pesos to accommodate 542 persons who testified in 154 cases in 2000.

206. At the same time, the Office of the Attorney-General of the Nation is currently devising an institutional human rights policy focussing on prevention. To that end, it is promoting a project with the Office of the United Nations High Commissioner for Human Rights in order to determine the scope and content of the concept of prevention in a supervisory body of the same kind as the Office of the Attorney-General. It is also engaged on training its officials nationwide in the subject of human rights and international humanitarian law, in conjunction with the Office of the United Nations High Commissioner for Human Rights and other national and international bodies. Furthermore, it has negotiated international cooperation funds for modernizing the institution. The most serious cases of human rights violations are directly handled by the Office of the Attorney-General of the Nation.

207. The Office of the People's Advocate is engaged in regulating official defence advocacy and ensuring professional quality and the commitment of the advocates in question.

208. The Higher Council of the Judiciary had been working on modernizing and expanding the criteria for the territorial distribution of the legal offices on the basis of a "violence map" in order to guarantee the required number of magistrates, the efficiency of criminal investigations, and access to justice.

209. Penitentiary system. The penitentiary and prison system is being improved through the increase in the numbers of places in prisons and by solving administrative problems in detention

centres. This is being financed from the Prisons Infrastructure Fund and the INPEC Council and will come under the National Criminal Policy Council.

210. In the past year, under the Plan for the Expansion of Prison Infrastructure, two new prisons were opened, thus easing overcrowding. The period 1998-2001 witnessed the creation of 7,462 new places, reducing overcrowding from 41.25% to the current 13.22%. In addition, CONPES approved an allocation of 660 billion pesos for the construction of a further 11 medium-security prisons. Special prison construction and refurbishment activities financed from the Prisons Infrastructure Fund are well under way. The aim is to expand capacity by a further 10,850 places. This goes hand in hand with the efforts of the Office of the Attorney General, which is finalizing a study on the subject of overcrowding in police stations.

211. INPEC and the judicial authorities are seriously attempting, given the magnitude and complexity of the situation in the present circumstances, to house private individuals deprived of their freedom as a preventive measure in detention centres specially designed for that purpose, so as to respect the need to separate accused persons from convicts. INPEC has set up a Human Rights Office and there has been an increase in the regular operations supported by the Office of the Public Prosecutor, the DAS, the CTI and the police, to ensure that the authorities control the prison population using methods and practices that respect the rights and dignity of detainees. The Ministry of Justice and INPEC have increased measures for the effective monitoring of the conduct of administrative, custodial and surveillance personnel so that any acts of corruption can be properly investigated and suitably punished. Progress is being made on the establishment of the INPEC Inspectorate-General, which should give impetus to disciplinary investigations of the institution's officials and of the INPEC's intelligence and counter-intelligence units. The agencies are providing the support required to enable the Office of the People's Advocate to move ahead with special monitoring of inmates' detention conditions and legal situations.

212. In addition, currently in the course of study is a draft of a new Penitentiary and Prison Code that complies with international norms and principles. It is important, however, to point out that the problem is caused by the legislation enforcement mechanisms rather than the actual content of the norms themselves.

Legislative measures

213. The list of legislative instruments serving to combat the different forms of violations of human rights and breaches of international humanitarian law and to take into account the recommendations of the international community constitute the results of this policy,

214. Thus Act No. 589 of 2000 designates as crimes (delitos) forced disappearances of individuals, genocide and the forced displacement of persons, increases the penalties for the crime of torture and introduces new provisions in respect of the crime of forced disappearance, such as the creation of special working groups on disappeared persons, a national register of disappeared persons, the administration of their property, the permanent obligation on the State to search for them, the urgent search mechanism, and the bar on amnesty or pardon for any of the crimes referred to in the Act.

215. The new penal code (Act No. 599 of 2000, which came into force in July 2001), in addition to incorporating the above-mentioned provisions, contains in Title II of Book Two a classification of crimes and offences against persons or property protected by international

humanitarian law, including the killing of a protected person, the use of illicit weapons of war, acts of terrorism and barbarity and hostage-taking, providing a means of extending effective protection to persons not participating in armed conflicts. The new code is a response to the requirements of justice concerning appropriate treatment of the conflict in Colombia and guarantees the observance of essential humanitarian principles, and also to the international commitment accepted by Colombia as a consequence of the ratification of the four Geneva Conventions and the two protocols additional thereto. It is also in line with the provisions of the Rome Statute of the International Criminal Court.

216. The Penal Code of Military Justice (Act No. 522 of 1999), which has been in force since the year 2000, is a fundamental element for the process of reform of the Public Force, since it now contains provisions regarding the extent of military jurisdiction, and especially the debarring of military judges from hearing cases of behaviour deemed to be serious violations of human rights.

217. The new Single Disciplinary Code, adopted as Act No. 734 of 2002, is compatible with international standards and recommendations and enjoys the active participation of the Office of the Public Prosecutor and the support of the Government through the Ministry of Justice.

218. Being applicable to all public servants, including those who have left the service, the Code unifies disciplinary standards and prevents disparities of treatment under special regimes.

219. The new code contains a complete list of wrongful acts deemed to be "very serious". These include genocide, serious violations of international humanitarian law, forced disappearance, torture, forced displacement, abduction for purposes of extortion, illegal deprivation of liberty, etc. The code also designates as "very serious" failure to comply with the orders and instructions contained in Presidential Directives whose object is the promotion of human rights and the implementation of international humanitarian law.

220. It is worth mentioning that the code contains a list of wrongful acts which are deemed very serious if committed by public servants exercising managerial, administrative, control or supervisory functions in prisons or penitentiaries.

221. The code increases the period after which disciplinary action becomes statute-barred to 12 years for very serious wrongful acts relating to human rights or international humanitarian law; the period elapsing before a sanction becomes statute-barred is set at 5 years from the date on which the decision becomes executory.

222. Act No. 707 of 28 December 2001, approving the Inter-American Convention on Forced Disappearances of Persons, has been adopted. At present it is being examined by the Constitutional Court - a necessary prerequisite for its entry into force.

223. As regards the Statute of the International Criminal Court (the "Rome Statute"), following its signature by Colombia in December 1998, the Chancellery began to take coordinating measures for the preparation of the meetings provided for in the treaty itself - preparatory commissions for the establishment of the Court - which will take place in New York.

224. On the domestic scene it should be mentioned that the subject occupies a special place in political debate on matters relating to peace and human rights. In that context, on the initiative of a number of senators, a draft legislative instrument (No. 14/01) was submitted to the General

Secretariat of the Senate on 15 March 2001 proposing an amendment to Article 93 of the Constitution incorporating the Statute of the International Criminal Court in it.

225. In concertation with the Government the draft instrument was rectified from the legal standpoint after it was realized that legislative initiatives relating to treaties are in the exclusive competence of the Government. It was thus agreed to reorientate the draft instrument towards the recognition of the jurisdiction of the Tribunal in Colombia prior to the submission of a draft bill for the incorporation of the Statute in national legislation. This was in fact done through Act No. 742 of May 2002, which was approved for entry into force by the Constitutional Court and is in process of ratification.

226. In addition, on 14 January 2002 Act No. 731 was adopted laying down provisions benefiting rural women. The purpose of this Act is to improve the quality of life of rural women, with priority being given to women on low incomes, and to establish specific measures to achieve equality between men and women living in rural areas.

6. Protection of human rights defenders and threatened persons

227. In the context of the armed conflict which is polarizing and affecting the country, the task of defenders of human rights becomes particularly difficult, since there are individuals of the mistaken opinion that laying complaints against State officials implies sympathy or links between organizations dedicated to that task and guerilla groups. This belief is prevalent above all in private justice groups. In this context regrettable and serious incidents have taken place which have cost the lives of human rights defenders.

228. Like the previous administration, the present Government has recognized the problem and supported the legitimate activities of NGOs concerned with human rights which carry out their work honestly and within the framework of the Constitution and the law. It has thus proclaimed an open door policy towards individuals and private organizations concerned with the promotion and defence of human rights. It has maintained dialogue and discussions with them on the analyses and criticisms which they address to it and on the policies they propose for dealing with the different aspect of the problems. It has sought to maintain constructive relations with the human rights organizations seeking to put an end to violations of those rights and has adopted measures to protect the lives and persons of their members.

229. In addition, it has promoted participation by NGOs in a number of committees set up by the government, viz.:

- the Human Rights Committee for the Trade Union Sector;
- the Human Rights Committee for Indigenous Peoples;
- the National Commission for Indigenous Territories;
- the Standing Committee for Consultation with Indigenous Peoples and Organizations;
- the High-Level Advisory Committee for Black Communities.

230. On 18 July 1997 a Presidential Directive was issued reaffirming the duty of the State to support and to dialogue and cooperate with organizations defending human rights and expressing

the President's gratitude to the government for the work they were doing. The Government devised and implemented a plan for the dissemination of that directive throughout the country and the regions with a view to promoting awareness, assimilation and implementation of it among civil and military authorities and members of the security organizations with a view to offering the organizations of civil society opportunities for discussion.

231. With the same end in view, the government has reaffirmed the importance and the legitimacy of the work of human rights defenders in the consolidation of a democratic culture and of respect for human rights, and with that in mind it is endeavouring to strengthen measures for their protection and to make those measures more effective. It was in that context that the Presidential Directive concerning support for and dialogue and cooperation with the human rights organizations by the State was issued.

232. The government is pressing forward with three programmes for the protection of human rights defenders. These programmes are coordinated by the Ministry of the Interior in pursuance of the mandate conferred in article 6 of Act No. 199 of 1995 and are: the programme for the protection of human rights defenders, leaders of social organizations and trade unions, witnesses and threatened persons (established by Decree No. 372 of 1996 and Act No. 418 of 1997), the programme for the protection of the leaders, members and survivors of the Patriotic Union and the Colombian Communist Party (established by Decree No. 978 of 1 June 2000) and the programme for the protection of journalists and social communicators (established by Decree No. 1592 of 18 August 2000).

233. The demand for inclusion within these programmes has been increasing during the last two years; this has had a significant impact in social, political and financial terms for the State of Colombia. The expansion of the coverage offered by the programme for the protection of human rights defenders, officers and leaders of social organizations and trade unions, witnesses of violations of human rights and of international humanitarian law and threatened persons is an important achievement in the field of human rights policy. The numbers of persons and NGOs protected increased from 177 in 1999 to 2,344 in 2002 - a 13-fold increase (1,244%).

234. A considerable number of persons have benefited from this programme. They have received training in self-protection measures from the State security bodies. Steps have been taken to protect the offices of NGOs, and in particular the "José Alvear Restrepo" Collective Corporation of Advocates and the Association of Relatives of Detainees and Missing Persons (ASFADDES), and arrangements have been made to enable human rights defenders to appoint trustworthy persons to look after their security; the persons in question are engaged and trained by the government to be placed within the protection schemes requested by activists in the field of human rights.

Persons protected

<i>Year</i>	<i>Trade unionists</i>	<i>NGOs</i>	<i>Leaders and witnesses</i>	<i>U.P. PCC</i>	<i>Journalists</i>	<i>Total</i>
1999	84	50	43	0	0	177
2000	375	224	190	77	14	887
2001	1.033	537	327	378	69	2.344

235. The financial allocations to the protection programmes have increased during the last few years. In 2001 the relevant budget line was increased by 415% over the previous year, increasing from 4,834 million pesos (approximately US\$ 2.2 million) to 24,918 million (approximately US\$ 11 million). This increase is reflected in the number of "soft" and "hard" protective measures taken. To this sum assigned to the programme itself should be added the 5,000 million pesos (approximately US\$ 2.2 million) allocated to the Administrative Security Department (DAS) for use in protection programmes; this makes a total of 29,918 million pesos (approximately US\$ 13.2 million).

236. In the same connection it must be mentioned that, with a view to improving its capacity for reaction in the area of timely adoption of protective measures, the Ministry of the Interior decided that the resources available to the programme should be administered and applied through the United Nations Development Programme (UNDP), which, in accordance with its channels and procedures, has undertaken the greater part of the implementation of the protective measures.

237. For the year 2002, with a view to improving the efficiency and the operability of the protection programmes, it was decided that the resources should be applied through the Financial Fund for Development Projects (FONADE), which has developed some speedy and flexible procedures for the implementation of protection measures.

238. To the same end, and in anticipation of the cooperation of the United States Agency for International Development, the Information System will be put in place and the adaptation of the installations at the Directorate-General will be put out to contract; this will enable better service to be given to users of the programme.

239. It can thus be clearly seen that the structure of the protection programmes has been strengthened by an increase in support staff by recourse to professionals highly qualified in this field; this has enabled them to cope with the increase in the number of applications for protection. For example, the number of trade unionists covered increased from 84 in 1999 to 1,003 in 2001 and the numbers of human rights defenders protected from 50 in 1999 to 537 in 2001, while the numbers of leaders and witnesses covered rose from 43 in 1999 to 327 in 2001. All the foregoing demonstrates the political will of the government to find a solution and to give special attention to these cases. It must be pointed out that a very high percentage of the protection measures taken in 2001 related to commitments dating from earlier years which could not be met on account of lack of financial resources - a difficulty which, as mentioned earlier, has progressively been overcome, especially during the last few months.

240. The government is at present evaluating the functioning, financing, procedures and other elements of the programmes with a view to optimizing their management. To that end a committee has been set up consisting of a representative of the Office of the Vice-President of the Republic, a representative of the police and one of the DAS, the delegate from the ILO Office in Colombia, a representative of the Office of the United Nations High Commissioner for Human Rights and three representatives of social organizations (one for the NGOs, another for the trade unions and a third for the Communist Party - Patriotic Union), to move forward with the coordination of the evaluation process. The aims of that process are to analyse the current conditions of the programmes in legal-political, administrative, financial and operational terms, considering future possibilities for development, systematization, technical advance and optimization, so as to devise a legal, regulatory and administrative framework suited to the protection system. The evaluation will be carried out in two stages:

- the first stage must present an analysis of the current legal, political, administrative and operational situation of the protection programmes;
- the second stage must present a proposal for the establishment of the legal and administrative framework of the protection programmes in order to optimize their management.

241. Once the protection programmes have been evaluated, a system for follow-up on the ensuing recommendations will be set in motion.

242. The Ministry of the Interior continues to make progress with the strengthening of mechanisms for inter-agency coordination with other bodies and institutions such as the National Police, the Administrative Department of Security (DAS), the Office of the Public Prosecutor of the Nation, the Office of the Vice-President of the Republic, the Office of the Attorney-General of the Nation, the Office of the People's Advocate and the same non-governmental and trade-union organizations, in order to unite efforts to verify information supplied by petitioners and as a support to the implementation of the measures adopted. The programmes themselves have risk control and evaluation committees (CRERs) composed of government bodies and the relevant organizations.

243. Regarding the strengthening and expansion of coverage of the protection measures provided by the programme for the protection of human rights defenders, trade-union and social leaders and persons under threat, the following results were achieved in 2001:

(a) *Humanitarian assistance*: there were 2,369 cases of special assistance (humanitarian assistance, overland transport and removals);

(b) *Security schemes*: at the end of 2001 there were 56 functioning “hard” protection schemes, comprising: two or three bodyguards and one vehicle, equipment, maintenance, fuel, insurance, pay and subsistence. In October 2001 there were 107 schemes of that type in operation, with 65 further schemes awaiting allocation. The budget for the indicated schemes covers 64% of the budget for the protection measures in course of implementation;

(c) *Media*: during 2001 the communications network was expanded in order to provided the beneficiaries of the protection programme with better security. There are in operation two communication networks with both cell phones and Avantel equipment, which act as early warning, prevention and protection networks. The protection programme has also equipped certain communities in areas without an operator with satellite dishes. Across the country, 1,175 cell phones and 464 Avantel sets have been provided.

(d) *Armour-plating*: escalation of the armed conflict has resulted in increased vulnerability of the headquarters of non-governmental and trade-union organizations, a state of affairs that called for a prompt response from the programme; in that connection, and on the basis of the recommendations contained in the security studies conducted by the National Police, 101 headquarters on national territory have been armour-plated. Armour-plating as a protective measure implies, among other things, equipping physical structures and installing closed-circuit television, metal detectors and intercommunication media.

244. Regarding the special comprehensive protection programme for leaders, members and survivors of the Patriotic Union and the Colombian Communist Party, created in late 2000, as

part of the quest for an amicable solution in the case before the ICHR, the following achievements are worthy of mention:

245. The programme's lines of action consist of media, armour-plating and security of offices and homes, humanitarian assistance, national and international tickets, removal assistance, funeral assistance, bullet-proof vests, travel allowances, productive projects, subsistence allowances and maintenance, advisory services for the implementation of productive projects and psycho-social care. In 2000 the programme was allocated 700 million pesos. In 2001 and up to 30 September an allocation of nearly 1.76 billion pesos was made and had enabled 365 cases to be dealt with by that date.

246. The programme for the protection of journalists and social communicators, the lines of action of which are the same as those of the aforementioned programmes, was allocated 300 million pesos in 2000. During 2001 and up to 30 September, a further 800 million pesos were allocated, permitting 67 cases to be dealt with by that date.

247. It is worth mentioning that the visit to the country in May 2001 by the members of the Inter-American Commission on Human Rights, to monitor the enforcement of precautionary measures imposed by that body, was largely instrumental in facilitating talks with petitioner organizations and individuals benefiting from those measures, and in identifying further factors for improving inter-agency coordination under the protection programmes mentioned above.

248. In addition, in the light of the repeated requests of human rights NGOs that their members' names should be excluded from military intelligence reports, the National Government is studying mechanisms for bringing the practices and proceedings of military intelligence concerning persons into line with the pronouncements of the Constitutional Court on the matter and with the contents of Presidential Directive 07, so that intelligence activities regarding individuals and the ensuing reports may be geared solely towards fighting crime as defined in the Penal Code.

7. Care of the population displaced by the *violencia*

249. The problem of persons displaced by the *violencia* in the country increased as a result of the resurgence and expansion of the domestic armed conflict, especially through the action of self-defence and guerrilla groups, whose aims include territorial control of certain areas, and, indirectly and more subtly, through the army's presence in areas in which it comes face to face with illegal groups. Unfortunately, this situation represents the principal humanitarian tragedy confronting the country.

250. The previous government recognized this problem and devised the outlines of a policy to deal with it through the National Economic and Social Policy Council; it then turned to the task of producing a set of programmes for the care of the persons affected covering successively emergency aid, settlement and return or relocation. In the field of institutional strengthening, in 1995 the *Care for the Displaced Population Section in the Special Administrative Unit for Human Rights (Directorate-General) of the Ministry of the Interior* came into operation, and in 1997 the *Office of the Presidential Adviser on Displaced Persons* was established; its functions are now discharged by the Social Solidarity Network.

251. In addition, work has begun on the establishment of a legal framework benefiting displaced persons. A decree of December 1996 introduced a special land acquisition programme. *Act No. 333 of December 1996* laid down rules for the cancellation of ownership of illegally acquired property and the use of the assets and resources confiscated in this manner to finance agrarian reform and social housing programmes for persons displaced by the *violencia*. Under this Act the Government provided that 50% of the resources obtained in this manner should be used for those purposes.

252. July 1997 saw the adoption of Act No. 387, which introduced measures for prevention, emergency aid, consolidation and socioeconomic stabilization of persons displaced by the *violencia* with a view to their ultimate return to their places of origin or agreed relocation. The Act also conferred legal status on the National Comprehensive Care System for the displaced population - a mechanism comprising all the public, private and community bodies engaged in producing plans, programmes and projects and undertaking specific measures designed to provide comprehensive care for the displaced.

253. That Act signifies recognition by the State of responsibility for the framing of policies and the adoption of measures for the provision of comprehensive care for the displaced population and provides an effective framework for the implementation of these measures inasmuch as it establishes competence, allocates responsibilities, coordinates measures and rationalizes efforts. In accordance with the provisions of the Act, a *National Plan for the Comprehensive Care of the Population Displaced by La Violencia* was adopted in January 1998.

254. The priority attached by the government to care for the displaced found material expression in the expenditure of 31 billion pesos in 1997 and over 121 billion in 1998. It should be recalled that during the same period INCORA invested over 18 million dollars in purchases of land for allocation to displaced families.

255. During the present administration, under the coordination of the Social Solidarity Network, the National Comprehensive Care System for the Displaced Population was consolidated. In 2001 the National Council on Comprehensive care for the Displaced Population was reactivated as an instrument of nation-wide coordination; this has permitted the review and adoption of new legal instruments, viz.:

- (a) draft decree concerning access to land for the displaced population and freezing of abandoned property (No. 2007, issued in September 2001);
- (b) study of mechanisms to exempt displaced men from compulsory military service, for which purpose a provisional booklet was created for men between ages 18 and 23 displaced by *la violencia*. For this purpose Ministry of Defence Decision No. 1879 was issued on 18 December 2001;
- (c) adoption of CONPES document 3115 of May 2001 approving the budget distribution by sector for the implementation of the National Plan;
- (d) approval of the National Plan for the Comprehensive Care of the Displaced Population, amending Decree No. 173 of 1998;
- (e) draft decree concerning preferential access to education for displaced persons (No. 2562 of 27 November 2001).

256. The Social Solidarity Network is supporting the decentralization model incorporated in the system by strengthening municipal, district and regional committees concerned with comprehensive care for the displaced and the Standing Committees for Work with the Displaced Population under a project financed by the Office of the United Nations High Commissioner for Refugees and by providing support material for decision-making at territorial level, such as the Guide on Comprehensive Care for Persons Displaced by *la Violencia*.

257. With a view to handling displacements of individuals and families into the towns, where they congregate to form high percentages of displaced persons, Care and Guidance Units (UAOs) have been formed, whose membership consists of representatives of the Public Ministry, the Solidarity Network, the town council offices, the Ministry of the Interior and the executing NGO. There are currently operational UAOs in Barranquilla, Bogotá, Cartagena, Valledupar, Soacha, Santa Marta, Villavicencio, Bucaramanga and Sincelejo.

258. The Social Solidarity Network has developed a strategy of delegated administration of resources which permits coordination of action with NGOs with experience and knowledge in the field of displacement as well as the provision of more comprehensive care. This strategy is being implemented in the following cities and regions: Barranquilla, Bogotá, Magangué, Cartagena, Montes de María, Norte de Bolívar, Florencia, Valledupar, Quibdó, Soacha, the department of Cundinamarca, the coffee-growing departments, Villavicencio, Barrancabermeja, Bucaramanga, Calç, Cúcuta, Medellín, Monterça, Santa Marta, Pasto, Sincelejo and Ibagué.

259. The Network has been promoting the formulation of contingency plans by municipal, district and departmental committees which take into account particular local characteristics and realities. These plans permit easing of the suffering caused by displacement and provide the agencies involved in dealing with the problems with an instrument which improves capacity and organization in the response to them.

260. During the period January 2000 - June 2001 the Network consolidated the National Information Network by the strengthening of two subsystems, namely the Single Register of Displaced Persons and the System for the Estimation of Forced Displacement by Comparing Different Sources, in order to provide accurate information on the scale of displacements, the characteristics of the groups affected, the territories concerned, the causes and those presumed responsible which would form a basis for the framing of plans, programmes and projects for the provision of care as well as their monitoring and reorientation. During the first half of 2001 the Network made a large-scale distribution of forms for the recording of information, and during the second half it launched a series of training workshops for representatives of the Public Ministry.

261. The measures taken to prevent internal displacements include humanitarian missions, i.e., observation missions seeking to take cognizance of and verify situations of risk or violations of the human rights of the population concerned, to support and publicly identify the threatened groups and to secure an institutional response to ensure protection and care for them.

262. Within the framework of international cooperation the Network has entered into alliances with various United Nations agencies with a view to strengthening the national care system.

263. The following are the results of those strategies obtained between January 2000 and June 2001:

264. Regarding displacement prevention, the Social Solidarity Network and other bodies have carried out local productive and promotional peaceful coexistence projects aimed at economic and social strengthening of the most vulnerable communities. Likewise, five special psycho-social projects are being implemented in the city of Bogotá, the municipality of Usme in Cundinamarca, and in the Atlántico, Santander, Caquetá, Chocó and Bolívar departments, in addition to the support offered by the Programme of Comprehensive Care for Municipalities Affected by Political Violence in Colombia to the civilian population affected by the massacres, occupations of municipalities, assaults and fighting which occur within the armed conflict, avoiding to a large extent mass movements of people, for which reason the help is provided in the affected place itself. This programme is also concerned with the building and reconstruction of affected premises. During the period under consideration, over 36 billion pesos' worth were executed, of which 34,255 billion came from the Social Solidarity Network for displacement prevention, from which 12,245 households benefited.

265. In the area of humanitarian assistance, the activities of the Social Solidarity Network take a variety of forms depending on the focus and magnitude of the event. For cases of individual displacement, in the main host cities assistance is provided through the operating NGOs under the delegated administration scheme. In other places, cases of individual displacement are directly addressed by the local offices of the network. Lastly, cases of mass displacement are addressed by the local offices, in collaboration with the other bodies of the system. Between January 2000 and June 2001 some 31,209 households were assisted with an investment of nearly 30 billion pesos, 25.5 billion of which came from the Network.

266. In the area of resettlement, which includes income-generation programmes, housing and work-training projects, the Social Solidarity Network's investment and co-financing amounted to 33.19 billion pesos, to the benefit of 14,500 households.

267. A total of 4,839 million pesos (3,489 million from the Network) was invested in institutional strengthening.

268. In short, between January 2000 and June 2001, the Social Solidarity Network itself invested 84,242 billion pesos; the total amount of national and international co-financing resources was 19,633 billion, making a total investment of 103,876 billion.

269. In addition to the foregoing, between January 2000 and June 2001, the Social Solidarity Network's projects committee allocated a total of 21,872 billion pesos to support the resettlement of 15,971 households and 178,237, 592 pesos for institutional strengthening; in addition, investment of 13,112 million pesos to provide emergency humanitarian assistance to 7,700 households is planned.

270. At the same time, President Andrés Pastrana issued Presidential Directive No. 06 on 28 November 2001 with instructions to step up the comprehensive assistance to the population displaced by the *violencia*. In its sixth paragraph, it orders all public servants engaged on matters relating to human rights and forced displacement owing to the *violencia* to comply with orders of a humanitarian nature, meaning those directives and guidelines issued by the President of the Republic, through the Ministry of the Interior and the Director of the President's Programme for Human Rights and relating to prevention, protection and care for victims of violations of those rights, and, where forced displacement caused by *la violencia* is concerned, through the Director-General of the Social Solidarity Network, the purpose of which is, in specific urgent cases, to

undertake specific activities for assisting potential or actual victims of human rights violations or forced displacement caused by the *violencia*, in order to avert or temporarily ease such situations.

271. It should be pointed out that in the context of the Presidential Directive, the Director-General of the Social Solidarity Network issued two humanitarian orders for two regions (Sierra Nevada de Santa Marta in the department of Magdalena, and the Catatumbo region in Northern Santander) particularly affected by the confrontation of self-defence and subversive groups, the repercussions of which have provoked large numbers of forced displacements.

8. Other mechanisms pertaining to the human rights policy

272. To develop the policy of improving, diversifying and increasing the institutional facilities available to meet the complex needs which the protection of human rights and the prevention of violations which may affect them require in situations such as those described throughout this report, a number of mechanisms, both legislative and organic, have been established and set to work. To facilitate their functioning a number of measures have been taken, some of which are described below.

273. With regard to the structural and cultural problems which still affect the *participation of women* in the different aspects of public life, and the conditions of work and status which still subject them to discriminatory treatment, it was decided to set up the *National Directorate for Equality of Women* (subsequently converted into the *Office of the Presidential Adviser on Equality of Women*) with a view to framing and implementing government policy on the subject and directed to the promotion of women and support and strengthening of advanced sectoral initiatives.

274. A vital element in the internal order to deal with the many forms of violations of human rights and the problems for the maintenance of public order to which those violations give rise is the decision to establish an administrative unit (*Special Directorate-General for Human Rights*) in the Ministry of the Interior with three areas of competence: care for persons displaced by the *violencia* (now the responsibility of the Social Solidarity Network); protection of defenders of human rights and threatened persons; and promotion of human rights. This measure has permitted significant increases in levels of management and intergovernmental coordination for the timely provision of care in emergencies and for the strengthening of decisions adopted in other bodies of State.

275. In order to achieve continually rising levels of differentiation and specificity in the responses by the different institutions of State to violations of human rights and to increase the capacity to promote fundamental rights, the administration of President Samper organized at the level of various ministries the establishment of *sectoral committees* with the participation of the sectors concerned. The presence on these committees of representatives of both associations of producers and of trade unions and labour organizations, with the government acting as mediator, has permitted individualized treatment of problems and the payment of special attention to particular dynamics and conditions, both geographical and peculiar to each individual sector. This plural structure has conferred a high degree of concertation on the measures and strategies developed and common approaches; it certainly offers a guarantee of the efficiency of the work of the bodies involved.

276. The following committees were created:

- Committee on Human Rights in the Trade Union Sector, coordinated by the Ministry of Labour;
- Committee on Human Rights for Indigenous Peoples, coordinated by the Ministry of the Interior;
- Committee on Human Rights in the Rural Sector, coordinated by the Ministry of Agriculture.

277. With a view to dealing with the serious problems existing within the country's prison system, the *Act concerning alternative penalties* was considered and adopted. The principal purpose of this Act is to modernize penalties, thus responding to contemporary trends in the conception of punishment and the forms of its infliction, which seek to humanize punishments and obtain a genuine reintegration into the life of the community. The Act established alternative mechanisms for the execution of the penalties imposed, designed to guarantee to prison inmates the continuation of productive activity and to avert the breakdown of their family and social relationships. Thus up to the year 1998 some 300 persons were granted conditional release and approximately 4,000 individuals received administrative benefits.

278. Similarly, in view of the serious congestion in court offices and the extremely long time required for the handling of the simplest of complaints brought before the courts, the *Act concerning alternative forms of dispute settlement* was adopted. This Act seeks to promote forms of judicial settlement conducted by the parties themselves in which they deal with one another directly with the assistance of arbitrators or conciliators in equity who facilitate the conclusion of settlements between the viewpoints in dispute, avoiding the excessive and expensive formalities and the costly rituals inherent in major court hearings. Thus the Act promotes *conciliation and arbitration centres* and what are known as Chambers of Justice, to which the parties can apply and arrive at agreements binding on all of them within a simple negotiating framework. In this way it is hoped to restore the confidence of the citizens in the administration of justice on the basis of the interest and the feeling for equity inherent in every citizen.

8.1. Educational and extension strategy with the President's Programme

279. To ensure the sustained implementation of its policies in the long term, the President's Programme for human rights and international humanitarian law is promoting an educational and extension strategy through the communication media; it is designed to inculcate awareness and acceptance of international humanitarian law among the citizens and to encourage respect and peaceful coexistence. The Monitoring Centre of the President's Programme is also in operation; this is a mechanism for the identification of progress in and obstacles to the implementation of government policy and for the publication of studies on specific subjects and problems.

8.2. Outlook for strengthened action in the field of human rights

280. To increase the effectiveness of the human rights policy, measures will be taken to enable certain institutional and budgetary shortcomings to be overcome in the short and medium term.

281. On 15 July 2002 the Economic and Social Policy Council (CONPES) approved a programme for strengthened action in the field of human rights. The programme includes the

creation in March 2003 of an emergency centre to strengthen the ability to respond to early warnings of violations of human rights and breaches of international humanitarian law.

282. The CONPES also approved the creation of a national council for the prevention of large-scale violations of human rights. This body will begin its work in December 2002. It is placed under the Office of the People's Advocate and will have the support of the Office of the President of the Republic, the Ministries of the Interior and Defence, the High Commissioner for Peace, the Social Solidarity Network and other institutions.

283. In the field of security of human rights defenders and threatened persons, the programmes for the protection of witnesses conducted by the Office of the Public Prosecutor of the Nation will be strengthened. To this end the Ministry of Finance, in coordination with the Office of the Public Prosecutor, will study the possibility of increasing the resources handled under the heading of "reserved expenditure". The Ministry of the Interior and the DAS will carry out an evaluation of the protection programme with a view to rationalizing resources and extending coverage to mayors and public officials under threat, among others. The same bodies will develop an information system for follow-up on cases of protection; in due course it will be required to analyse the degree of risk to which Congressmen are exposed and propose protection and prevention schemes.

284. The comprehensive programme includes care for the population displaced by the *violencia*. Work will be done on the strengthening of the early-warning system as a mechanism for prevention and the monitoring of the zones of highest risk by the Social Solidarity Network. In the field of promotion of international humanitarian law through family welfare and national planning, a CONPES document will be prepared establishing a policy for care of minors extricated from the armed conflict. The Office of the Vice-President will take responsibility for preparing a plan for removal of mines and care for victims of anti-personnel mines.

285. The fifth area of work to which priority will be given in the field of human rights is the overhaul of the administration of justice. The first measures taken will focus on combatting impunity by giving priority to the Cases Area, which is managed by the Office of the Vice-President.

286. A national information system on violations of human rights and breaches of international humanitarian law will be established.

287. At the same time the Office of the People's Advocate will increase the number of public defenders in 314 municipalities.

288. The second strategy in the field of justice is that concerned with penitentiary and prison policy. The activities of the human rights groups operating in detention establishments of this kind will be strengthened, and the number of defenders assigned to provide services for some 30,000 inmates of these establishments will be increased to 535.

289. The sixth priority area relates to commitments assumed vis-a-vis international organizations. To that end a section will be set up in the Ministry of Foreign Affairs to permit fulfilment of the obligations to which the government commits itself. Efforts will be made to develop proceedings for arriving at amicable solutions and, where appropriate, for emergency

measures of a conservatory or provisional nature within the framework of the Inter-American protection system.

290. Also included in this initiative for strengthening human rights policy is the fight against outlawed armed organizations.

291. According to the CONPES document, there is a need to consolidate the Coordination Centre for coordination of the campaign against outlawed groups so as to strengthen preventive action and guarantee timely intervention by the Public Force.

292. For its part, the National Police will develop the Rural Security Plan for building stations in municipalities that have none.

293. The President's Programme for human rights will deliver next August an outline for the National Action Plan, the final version of which should be ready by March 2003 and will contain inter-agency agreements and social consensuses for establishing the priorities for attention and providing guidelines for the State's short-, medium- and long-term action.

294. With regard to institutional strengthening, the Office of the People's Advocate will design and implement the model for monitoring and evaluation of public policies that affect human rights, both civil and political and economic, social and cultural, collective and environmental.

295. The Office of the Vice-President will prepare quarterly evaluation documents which will include an analysis of policy execution.

8.3. National Plan of Action on human rights and international humanitarian law

296. In keeping with the guidelines established at the 1993 Vienna Conference, the Government is working on devising a National Plan of Action on Human Rights and International Humanitarian Law based on the notion of indivisibility of human rights and the interdependence of all so-called generations of human rights, without prejudice to the necessary priorities for action designed to protect the rights to life, liberty and integrity. The plan will concern the State as a whole and will transcend the priorities and orientations of successive periods of government, and it will be drawn up in a concerted fashion.

297. In order to push forward the process, the Intersectoral Committee on Human Rights and International Humanitarian Law, created under Decree No. 321 of 2000, has been assigned, in addition to its other functions, the task of "guiding, encouraging and coordinating the implementation of the National Plan of Action on Human Rights and International Humanitarian Law, using consultation mechanisms and complying with the principles of decentralization, self-management and participation." Technical advice on devising the Plan is being provided by the Office of the United Nations High Commissioner for Human Rights in Colombia within the framework of a cooperation agreement between that office and the Office of the Vice-President of the Republic.

298. With a view to overcoming the obstacles that have delayed the Plan's adoption, the President's Programme for human rights drew up an outline for the National Plan of Action on Human Rights and International Humanitarian Law, containing its structural components, and will serve as a basic contribution to the consultation process with a view to promoting it. It also prepared a proposed methodology for moving consultation forward. Accordingly, the recently

completed outline for the Plan of Action is designed to clarify the fields of institutional action on which policy guidelines must be drawn up and programmes and projects deployed.

III. HUMANIZATION OF THE ARMED CONFLICT AND THE SEARCH FOR PEACE

1. Humanization of the armed conflict

299. From the beginning of its term of office the Government of President Samper insisted on the need, within the framework of his peace policy, to make approaches to the guerrilla movements with a view to the framing of agreements of immediate applicability for the implementation of international humanitarian law. However, the guerillas were reluctant to respond to calls to conclude agreements for the humanization of the conflict.

300. At the same time as it is seeking a negotiated outcome to the conflict, the State of Colombia has made a unilateral commitment in connection with its obligation in international law to respect and enforce the standards of international humanitarian law. Thus the Government has taken measures such as the approval in 1995 of Colombia's adhesion to Protocol II additional to the Geneva Conventions and the deposit in 1996 of the declaration recognizing *the competence of the International Fact-Finding Commission established under article 90 of Protocol I*.

301. Similarly, the *National Government and the International Committee of the Red Cross (CICR) signed an agreement* to guarantee and facilitate the humanitarian work of that organization in Colombia, thus enabling it to maintain, for humanitarian purposes, working relations with the organized armed groups, including the "private justice" groups, and to provide humanitarian assistance to civilians affected by the conflict. It should also be mentioned that one of the functions of the Office of the United Nations High Commissioner for Human Rights in Colombia is the receipt of complaints concerning breaches of humanitarian standards in armed conflicts, including those committed by guerrillas and private justice groups.

302. In addition, the measures for the dissemination and implementation of the standards of international humanitarian law, with particular focus on the armed forces, have enjoyed the wholehearted support of the Colombian National Red Cross Society. Also, beginning in March 1996 the Office of the High Commissioner for Peace, together with the Colombian Red Cross, launched a large-scale campaign for the dissemination of international humanitarian law in some 100 municipalities in which the violence resulting from the armed conflict is particularly severe.

303. Under the present administration the humanization of the conflict has also been a central item on the agenda of negotiation with the armed groups. To that end the National Government has endeavoured to conclude humanitarian agreements to put an end to abductions, extortion, attacks on the population, the use of gas cylinders, etc., and has insisted, with the support of the international community, on the need for the insurgents to observe and enforce international humanitarian law and ensure the respect for the civilian population and of non-combatants. Equally, calls to the insurgents to consider a cease-fire were reiterated in order to permit negotiations to take place in a more propitious atmosphere and to move towards the protection of the population affected by the intensity of the conflict.

1.1. Exclusion of minors from the armed conflict

304. In Colombia there are no minors under age 18 performing tasks of any kind in the armed forces - a rule which exceeds international standards. In addition, an ambitious programme of comprehensive assistance, rehabilitation and reintegration is being pursued for minors extricated from the armed conflict. This policy is being implemented and coordinated by the National Reintegration Office and envisages the participation of social organizations. During the year 2000 three specialized centres were set up for children extricated but abandoned or in danger of death and the establishment of the National Network of Support for Released Children was begun. Twenty "peace hostels" have been opened to facilitate the integration of these minors in decent conditions, and a programme of family support enabling some minors to be reintegrated in a family environment has been created. Under the ICBF and the Reintegration Programme some 400 minors between ages 11 and 18 have been taken into comprehensive care. Between January and July 2001, under a specialized care programme, the ICBF provided care for 275 minors extricated from the armed conflict.

1.2. Disposal of anti-personnel mines

305. In fulfilment of the obligations deriving from its status as a signatory of the Convention on the use, stockpiling, production and transfer of anti-personnel mines and their destruction, and even before the Convention formally entered into force in Colombia, the National Government, through the Ministry of Defence, began work on the location and destruction of anti-personnel mines.

306. For the effective discharge of the commitments deriving from the Ottawa Convention, ratified by Colombia, the Programme for the Prevention of Accidents caused by Mines and Care for Victims was launched within the President's Programme for human rights and international humanitarian law. Under this programme, and in cooperation with national and international civil organizations, the Monitoring Centre on Action against Anti-Personnel Mines was started up. Since then a historical review has been carried out of accidents and incidents caused by anti-personnel mines and other explosive devices since 1990, particular attention being focussed on 16 municipalities in the departments of Santander, Antioquia and Bolívar. In addition, and under the same programme, a Care for Victims of Anti-personnel Mines project is in course of implementation in those 16 municipalities. In its second phase the project is extending its scope to an additional 16 municipalities situated in the departments of Cauca, Valle del Cauca and Antioquia.

307. Furthermore, under Decree No. 2113 of 8 October 2001, the National Intersectoral Committee for Action against Mines and the technical Committees for Prevention, Care of Victims and Marking, Mapping and Disposal were set up. In addition, with the support of the International Organization for Migration and the Corporación Justa Paz, work has begun on the preparation of a campaign for the promotion of awareness through the mass media.

1.3. Criminalization in domestic law of atrocities committed in connection with the armed conflict

308. The adoption of the new Penal Code (under Act No. 599 of July 2000) is a significant step forward in the fulfilment of the international commitment accepted by the State of Colombia by

its ratification of the four Geneva Conventions and of the two Protocols additional to those conventions.

309. As is stated in the text of the provisions of those international instruments (article 1 common to the four Conventions and article 1 of Protocol I), the obligation incumbent on each State Party is "to respect and ensure respect...in all circumstances" for humanitarian provisions. Thus a State has an international duty to take the broadest possible gamut of measures and to set in motion mechanisms designed to ensure observance of those instructions and compliance with the prohibitions by the members of its armed forces and to make the necessary efforts to ensure that existing organized dissident and armed groups existing within its territory adopt these minimum humanitarian standards.

310. One of the measures for implementation conventionally deemed to be of particular importance is the introduction into domestic penal law of provisions declaring typically illegal and culpable, and subject to *jus puniendi* if committed, all acts deemed under international humanitarian law to be "grave breaches" (articles 50, 51, 140 and 147 of each of the four Conventions and article 85 of Protocol I)

311. In strict accordance with the premises of international public law, and in particular with the provisions of international humanitarian law, the draft penal code submitted by the Public Prosecutor of the Republic, passed through the legislative chambers and approved by the President of the Republic as Act No. 599 of 29 July 2000, defines 30 acts or basic types of acts (in articles 135-164) as criminal in its Title II ("offences against persons and property protected by international humanitarian law").

312. It should be emphasized that these penal definitions comply with the technical criteria which have emerged in international legal doctrine since the trial of the Nazi war criminals in Nuremberg and the principles consolidated by the United Nations bodies which have been working on the subject for 50 years (Resolution 177 of 21 November 1947 on the formulation of the principles recognized in the Charter of the Nuremberg Tribunal and the judgment of the Tribunal, Resolution 3074 of 3 December 1973 concerning principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, and the more recent trends as laid down in the Statute of the International Criminal Court and other instruments of universal public law.

313. Criminalization is in fact based here on the concept of the undefined active subject, so that any of the criminalized acts may be committed either by a private individual or by a public official, a member of the armed forces or a member of an outlawed armed group, and any person who commits any of these acts may be charged; thus the language used is in accordance with the international instruments mentioned.

314. Equally, and in so doing incorporating the most progressive theories on the subject, which have very rightly pointed out the need to punish the commission of war crimes committed both in international and non-international armed conflicts with equal severity and in accordance with the same parameters, that the contextual circumstances of their occurrence in one or the other type of conflict should not affect in any way the degree of responsibility and the punishment for the crime committed, and that the definition of the crimes and of the relevant penalties makes no distinction between the two types of conflict.

315. Within the current framework of comparative law the inclusion of these serious violations within the ambit of domestic penal law constitutes an exceptional case, not only with regard to the degree of criminality and the scope of the acts so criminalized, but also with regard to their inclusion in ordinary criminal law rather than in the military criminal code.

316. In addition to the doctrinal principles underlying the formulation of these crimes and their extremely broad definition - and this point deserves special emphasis - the definitions of criminal acts introduced constitute a highly significant step towards the necessary adaptations in the law which the impending ratification of the Statute of the International Criminal Court will require in order to bring into effect the principle of complementarity, under which that court would be able to take cognizance of crimes whose seriousness is of concern to the international community as a whole which have not been investigated and tried properly or in accordance with internationally recognized guarantees of due process.

317. The protection and legal guardianship conferred on all the persons and property protected - that term covering members of the civilian population, persons not taking part in hostilities, civilians in the power of the adverse party, persons out of condition to fight on account of wounds, sickness or shipwreck, medical or religious personnel, journalists on mission or accredited war correspondents, combatants who have laid down their arms by reason of capture, surrender or any similar cause - seeks to secure practical observance of the essential humanitarian principles of immunity of the civilian population, the distinction between combatants and non-combatants, proportionality and non-discrimination in the employment of weapons and methods of warfare as well as of the principle of not causing unnecessary or superfluous suffering and coincides in its essence and substance with the provisions adopted in the Rome Statute of the International Criminal Court.

318. In this way the State of Colombia seeks to contribute to the regularization and humanization of the conflict by use of the dissuasive and preventive power of the penal measures applied to persons who fail to comply with the minimum humanitarian standards which the best elements in universal legal tradition have elaborated over the centuries and consolidated thanks to the most recent technical and doctrinal refinements. The serious violations of the provisions of international humanitarian law which are now criminalized in the Penal Code of Colombia are as follows:

- homicide; punishable by up to 40 years' imprisonment;
- personal injury, punishable by over 6 years' imprisonment;
- torture (penalty up to 20 years' imprisonment);
- rape (penalty up to 18 years' imprisonment);
- sexual acts with violence, punishable with up to 9 years' imprisonment;
- forced prostitution or sexual enslavement, punishable by up to 18 years' imprisonment;
- use of illicit weapons and methods of warfare, which carry a penalty of up to 10 years' imprisonment. This is a penal category which, by its comprehensive nature, embraces the conventional prohibitions on the use of certain weapons in respect of

which the relevant international instrument does not provide for any penalty and the applicability of which to both types of conflict goes further than the scope of the protection provided under the Rome Statute;

- perfidy (punishable by up to 8 years' imprisonment);
- acts of terrorism, punishable by up to 25 years' imprisonment. The inclusion of such acts, notwithstanding the difficulties inherent in the category, expands the legal guardianship traditionally offered;
- barbarous acts, which may give rise to up to 15 years' imprisonment;
- inhuman and degrading treatment and biological experiments, which carry a penalty of up to 10 years' imprisonment;
- acts of racial discrimination; all discriminatory practices are punishable by up to 10 years' imprisonment;
- hostage-taking, punishable by up to 30 years' imprisonment. The severity of this penalty is designed to check the perverse increase in this practice; in 2000, 3,706 persons were taken hostage, 1,840 of them (49%) by the subversive groups;
- illegal detention and withholding of due process, the penalty in respect of which may not exceed 15 years' imprisonment;
- use of force to obtain support for acts of war, punishable by up to 6 years' imprisonment;
- pillage on the field of battle (punishable by up to 10 years' imprisonment);
- failure to provide aid and humanitarian assistance (punishable by up to 5 years' deprivation of liberty);
- impeding medical and humanitarian operations (penalty up to 6 years' imprisonment);
- destruction and seizure of protected property, such as civilian property which is not a military objective, cultural objects and items for religious worship, objects indispensable to the survival of the civilian population or the natural environment and works and installations containing dangerous forces (maximum penalty 10 years' imprisonment). This is designed as a response to the approximately 100 indiscriminate attacks on defenceless population groups committed during 1999 and 2000 respectively;
- destruction of medical items and installations (punishable by up to 10 years' imprisonment);
- destruction or illicit use of cultural objects and places of worship, punishable by imprisonment not exceeding 10 years. This measure incorporates and goes beyond the scope of the protection provided by the 1954 Hague Convention on these subjects and the humanitarian provisions contained therein;

- attacks against works and installations containing dangerous forces, which carry a basic penalty of up to 15 years' imprisonment. The maximum is increased to 20 years if the attack has any effect on the subsistence of the civilian population;
- reprisals; these are criminalized absolutely and punishable by up to 5 years' imprisonment. In scope this provision, which admits no exceptions of any kind, offers protection against such acts going considerably beyond that presently in force as laid down in Additional Protocol I (articles 20, 51(6), 52(1), 53(c), 54(4), 55(2) and 56(4), under which reprisals are permissible provided that they are proportionate, that the adversary has had due notice thereof, and as a last resort when the enemy commits serious violations, in order to prevent the continuation or increase in the number of those violations directed at prisoners of war or persons deprived of liberty;
- the deportation, removal or displacement of population (punishable by up to 20 years' imprisonment). Here the provisions prohibiting changes in the area of settlement of civilian population in a manner contrary to international law which may be imposed within the framework of an armed conflict, whether international or national, are amalgamated into a single provision;
- attacks against the means of sustenance of the civilian population and objects indispensable thereto (imprisonment not exceeding 10 years);
- failure to take measures for the protection of the civilian population (maximum penalty 10 years' imprisonment). This completes the scope of the legal protection of the civilian population offered by penal legislation;
- illicit recruitment, i.e., recruiting, or forcing to participate directly or indirectly in hostilities or armed actions, minors under age 18 (punishable by a maximum of 6 years' imprisonment). This provision offers protection greater in scope than current international conventional or customary law in that it extends minority to age 18, thus remaining consistent with the reservation expressed by the Government of Colombia concerning article 38 of the Convention on the Rights of the Child accepting that age as the borderline between infancy and adulthood, unlike that Convention and the two additional protocols (art. 77(2) of Additional Protocol I and 4(3) (c) of Additional Protocol II and even the Statute of the International Criminal Court (art. 8.(b)(xxvi) and (d) (vii), which set the age of majority at 15 years and define the violation in a much more restrictive fashion as being confined to active or direct involvement in hostilities. This provision seeks to end the involvement of some 6,000 minors in the armed conflict by outlawed armed groups;
- extortion or arbitrary levies (punishable by up to 15 years' deprivation of liberty); and, finally, destruction of the environment, punishable by up to 15 years' imprisonment.

319. Finally, it must be added that the general principles concerning the responsibility of accomplices, perpetrators and other persons participating in the commission of such acts, as well as that of their superiors (by omission) and of persons with a special duty of safeguarding, apply to all persons who commit any of the above-mentioned atrocities.

1.4. Other measures

320. On 28 November 2001 a Presidential Directive was issued on support for, discussion with and cooperation in the work of non-governmental organizations engaged in humanitarian activity in the country. That directive gave specific recognition of the work of those national and international non-governmental organizations engaging in the provision of aid, protection, assistance and counselling to victims of natural disasters, the internal armed conflict and other violent incidents and gives precise instructions to public servants requiring them actively to provide members of those organizations with the active support and cooperation necessary in the performance of their humanitarian work.

321. Reintegration. The Reintegration Programme, designed for demobilized members of the subversive movement, forms part of the measures for the implementation of international humanitarian law and the complementary efforts to the peace process being made. It includes economic aid for individuals, vocational and professional training, the financing of collective productive projects and various forms of associative labour. Currently the demobilization of over 5,200 former combatants is under way.

1.5. The Bojayá case

322. Undoubtedly the regrettable incidents which occurred in Bella Vista, the municipal capital of Bojayá (Choco), at the beginning of May 2002, when, as a consequence of actions by outlawed armed groups operating on Colombian territory, 119 persons were killed and over 100 injured and hundreds of families had to flee to escape from the situation to which the conflict had given rise, constitutes the most serious breach of international humanitarian law committed in Colombia during recent decades.

323. Once the incidents had occurred, on 6 May the Chancellor informed the Director of the Office of the United Nations High Commissioner for Human Rights in Colombia of the desire of the Government for its cooperation in the conduct of a humanitarian mission to the municipality of Bojayá (department of Choco).

324. The Director of the Office, Mr. Anders Kompass, responded favourably to the request of the National Government in a note dated 7 May and on 9 - 12 May carried out a humanitarian mission consisting of 5 United Nations officials with the Director of the Office at its head.

325. Regarding the background to the case, the United Nations stated in its report that *"On 25 March 2000 the FARC-EP conducted a military operation at Vigã del Fuerte and Bella Vista with the aim of taking control of the area. In the attack against the National Police post in Vigã del Fuerte, which was destroyed, 21 members of the police force were killed and some of the bodies were mutilated. In addition, three civilians were killed in the crossfire and civilian property sustained serious damage. During these clashes the FARC-EP killed six persons (including Mr. Pastor Damián Perea, the local mayor) whom they accused of cooperation with the paramilitary groups."* The report adds that *"Since then the FARC-EP have held control of the Middle and Upper Atrato from Las Mercedes, in the municipality of Quibdó, to Boca de Curvaradó, in the municipality of Carmen del Darién."*

326. The incidents of 1 May began with fighting in Vigça del Fuerte between illegal self-defence groups and the FARC guerrillas; the fighting was subsequently concentrated in Bojayá-Bella Vista, causing some 500 inhabitants to seek refuge in the church.

327. On 2 May the civilians in the church suffered when the FARC set off a gas-cylinder bomb, causing the deaths of 119 persons (including 45 children), injuring some 100 others and forcing hundreds of families in the zone to move away to Quibdó, the capital of the department.

328. On completion of the mission the Office submitted a report to the President of the Republic and to national and international public opinion concluding as follows:

“The FARC-EP are responsible for the violent deaths of over 100 civilians, injuries to over 80 persons and the destruction of civilian property by throwing gas-cylinder bombs during an armed clash with a group of paramilitaries ...

These acts constitute an attack on the civilian population and as such infringe article 3 common to the four Geneva Conventions and article 13 of Protocol II additional to those Conventions. In particular, they violate the principles of distinction, limitation and proportionality and that of immunity of the civilian population. International humanitarian law requires the parties in conflict to ensure the protection of the civilian population from the dangers arising from military operations (article 13 of Additional Protocol II).

In addition, the acts under consideration constitute an indiscriminate attack on the civilian population. Although the specific case is not expressly covered by article 3 common to the four Geneva Conventions or by Additional Protocol II, within an armed conflict of a non-international nature, any acts committed in breach of paragraphs 1 and 2 of article 13 of that protocol may be considered as such. Likewise, and considering that the above-mentioned humanitarian principles apply equally to internal armed conflicts, attacks with the use of methods which do not adequately distinguish the objective are equally prohibited in conflicts of this type. It is important to point out that, as the Office of the High Commissioner has repeatedly observed, certain methods of attacking, such as gas-cylinder bombs, are difficult to aim and lacking in precision.

(...) As the attacks in question caused the deaths of civilians, they constitute murders of persons protected by international humanitarian law. In this sense they specifically violate paragraph 1, subparagraph (a), of article 3 common to the four Geneva Conventions and article 4.2. of Protocol II. These provisions prohibit the combatants from committing violence to the life, health and physical or mental well-being of persons not taking part directly in the hostilities or who have ceased to take part therein. Both sets of provisions protect civilians in the first instance.

(...) The FARC-EP are also responsible for violation of the obligation to protect cultural objects and places of worship laid down in article 16 of Protocol II. It must be emphasized that that provision implies a prohibition on committing “acts of hostility” against places of worship or utilizing protected property “in support of the military effort”. A hostile act is to be understood as “any act related to the conflict which causes or may cause material damage to protected property”.

It must be added that the FARC-EP are also responsible for the incidents which occurred in Napipk on 6 May when it once again exposed the civilian population in its

clash with the marine infantry when the latter was seeking to reach Bellavista. It should be mentioned that the ICRC states that the definition of an attack is "acts of violence against the adversary, whether in offence or in defence".

The FARC-EP are also responsible for the many and large-scale displacements of population caused by its actions. The acts in question infringe article 17 of Additional Protocol II, which prohibits both ordering the displacement of the civilian population for reasons related to the conflict (except where necessary for the security of the civilians or for imperative military reasons) and forcing civilians to leave their own territory for reasons connected with the conflict. The same provision also imposes an obligation to take all possible measures for the care of the displaced population.

(...) It should be pointed out that some breaches of international humanitarian law constitute war crimes on account of their gravity. These include the murder of protected persons, attacks against the civilian population, attacks on places of worship and forced displacement.

It is important to note that the Statute of the International Criminal Court contains a definition of war crimes committed in relation to internal armed conflicts. Article 8.2 defines war crimes as follows: "in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions" and "other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law".

329. On the subject of breaches of international humanitarian law attributed to the United Self-Defence Organizations of Colombia (AUC) the report states:

"The paramilitary group known as Autodefensas Unidas de Colombia (United Self-Defence Organizations of Colombia) also bears responsibility in the incidents which took place in Bojayá on 1 and 2 May 2002 in which, in the course of a clash with the FARC-EP, 119 civilians were killed, some 80 injured and a number of items of civilian property destroyed.

Even though the deaths of the civilians was the direct consequence of the cylinder bombs thrown by the FARC, the paramilitaries incurred responsibility in the humanitarian field in that they exposed the civilian population to the dangers of military action.

In this sense the actions of the paramilitaries, which violated the principles of distinction and of immunity of the civilian population, constitute an attack on the civilian population and therefore a breach of article 3 common to the four Geneva Conventions and article 13 of Additional Protocol II.

As stated above, international humanitarian law requires the protection of the civilian population to be guaranteed in all circumstances. To that end article 13 of Additional Protocol II stipulates that the civilian population shall enjoy general protection against the dangers arising from military operations. That term should be understood as covering all contexts, both offensive and defensive (...).

Clearly, by participating in acts of war in a populated area in which numerous civilians were present, the paramilitaries failed to respect the obligation to protect persons not directly taking part in the hostilities. Equally, these combatants, by taking up positions in the neighbourhood of places and buildings in which the civilians had taken refuge, not only failed to reduce collateral losses to a minimum and to take safeguarding measures, but on the contrary increased the risk of exposure for those civilians.

In addition to the foregoing, the paramilitaries failed to comply with the obligation contained in article 16 of Additional Protocol II concerning the protection of cultural objects and places of worship and the prohibition on use of protected objects in support of the military effort. It must be pointed out that this implies a duty to take all possible measures to attempt to prevent their use in support of military operations with a view to avoiding their destruction or damage. Inasmuch as some members of the paramilitary group attempted to enter the church in Bellavista and, when faced with the opposition of the community, remained in the neighbourhood of the church, they exposed not only the civilian population but also the protected building.

The AUC has also incurred responsibility through its conduct and presence in the urban centres of Bellavista and Vigça del Fuerte during the days following 2 May. By so doing they again exposed the civilian population to possible attacks. By so doing it infringed both the humanitarian principles referred to earlier and the requirement to protect the civilian population.

The AUC is also responsible for the successive and large-scale displacements of the civilian population in the region by reason of its activities, the threats it uttered and the combats in which its members took part. Behaviour of this kind violates article 17 of Additional Protocol II.

Considering that the theft of provisions, goods and chattels and boats belonging to the civilian population of Bellavista has been attributed to the paramilitaries, the AUC is responsible for pillage and has thus infringed article 4.2(g) of Protocol II Additional to the four Geneva Conventions.

The considerations already advanced concerning war crimes in the section examining the responsibility of the FARC-EP are applicable to the paramilitaries.

Regarding the possible responsibility of the State in relation to its general duty of protection, the Office states that "if that failure to protect is formally established - that is to say, through investigation by the competent authorities - the State will be responsible for the violent deaths and injuries suffered by civilians and for the damage to civilian property caused during the incidents described in this report. That responsibility also gives rise to the obligation to compensate the victims and their families."

On this subject the report states that the Office has taken note of the decision of the Public Prosecutor of the Nation, Dr. Edgardo Maya, to conduct in this connection "*the relevant disciplinary inquiries with a view to determining why the State agencies responsible for providing guarantees of security and protection to the civilian population of the Chocó did not adopt more effective, timely and appropriate measures to prevent such a tragic and serious occurrence as that which took place*".

The Vice-President of the Republic, after taking cognizance of the United Nations report, made a similar pronouncement. He first stated that "in the reconstruction of the facts, the report refers to situations which, in the view of the Office, may constitute omissions by public servants in their duties of safeguarding and protection". More specifically, he said, "As the report states, the Office of the High Commissioner is not a jurisdictional body which can carry out judicial inquiries, collecting evidence and establishing responsibilities. Consequently the Minister shares the recommendation of the Office that it is for the competent authorities to conduct the relevant criminal and disciplinary investigations and that it is they, and not bodies with no competence to do so, which should determine responsibilities and where they lie."

The Vice-President and Minister of Defence added, in a clear statement of the political will of the administration of President Pastrana in this matter: "The Ministry of National Defence, as always, reaffirms its determination that a full light should be thrown on these incidents and to cooperate with the competent authorities to that end".

The report ends with recommendations on judicial and disciplinary matters and on matters relating to public order; displacements; guarantees of economic, social and cultural rights; compliance with international humanitarian law; cooperation with the Office; and peace. As the Vice-President announced, the National Government will, "within the framework of its functions and in coordination with other governmental agencies and the regional authorities, continue to provide care for the population affected by these incidents, and, to that end, it has taken note of the recommendations on this subject contained in the report".

330. The foregoing reflects not only the concern of the Government of Colombia over the occurrence of incidents so regrettable as those which have occurred in the department of Chocó, but also its unshakeable determination and spirit of cooperation, not only in the investigations to be undertaken by the competent authorities to establish responsibilities and where they lie (by means of appropriate disciplinary and criminal proceedings), but also in concern with the consequences which these violations of humanitarian standards have had for the civilian population of the zone.

2. The search for peace

331. Already before his election as President of the Colombian people, Andrés Pastrana addressed the country unambiguously, affirming that the peace policy of his administration would not be confined to dialogue and negotiation with the illegal groups. He thus emphasized the importance of involving all sectors of society in the construction of a stable peace for Colombia.

332. Thus for four years a comprehensive peace policy was implemented. Its component elements - diplomacy for peace, a frontal attack on drug trafficking, the strengthening of the Public Force, the social component of Plan Colombia - were pursued with substantial results. At the same time, dialogue continued with the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN).

333. Although at present the dialogue with the FARC and the ELN has been broken off, the last four years have been full of experience, both good and bad, which should be absorbed by

Colombian society as a whole in order to continue working on the positive aspects and at the same time avoid the obstacles which brought the talks to a halt.

334. President Pastrana and his government team have left a ploughed field in which the seeds of future negotiation with the insurgents must be sown. There is an open agenda with major themes and reforms which deserve continued study and analysis, since it depends on them whether ultimately social justice is achieved by the free exercise of democracy for the construction of a country and society from which it is our desire that the need to resort to arms or violence will be absent.

335. Doubtless this process is subject to many interpretations, which will emerge with time.

2.1. Negotiations with the FARC-EP

From dialogue to negotiation

336. Notwithstanding the insistence of the Government on beginning the process in a peaceful climate, the negotiations began in a conflictual climate in view of the ambiguous attitude of the FARC on the matter. However, it is also certain that to obtain peace one could not wait until peace existed.

337. During the first four months a process of dialogue took place with a view to defining an agenda for negotiations. Initially, on 7 January 1999 a Dialogue Committee was established with a membership including personalities from different sectors of society. The purpose of this measure was to make the Committee a representative body at national level. Three months later, on 6 May 1999, the Common Agenda for Change to Achieve a New Colombia was signed; this document contained 12 major items, which were subsequently grouped into three thematic groups: (1) social and economic structure; (2) human rights, international humanitarian law and international relations; and (3) democracy and the political structure of the State.

Involvement of civil society

338. In recognition of the fact that the construction of peace requires commitment and confidence in the negotiation process on the part of all Colombians, and that experience shows that the success of any peace agreement will depend to a considerable degree on the positive relationship existing between society and the agreements, The National Thematic Committee was established as an instrument to channel the participation of Colombian citizens within the negotiation process.

339. Equally, with a view to involving civil society in the peace process, the negotiations were conducted openly in view of the whole country. Through the communication media Colombians were kept informed of what was going on at the negotiating table and of the advances and setbacks in the peace process.

Involvement of the international community

340. In the international field the National Government, headed by its President, developed an aggressive strategy of diplomacy for peace, designed to internationalize the negotiating process by disseminating throughout the world a knowledge of realities in Colombia and to secure political and economic support for the construction of peace. Active and continuing links with the

international community have always been deemed an element of tremendous importance, and from the outset its political support and participation has been sought.

341. In January 2000 the National Commission for Dialogue and Negotiation made a tour of Europe to study the development models of certain countries. The next step was taken in June 2000 with an international public meeting on crop substitution and the environment; among other things this meeting opened the doors for participation by the international community in the peace process.

342. Although at the beginning the process was deemed impossible for the FARC, the National Commission for Dialogue and Negotiation consisted of three bodies: (1) a group of 28 friendly countries and international organizations supporting the process; (2) an International Facilitation Committee, made up of 10 countries; and (3) a Committee for Continuing Participation in the Work of the Commission.

343. The purpose of the group of friendly countries and international organizations was to accompany the process by holding regular meetings with the National Commission for Dialogue and Negotiation to receive information on the situation and development of the negotiations.

344. The task of the International Facilitation Committee was to facilitate, at the request of the parties, the advance of the process and arrival at a negotiated political solution. Finally, the Committee for Continuing Participation in the National Commission for Dialogue and Negotiation was established to enable its members to attend all the meetings of the Commission, to take an active part in those meetings at the request of the parties and to assist with their good offices to overcome any obstacles which might arise.

Peace as a policy of the State

345. From the very beginning the Government endeavoured to give the peace policy the status of a policy of the State transcending changes of government.

346. To that end the Common Front for Peace and against Violence was set up, containing representatives of all the political movements in the country, as an advisory body to the President of the Republic on peace-related matters.

347. The National Commission for Dialogue and Negotiation, for its part, incorporated within itself the Political Support Group, originally established under the Caquetania Agreement of 1999 to permit a better flow of information on developments, progress and incidents in the peace process among the different political movements in the country. Its membership consisted of the presidents of the parties and movements.

348. Within these bodies there was agreement to support the negotiated political solution as an appropriate manner in which to bring to an end the armed conflict in Colombia and to support the policies of the State in favour of peace and against paramilitarism.

Agreement for the release of soldiers and members of the police force

349. On taking up the Presidency the Government of Andrés Pastrana learned that the FARC was holding some 400 soldiers and members of the police force for use in possible negotiations on their release as a means of bringing pressure on the new government.

350. In exchange for the release of these soldiers and police officers, the FARC initially demanded - and is still demanding - an Act providing for continuous exchanges. Subsequently they spoke of a single exchange of prisoners (on the basis of a humanitarian agreement concluded under article 3 common to the Geneva Conventions). Thirdly, they welcomed a proposal of the International Committee of the Red Cross to receive prisoners taken by both parties and send them to a neutral country, where they would remain until a peace agreement had been signed between the Government and the Secretariat of the FARC. The National Government was categorical; none of the proposals made by the FARC were worthy of consideration.

351. Finally, an agreement based on international humanitarian law was reached giving effect to the humanitarian provisions on the release of soldiers and members of the police; under that agreement 349 soldiers and members of the police, who had been held by the FARC for between 2 and 4 years, and 14 sick captive guerrillas, recovered their freedom. The agreement demonstrated that international humanitarian law is a necessary framework for the solution of the conflict, and also that the parties can arrive at agreements.

The move towards negotiation in a peaceful climate

352. Generally speaking, the difficulties arising in the peace process derived from the problems of negotiation in a conflictual climate. This situation, which at one time enabled the negotiation process to begin, explains why a year later it became difficult to continue negotiations without a serious and verifiable ceasefire and cessation of hostilities. Eventually, in mid-2000, the parties exchanged proposals for a ceasefire and cessation of hostilities and at the beginning of 2002 presented proposals for a diminution of the intensity of the conflict, this notwithstanding the fact that the FARC had stated at the beginning of the process that it would not discuss this subject until 80% of the agenda items had been negotiated.

353. The Government, seeking to put an end to extortion and abduction, proposed a bilateral and verifiable ceasefire and cessation of hostilities for a set period, extensible by agreement between the parties and based on three fundamental principles - indivisibility (of the ceasefire and cessation of hostilities); verifiability and verification; and geographical location.

354. In November 2000 the FARC once again blocked the proceedings of the Negotiation Commission. Following this, the Head of State held a third meeting with Manuel Marulanda, as a result of which the Los Pozos agreement was signed under which the FARC undertook to cease to block the work of the Negotiation Commission and advance the process.

355. Another result of the Los Pozos agreement was that the parties created a Committee of Personalities with the task of making recommendations on machinery to put an end to "paramilitarismo" and reduce the intensity of the conflict.

356. The document presented by that Committee proposed an appropriate series of steps for the immediate development and intensification of the peace process, based on the following elements: (a) a truce with a ceasefire and suspension of military hostilities; (b) once the truce, the ceasefire and the cessation of hostilities has been agreed to, negotiation of the items in the Common Agenda; (c) mechanisms for submission of the agreements to a popular referendum and laying down of arms by the FARC; and (d) beginning of the post-conflict phase.

357. With the signature of the San Francisco Agreement in October 2001 the parties undertook immediately to begin the comprehensive study of the document submitted by the Committee.

358. Even so, in January 2002 the FARC claimed that there were no guarantees of security in the zone for the continuation of the negotiations. To this the Government replied that the conditions did exist and called for a resumption of the negotiations mapped out in the San Francisco Agreement. In view of the refusal of the FARC to unblock the proceedings and its manifest unwillingness to give further effect to what had been agreed in San Francisco, the Government declared the proceedings suspended. Before this announcement the President gave the FARC 48 hours to meet with the United Nations and, if it had not modified its position during that period, he gave it a further 48 hours to evacuate the neutral zone.

359. After 2 days of meetings with James Lemoine, the United Nations delegate, the FARC presented to the public a draft agreement without consulting the Government. That agreement contained no explicit recognition of the guarantees of security in the neutral zone. The Government replied that the draft agreement was unsatisfactory and that the 48-hour period for evacuation had started to run. In this situation the facilitating countries went to the neutral zone in a final attempt to salvage the process. Finally the FARC accepted that there were guarantees for negotiation and stated that it was going to put the San Francisco Agreement into effect immediately.

360. This marked a turning-point in the proceedings, and on 20 January the parties agreed on a time-table to implement the San Francisco Agreement and immediately begin the study of a truce, with a ceasefire and cessation of hostilities. The proposed date set for the conclusion of the first agreements following the dampdown of the conflict was 7 April.

361. During the month of February the parties submitted their proposals for reducing the scale of the conflict, signed an agreement on permanent presence by national and international bodies in the Negotiation Commission and met with the Presidential candidates in Caguán.

362. Notwithstanding this progress, on 20 February the FARC seized an Aires aeroplane with a view to abducting Senator Eduardo Gechem. On the same day the President declared the peace process terminated and decreed the abolition of the neutral zone with effect from midday on the same day.

2.2. Results of the peace proceedings with ELN

363. Notwithstanding the erratic behaviour of this insurgent group (to quote some examples: the blowing-up of the central pipeline in Machuca, the large-scale abductions at La Marça, the theft of the Avianca Fokker and the abductions at Ciénaga del Torno and Km. 18 on the Vña al Mar), the Government has stood firm in its determination to pursue dialogue in the firm conviction that this is the most appropriate way of securing peace. On 9 October 1998, by Decision No. 83, the Government declared the process of dialogue with the ELN open and recognized the political nature of that insurgent group. Some days later the Government formally confirmed its position and indicated that it would take part in the meeting at Rño Verde to discuss the details of a proposal for a National Convention. Subsequently it showed willingness to study the possibility of establishing a demilitarized zone in southern Bolívar, and with that aim in mind it organized a wide-ranging democratic and participative exercise with the communities of the region. Even after this proposal fell through, the Government was still prepared to resume a process of dialogue on a different agenda in November 2001 and continued to insist on the importance of dialogue and the reduction of the intensity of the conflict.

364. During these four years the Government has shown determination in its peace proposals and generosity in times when a search for alternative approaches had to be made to overcome the natural obstacles which are inevitably encountered in proceedings of this type. However, dialogue for dialogue's sake has no sense unless paralleled by a genuine will to achieve concrete results which will benefit all Colombians and lead to peace. The Government therefore had no hesitation in suspending the peace process when the ELN was unwilling to seek alternative courses which would overcome these obstacles, showing no willingness to seek a negotiated solution to the conflict.

365. The efforts of the Government, its conviction that a political solution to the conflict could be found and years of negotiation (although interrupted) helped to bring the ELN to a decision to take its place in the Negotiation Commission for the purpose of reaching agreements which would lead to peace and reconciliation. The ELN affirmed this position in the Geneva Declaration, the Agreement for Colombia, the Havana Declaration and other statements.

National Convention

366. Following the meeting at Puerta del Cielo, the ELN put forward a proposal to hold a National Convention as part of the peace process; the proposal was approved by President Pastrana in October 1998. However, at first the proposal was confused, and it was not clear what the characteristics, attendance, agenda and structure of the Convention would be.

367. To define these elements a meeting was held at Rño Verde, and a Preparatory Operative Committee on the National Convention was established consisting of the Government, the ELN and some representatives of civil society. Within that committee a document was signed permitting a clearer definition of the Convention.

368. Although considerable progress had been made with the preparations for the Convention, and 13 February 1999 had been fixed as the date for the opening, in December 1998 the ELN demanded that the Government establish a demilitarized zone. This new demand by the ELN surprised not only the Government, but also the members of the Preparatory Operative Committee, who until then had been preparing, together with the ELN, a plan for the Convention which was incompatible with the establishment of such a zone.

Meeting zone

369. In January 1999 the Government agreed to study the possibility of creating a demilitarized zone in the southern part of Bolívar to be known as the "meeting zone". To that end the Government and representatives of the Central Command of the ELN held several meetings between February and April. However, when the conversations were making progress and the Government saw possibilities of arriving at an agreement which would permit a formal start to the process, on 12 April 1999 the ELN seized an aeroplane belonging to Avianca and on 30 May abducted 143 persons from the La Marça church in Calç. The Government unhesitatingly condemned this act and decided to suspend all attempts at dialogue until all the abducted persons had been unconditionally released.

370. Not until September did the Government, in a new attempt to make progress in the search for a political solution, meet with representatives of the ELN in Havana, thus reopening the discussion on the possibility of establishing a meeting zone in the southern part of Bolívar. During the following months the Government and the ELN worked hard on the definition of the

characteristics and the geographical boundaries of the zone, but they came up against an obstacle out of their control, namely the opposition of the communities in the southern part of Bolívar to the idea of creating a meeting zone.

371. Setting aside the difficulties to which the opposition of the population gave rise, the President announced to the country that, for the holding of the National Convention and to advance negotiations with the ELN, a meeting zone would be established in the municipalities of Yondó, Cantagallo and San Pablo under national and international supervision. For that purpose the Minister of the Interior would begin consultations with the authorities and the population of the region.

372. As a consequence of that announcement the inhabitants of the regions concerned again blocked the roads leading to the centre and the North of the country as a protest against the possible creation of a meeting zone.

373. Notwithstanding the efforts made, once again when the conversations were making good progress the ELN adopted a defiant attitude, not only towards the Government, but also towards the Group of Friendly Countries and the Facilitation Committee, which at the time were in the southern part of Bolívar performing their assigned tasks; on 17 September the ELN abducted some 70 persons at Km 18 of the Vía al Mar in the department of Valle. Immediately, by order of the President, the army went into action to rescue the persons abducted, who were being held in the region of the Farallones de Calz. After over a month of intense military operations and difficult political negotiations, the Government and the ELN concluded an agreement under which the ELN undertook to release the 19 persons whom it was still holding captive. Thus the lives of these Colombian citizens were saved and they recovered their freedom.

374. Once the impasse created by the multiple abduction at Km 18 on the Vía al Mar had been ended, the Government took a policy decision to make further progress towards the creation of a meeting zone. To that end a series of meetings were held in Havana at which the rules for the meeting zone and for its supervision as well as its boundaries were agreed on. The meeting ended with a unilateral commitment by the ELN to release on 23 December 42 soldiers and members of the police which it was holding.

375. Once the rules had been agreed on the Government considered it appropriate to bring to an end the process of dialogue and participation begun with the communities in the southern part of Bolívar and thus ensure the viability and sustainability of the future zone.

376. Convinced that any new obstacles could be overcome without major difficulties, the Government continued with the preparations for the establishment of the meeting zone. Among other things, the Government requested the sponsorship of the United Nations for a group of foreign technical experts in supervision, members of the Forum for Peace and Conflict Prevention, to visit the country and recommend to the parties a plan for supervision adapted to the characteristics of the region and the conflict.

377. Notwithstanding the desire of the Government, in April the ELN suddenly broke off the conversations.

378. In mid-June a new meeting between the ELN and the Government following the meeting of 5 April. The background to that meeting was the Formal Meeting on the Humanitarian Challenge

held in Geneva. At that meeting the Government presented the ELN with a detailed schedule of the measures which still had to be taken and the problems to be settled before the zone could be formally established. As a result of that meeting the parties agreed to hold a meeting which would permit progress in the definition of the outstanding problems.

379. In pursuance of that agreement, the Government and representatives of the ELN met on Isla Margarita (Venezuela) at the end of June.

380. The parties met again near Caracas on 5 August. However, at that meeting the Government discovered that the ELN had suddenly changed its position, introducing new elements into the discussion and, above all, setting new conditions unacceptable to the Government. The latter, in an attempt to salvage the process, offered five alternative proposals to the subversives. It proposed to establish the zone in stages; to conduct the peace negotiations outside the country; to reduce the size of the zone so that the process could begin more rapidly; to change the location of the zone; and, finally, to begin the negotiations and the National Convention outside Colombia and to transfer it into the country at a later date. All these proposals and alternatives were systematically rejected by the ELN, thus casting doubt on the genuineness of its desire for peace.

381. In this situation the conversations with the ELN were broken off on 7 August 2001. The President once again affirmed his conviction that negotiation was the only way forward to the attainment of peace and that during his term of government the door would always be open for dialogue.

Reduction of intensity of the conflict

382. Although direct conversations with the ELN were suspended between August and November 2001, The High Commissioner for Peace held meetings with various sectors of Colombian society and the international community, including the Facilitation Committee and the Group of Friendly Countries, to explore possible paths which might lead to a resumption of negotiations for peace.

383. On the initiative of the Government the parties made a number of approaches to one another, and on 24 November the peace process took a new direction with the signature of the Agreement for Colombia. On that occasion the Government and the ELN agreed on a transitional agenda which provided for five meetings on specific themes outside the country and meetings of bilateral working groups to discuss a ceasefire and the ending of hostilities, measures to reduce the intensity of the conflict and problems in the energy sector.

384. The first working meeting ended on 15 December with the signature of the Havana Declaration, in which the ELN undertook to make important announcements concerning peace. Thus on 17 December the ELN unilaterally declared a Christmas truce and agreed to suspend multiple abductions.

385. With the resumption of dialogue, the parties agreed on a date for the Peace Summit, the purpose of which was to undertake, together with civil society and the international community, an evaluation of the scope, successes and obstacles in the process of dialogue which would enable the future prospects for the latter to be determined.

386. On the basis of the recommendations which emerged from the meeting held in February the Government and the ELN began to discuss the possibility of a truce with a ceasefire and the

cessation of hostilities. Subsequently some 10 meetings were held to make progress in the discussion of the matter.

387. Although there were themes on which the Government and the ELN reached a substantial measure of agreement, the difficulties encountered in matters of subsistence of the members of the ELN during the period of the truce and the separation of the forces were insurmountable. The proposals of the ELN on the two subjects were unacceptable to the Government.

388. In view of the impossibility of arriving at an agreement on a truce with a ceasefire and a cessation of hostilities, the Government proposed to the ELN that work should begin on a humanitarian agreement which would make for a reduction in the intensity of the conflict. The terms of this new proposal were agreed to by the representatives of the ELN in Havana, who, with express ratification by their high command, had full powers to commit their organization. However, only minutes before committing themselves the ELN decided not to sign this new agreement. In the circumstances the Government once again decided to suspend the peace process to enable the President-elect to resume it if he considered such a step desirable.

The international community

389. From June 2000 onwards the peace negotiations with the ELN had the support of the Group of Friendly Countries, consisting of France, Spain, Cuba, Switzerland and Norway. That group of countries has helped the parties to come through moments of crisis which have occurred during the last four years and have repeatedly served as facilitators, guarantors, witnesses, counsellors and supervisors.

Civil society

390. In view of the difficulties encountered in the process, some of the members of the Operative Committee joined up with another group of persons in civil society to form what is now known as the Facilitation Committee and offered their good offices to the parties with the aim of facilitating the resumption of dialogue. That offer was accepted by both the Government and the ELN.

The door to peace is still open

391. After four years of unremitting efforts to achieve peace, it can be affirmed that the State and society have gained from the process conducted under the leadership of President Andrés Pastrana. The gains include legitimacy, awareness of the solution, knowledge of the problem, the current position on the international plane, the strengthening of the armed forces, the political triumph over the guerrilla movement, the strengthening of national unity around the aim of peace, the increased maturity of the media and the strengthening of the democratic institutions.

392. The guerrilla movement has missed the greatest opportunity in its history to convert itself into a party in political history, preferring to remain a participant in a story of death and sadness.

393. But Colombian society will also have to decide what kind of a peace it wants and in what form. Above all, it will be necessary to dissipate the hatred which so much violence has bred in the country. This process of fostering coexistence may be more complex than dialogues with the guerrillas, but without it Colombia will never achieve reconciliation.

IV. THE OFFICE OF THE PEOPLE'S ADVOCATE 1992-2002

394. The 1991 Constituent National Assembly decided to create the Office of the People's Advocate as a body entrusted to ensure "the promotion, exercise and dissemination of human rights". With that decision the Assembly was responding both to national needs and to international requirements.

395. Firstly, since the rights of the individual form the backbone of the Constitution, it was necessary to create an institution with the specific task of disseminating and protecting human rights. To attain this objective the Constituent Assembly decided to follow the model in general use in the region, consisting of the creation of an autonomous and specialized body (generally bearing the title of People's Advocate) to perform those tasks.

396. Secondly, in preparation for that occasion Colombia had already ratified the principal international treaties on human rights. Precisely with a view to facilitating the practical implementation of those treaties, the United Nations, with particular emphasis since the beginning of the 1980s, has been recommending that member States create national institutions for the promotion and protection of human rights in the form of an Office of the People's Advocate, a committee on human rights or a specialized human rights institution; it expressed its readiness to advise and cooperate with States where necessary for the performance of that task.

397. Thus the establishment of the institution of Office of the People's Advocate signified the adaptation of Colombia's constitutional order to international requirements in the field of human rights and prevailing tendencies in modern constitutional theory.

398. The functions assigned to the People's Advocate were as follows:

"Article 282 of the Constitution. The People's Advocate shall ensure the promotion, exercise and dissemination of human rights. To that end it shall perform the following functions:

1. Advise and instruct the inhabitants of the national territory and Colombian citizens abroad in the exercise and defence of their rights before the competent authorities or private entities;
2. Publicize human rights and recommend policies for the teaching of human rights;
3. Invoke the right to habeas corpus and initiate actions of protection, without prejudice to the rights of the parties concerned;
4. Organize and direct the Office of the People's Advocate in the manner laid down by law;
5. Bring public actions in relation to matters within its jurisdiction;
6. Submit draft legislation on matters relating to its jurisdiction;
7. Report to Congress on the discharge of its functions;

8. Perform other functions as determined by law."

399. All these functions, and the organization of the Office of the People's Advocate itself, were subsequently regulated by Act No. 24 of 1992.

400. Unquestionably the work done by the Office of the People's Advocate during the 10 years of its existence demonstrates that the decision of the Constituent Assembly was an excellent one. The evaluations carried out by various daily newspapers on the occasion of the tenth anniversary of the 1991 Constitution reveal that the Office of the People's Advocate is one of the institutions most appreciated and recognized by Colombians.

401. In a recent report, produced by a number of institutions including the President's Programme to Combat Corruption, the World Bank and the Office of the Controller-General of the Republic, the Office of the People's Advocate was stated to be one of the three Colombian State institutions which the majority of the citizens considered to be honest. The report also states that the Office - like the other two agencies, the National Learning Service (SENA) and the Colombian Family Welfare Institute (ICBF) - are seen as institutions which are sensitive and close to the needs of Colombian citizens, and especially the poorest.

402. In addition, according to a study carried out by the National Advisory Centre in 1995², 76% of the persons who had sought the services of the Office of the People's Advocate emphasized the quality of those services, rating them "good" or "very good".

403. Likewise, the international human rights organizations have publicly recognized the work of the Office of the People's Advocate. For instance, the Office of the United Nations High Commissioner for Human Rights has done so in a number of its reports, such as its annual report for the year 2001³, in which it emphasizes "the role played by the Ombudsman's Office in promoting and protecting human rights and the fact that in so doing it has maintained continuous cooperation with OHCHR. The Ombudsman's Office has followed closely the main problems affecting the Colombian people, thus demonstrating a genuine commitment to its mandate".

404. The report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on his visit to Colombia in 1996⁴ contains the following:

"National institutions for the promotion and protection of human rights are giving increased attention to action to combat racism and racial discrimination. The national Ombudsman and the regional ombudsmen in Calç, Cartagena and Quibdo, for example, have begun human rights education programmes for the public, with emphasis on equality and non-discrimination."

405. The administrative model, the quality of the service provided, the closeness to the individual and the immediacy of defensorial action in Colombia have also served as benchmarks for other institutions established in recent years in other countries of Latin America.

² National Study on Perception of the Management of the Office of the People's Advocate, CNC, Tercero Mundo (eds.)1995, Santafé de Bogotá, Colombia.

³ E/CN.4/2002/17, 28 February 2002.

⁴ E/CN.4/1997/71/Add. 1, 13 January 1997, pp. 3-18.

406. The Office of the People's Advocate performs its functions through four directorates, eight branch offices and regional and sectional defenders active in every department of Colombia.

407. The national directorates are primarily concerned with the following areas:

Office of the Public Defender

408. This directorate acts on behalf of persons who for economic or social reasons are not in a position themselves to provide for the defence of their rights. It provides judicial and non-judicial representation for them to guarantee them full and equal access to the courts or against the decisions of any administrative authority. It should be noted that the Office of the Public Defender is active in the different branches of the law, namely in labour, civil, administrative, family and penal matters (the majority of cases falling within the last-mentioned category).

Judicial appeals and actions

409. This directorate coordinates action in cases of guardianship, the right of habeas corpus, actions by the people and public action on grounds of unconstitutionality. It also applies to the Constitutional Court for review of guardianship decisions which the Office considers should be reviewed by that supreme tribunal.

Examination and processing of complaints

410. This directorate handles, on its own authority or on application from individuals, petitions and complaints immediately and in an appropriate and informal fashion; it approaches authorities and private individuals to obtain solutions to these petitions and complaints and supervises the implementation of the outcomes it obtains. In addition to these functions this directorate is responsible for ensuring the protection of human rights in public institutions, and especially in prisons, judicial establishments, police premises and psychiatric internment centres.

Promotion and dissemination of human rights

411. The task of this directorate is to draw up and put into effect academic programmes for the teaching of human rights and the principles of democratic participation and to promote campaigns for respect for human rights. It has been conducting its dissemination work through the continuing publication of written texts and audiovisual and audio messages.

412. In addition to the directorates described, the Office has a working team of delegate defenders in each of the areas where the entire range of rights are objects of concern, and in particular the rights of women, of the child, of old people, the right to health and social security, the rights of indigenous populations and ethnic minorities, of persons deprived of liberty, economic, social and cultural rights, the environment, citizen participation and constitutional and legal matters.

413. Daily reports are made to the Office of the People's Advocate on acts of violence of all types affecting the exercise of fundamental rights and constituting serious violations of international humanitarian law. In the internal organization of the Office acts of this kind are handled under the heading of the right to humanitarian protection.

414. The Office has concentrated its activity on specific types of occurrence such as forced displacement, hostage-taking and the murder of and threats against persons protected by the provisions of international humanitarian law.

415. The Office of the People's Advocate also has at present an Early Warning System (SAT), which is an instrument of the defensorial policy of prevention; it seeks to provide warnings of threats, situations of vulnerability and risks faced by the population and arising from the armed conflict, thus facilitating a timely and coordinated response by the State.

416. The work of the SAT is based on the reception, verification, analysis, evaluation, classification, transmission and follow-up of information leading to credible and concrete diagnoses of large-scale violations of human rights occurring in the context of the internal armed conflict. This approach leads to an output of items such as reports, analyses and early warnings or "warnings of imminence" which, once prepared, are forwarded to the competent authorities for response.

417. The Office of the People's Advocate is now the only institution at national level which has succeeded in establishing a presence in all the municipalities forming part of the "alert zone" and maintaining it even after the date on which the National Government suspended their classification as such.

418. The assistance given by the officials of the Office of the People's Advocate to the inhabitants of the municipalities which were used as centres for the peace dialogues conducted between the Government and the FARC guerrillas for over 3 years has served for the performance of work on the promotion, dissemination, protection and defence of human rights, including mediation with the armed parties to the conflict in order to secure respect for the lives, freedom and other rights of the inhabitants of the zone; these officials also received, took up and handled a number of complaints from the community concerning abuses and infringements of their rights.

419. The People's Advocate is continually in touch with the legislature on matters of vital interest for the defence of democracy. It submits draft bills designed to protect human rights, for example, on fundamental matters such as habeas data, habeas corpus or the project for the development of the content of legislation fundamental for peace. Similarly, its approaches to Congress have taken the concrete form of continuing discussions on subjects such as fumigation and eradication of crops, the administration of the funds of the subsidiary health service, the situation of the displaced population, the peace process, discussion of the reports on human rights received from international organizations, debates on the whole range of measures designed to suspend or restrict the rights of Colombian citizens or measures to prevent indiscriminate exploitation of natural resources or threats against ethnic or racial minorities in the country or mechanisms for citizen participation.

420. During recent years, through the preparation of documents such as the "Resoluciones Defensoriales", a different form of expression of defence of human rights and of the moral judicial authority of the People's Advocate has been consolidated; these documents, taken together with those already existing, mark a fundamental difference from the work of other institutions, such as the Office of the Attorney-General or the Office of the Public Prosecutor of the Nation, which were established for a fundamentally punitive purpose.

421. The ninth report of the People's Advocate⁵, commenting on the "Resoluciones Defensoriales", states that "their issue gives concrete form to the exercise of certain competencies which the Constitution assigns to this agency. The subject-matter of these resolutions relates to specific situations of commission of violations, or utterance of threats of violations, of a human right by a public authority or a private individual".

422. The volume of work performed by the Office of the People's Advocate has substantially exceeded the expectations formulated for it in the early years of its existence. The achievements of the institution include the handling of over 360,000 complaints, requests for advice and consultations; the training of some 700,000 persons throughout the country in human rights and the mechanisms for their protection, including the programme of the National Network of Human Rights Defenders, which has trained 1,741 leaders in 288 municipalities throughout the country; the printing of some 14 million documents in the forms of texts, the periodical *Su Defensor*, which is available in every corner of the country, pamphlets, leaflets, etc., to promote and disseminate knowledge of the rights of the population; the introduction of some 26,000 actions, appeals and challenges before courts and administrative bodies; and coverage of 72% of municipalities by the services of the People's Advocate.

423. In view of the increase in its activities and the increase in the numbers of violations of human rights occurring in the country, the State of Colombia is facing the challenge of redoubling its efforts to strengthen the Office of the People's Advocate to enable it to carry out its constitutional mission more effectively.

424. Between 1995 and 2000 the numbers of cases dealt with by the Office and of applications for proceedings increased by 811% and the numbers of complaints handled by 455%; during the same period the number of complaints received by the Office increased by 210% and the numbers of applications for guardianship measures by 99%.

V. FACTUAL DESCRIPTION OF THE SITUATION REGARDING VIOLENCE, HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW IN COLOMBIA

425. The following is a description of the social situation and of the political violence which has been afflicting the country. It covers both acts of violence attributable to delinquent individuals and groups and violations of human rights and breaches of international humanitarian law.

1. Murders

426. According to the National Police, in 2001, 27,841 murders were committed - a rate of 64.6 per 100,000 inhabitants. That was the third consecutive year in which these indicators rose. In absolute terms, the number of murders committed in 2001 was 4.9% higher than in 2000 (26,540), 14% higher than in 1999 (24,538) and 21% higher than in 1998 (23,096). The figure for 2001 was the highest in absolute terms since 1994 (26,828) but was exceeded by those for 1991 (28,824), 1992 (28,224 - the highest for the decade) and 1993 (28,173).

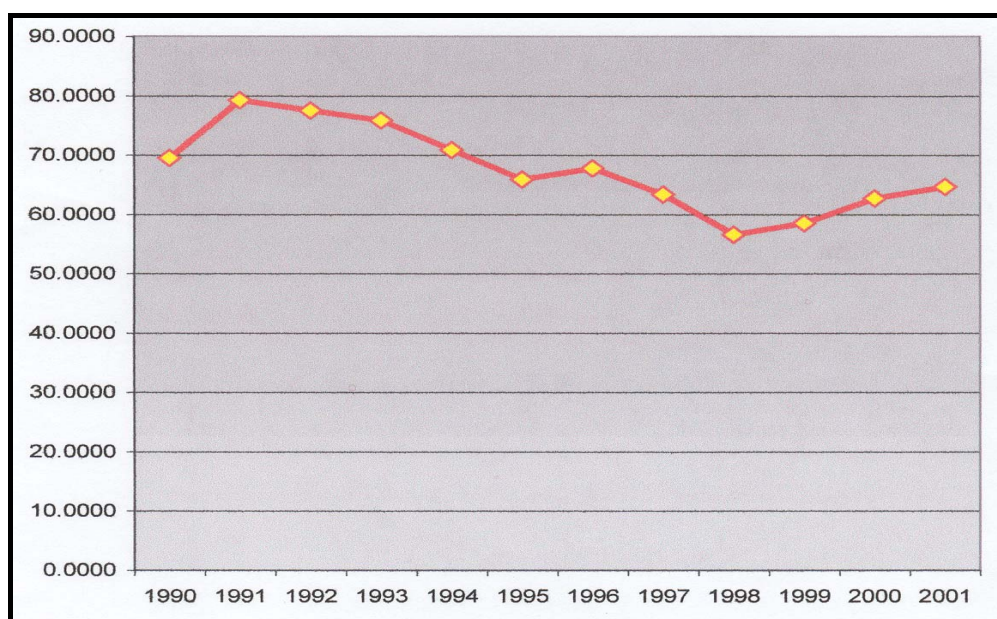
⁵ Noveno informe del Defensor del Pueblo al Congreso de Colombia, Jan.-Dec. 2001, Imprenta Nacional de Colombia, July 2002, pp. 231 ff.

Murders: annual change in numbers of victims

<i>Year</i>	<i>Annual rate (percentage)</i>	<i>No. of victims</i>	<i>Annual variation (percentage)</i>
1990	69.51	24 308	
1991	79.26	28 284	16.36
1992	77.53	28 224	-0.21
1993	75.88	28 173	-0.18
1994	70.88	26 828	-4.77
1995	65.90	25 398	-5.33
1996	67.80	26 642	4.90
1997	63.35	25 379	-4.74
1998	56.57	23 096	-9.00
1999	58.57	24 358	5.46
2000	62.71	26 540	8.96
2001	64.64	27 841	4.90

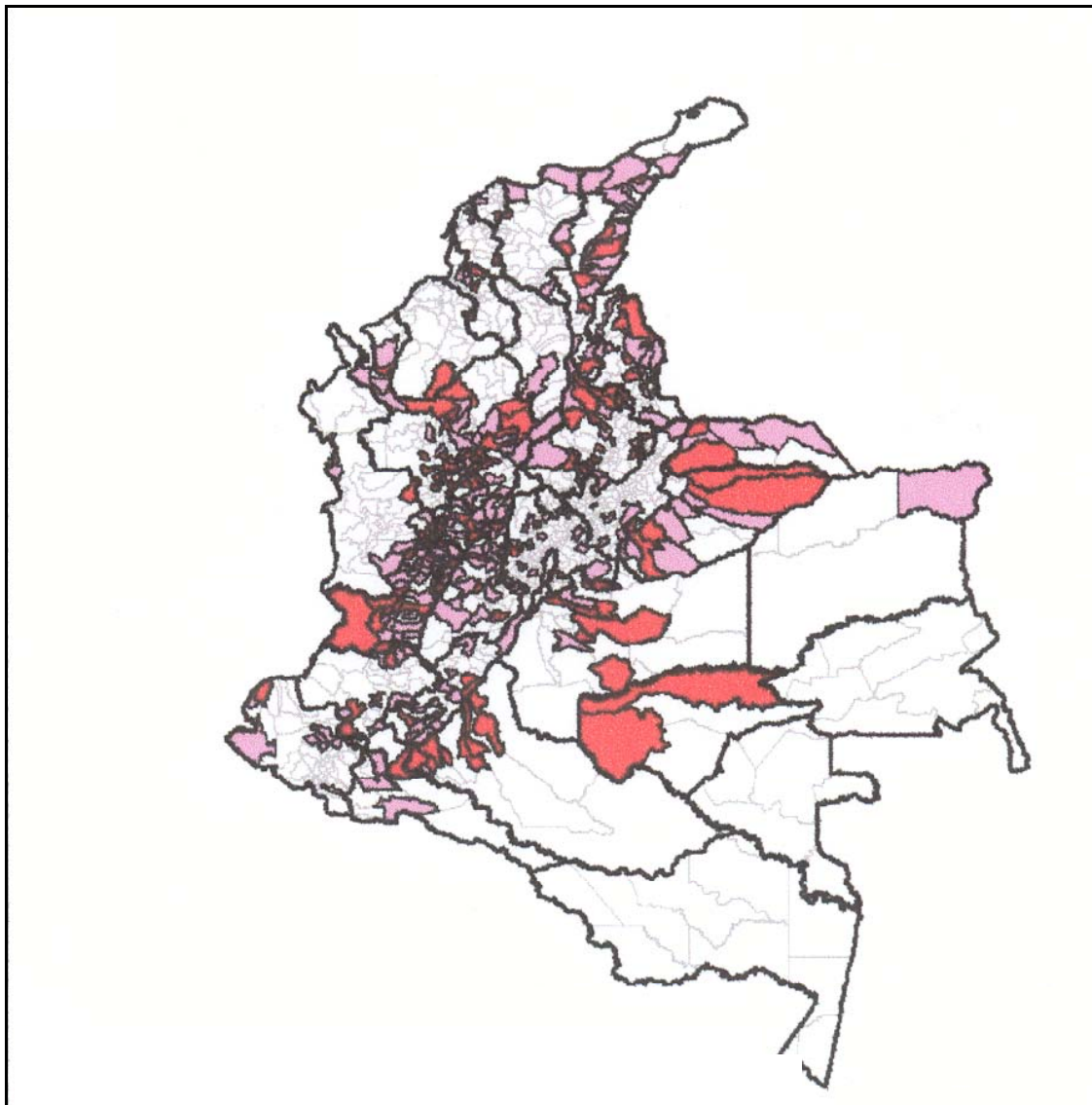
427. In 2001 the murder rate tended to be higher in municipalities with relatively small populations. It was 78.4 in municipalities with populations of between 5,000 and 10,000 inhabitants, 69.9 in municipalities with between 10,000 and 20,000, 67.5 in those with populations of between 20,000 and 50,000 and 66.8 in those with populations of 5,000 or less. All these rates were higher than the national average. Below that average came municipalities with between 50,000 and 100,000 inhabitants (63.4), those with over 500,000 inhabitants (62.9) and those with between 100,000 and 500,000 inhabitants (62.2).

Annual murder rate, 1990-2001



Source: National Police: Criminological Research Centre.
Processed by Office of the Vice-President of the Republic: Monitoring Centre for The President's Programme for Human Rights and International Humanitarian Law.

Murders 2001



- Equal to or below the national average murder rate.
- Equal to or above the national average murder rate. ***

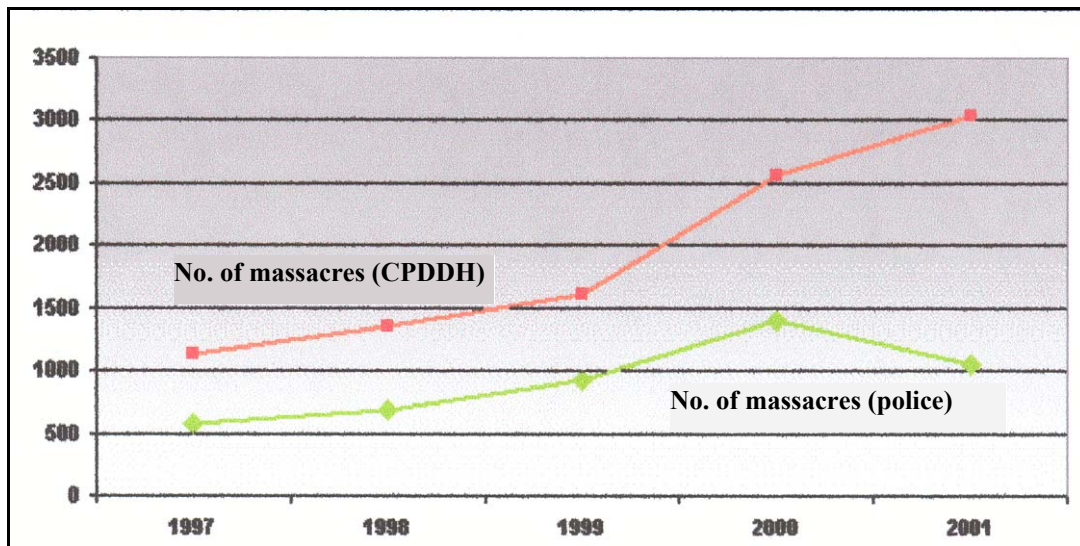
*Source: National Police: Criminological Research Centre. Cartography: DANE.
Processed by Office of the Vice-President of the Republic: Monitoring Centre for The President's Programme for Human Rights and International Humanitarian Law.*

2. Massacres

428. According to the National Police (taking into account cases with 4 or more victims), the numbers of victims fell from 1,201 in 2000 to 1,034 in 2001 (a decrease of 14%; figure not consolidated). At first sight this appears to be a significant development if it is recalled that the indicator had been climbing steadily since 1995 and that between 1993 and 1998 the number of cases was of the order of 500. However, it throws little light on the numbers of murders associated with the armed conflict, since it leaves out of account selective assassinations and a large number of multiple killings.

Massacres in 2001 according to National Police and the Standing Committee for the Defence of Human Rights (CPDDH)

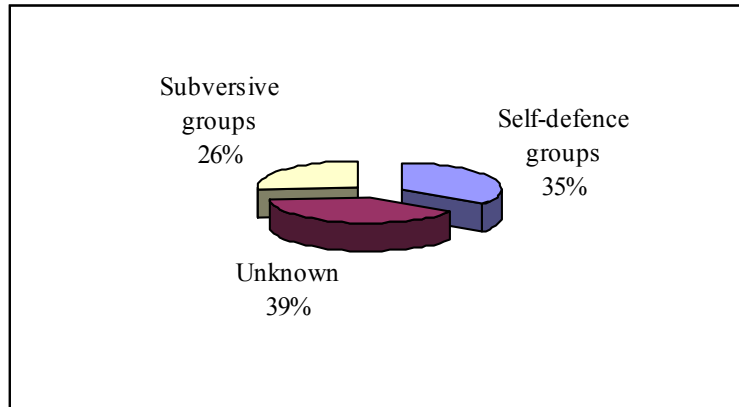
<i>Year</i>	<i>National Police</i>	<i>CPDDH</i>
1997	571	1 128
1998	677	1 359
1999	929	1 605
2000	1 403	2 564
2001	1 044	3 043



Source: National Police and CPDDH.

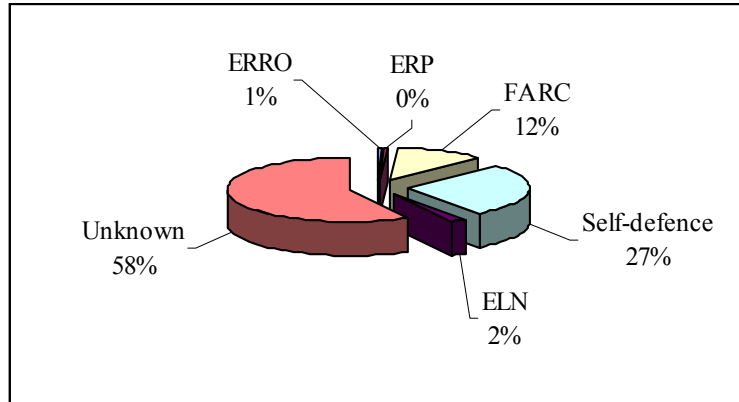
Processed by Office of the Vice-President of the Republic: Monitoring Centre for The President's Programme for Human Rights and International Humanitarian Law.

429. The statistics of the Permanent Committee for the Defence of Human Rights (CPDDH), which take into account incidents involving three or more victims, show a trend opposite to that shown by the police figures. According to this source, there were 3,043 victims of massacres in 2001 - 19% more than the 2,564 victims in 2000. These figures are not comparable with previous years, since in the past the criterion was four victims or more. Although no disaggregation of the incidents permitting evaluation of the quality of the information is available, this figure suggests the enormous weight of the armed conflict in murders in Colombia.



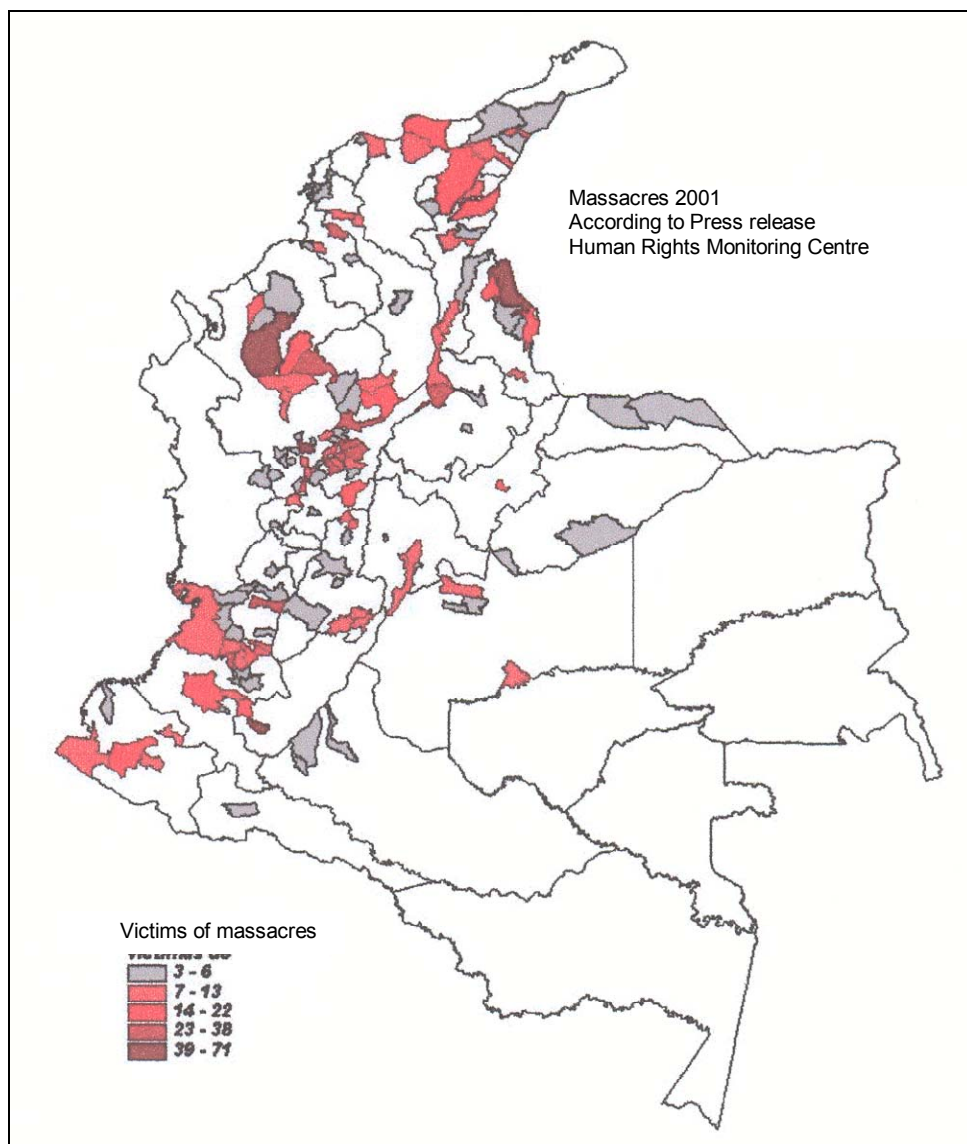
<i>Perpetrator</i>	<i>Total victims</i>
Self-defence groups	527
Unknown	593
Subversive groups	399
Total	1.519

Massacres in 2001 according to National Police



<i>Perpetrator</i>	<i>Total victims</i>
Self-defence groups	527
Unknown	593
Subversive groups	399
Total	1.519

Massacres in 2001 according to Press release of the Monitoring Centre for human rights and international humanitarian law



Departments and municipalities where massacres occurred in 2001 according to the National Police

<i>Department</i>	<i>Municipality</i>	<i>Perpetrator</i>	<i>Number of victims</i>
Cauca	Buenos Aires	Self-defence	40
Antioquia	Medellín	Unknown	34
Sucre	Ovejas	Self-defence	27
Norte de Santander	Cúcuta	Unknown	26
Valle	Buga	Self-defence	24
Córdoba	Lorica	FARC	23
Antioquia	Peñol	Unknown	21

<i>Department</i>	<i>Municipality</i>	<i>Perpetrator</i>	<i>Number of victims</i>
Valle	Cali	Unknown	20
Boyacá	Sogamoso	Unknown	19
Cauca	El Tambo	Unknown	19
Distrito capital	Santa Fe de Bogotá D.C.	Unknown	16
Guajira	Hatonuevo	Unknown	16
Antioquia	Cocorná	Unknown	13
Antioquia	La Pintada	Unknown	13
Cauca	Corinto	Unknown	13
Cesar	San Diego	Unknown	13
Norte de Santander	Tibú	FARC	13
Antioquia	Carmen de Viboral	Unknown	12
Antioquia	Montebello	Self-defence	12
Antioquia	Remedios	Self-defence	12
Antioquia	Taraza	FARC	12
Cesar	Valledupar	Self-defence	12
Cundinamarca	Soacha	Unknown	12
Antioquia	San Pedro de Urabá	FARC	11
Cauca	Cajibío	Unknown	10
Cauca	Santander de Quilichao	Unknown	10
Córdoba	Lorica	Unknown	10
Guajira	Riohacha	Unknown	10
Magdalena	Santa Marta	Unknown	10
Norte de Santander	Tibú	ELN	10
Caquetá	Currillo	Unknown	9
Cauca	Caloto	Unknown	9
Cauca	Piendamó	Unknown	9
Cauca	Puracé	Unknown	9
Meta	Villavicencio	Unknown	9
Santander	Puerto Wilches	Unknown	9
Antioquia	Bello	Unknown	8
Antioquia	La Ceja	Self-defence	8
Antioquia	Marinilla	Self-defence	8
Bolívar	San Jacinto	FARC	8
Norte de Santander	Tibú	Unknown	8
Tolima	Ibagué	Unknown	8
Antioquia	Granada	Self-defence	7
Antioquia	Segovia	Self-defence	7
Caquetá	La Montañita	FARC	7
Chocó	Tado	ERG	7
Huila	Isnos	FARC	7

<i>Department</i>	<i>Municipality</i>	<i>Perpetrator</i>	<i>Number of victims</i>
Nariño	Tumaco	Unknown	7
Tolima	Mariquita	Unknown	7
Tolima	Prado	FARC	7
Antioquia	Caldas	Self-defence	6
Antioquia	Yolombó	Unknown	6
Bolívar	Turbana	Self-defence	6
Guajira	Riohacha	Self-defence	6
Meta	San Carlos Guaroa	Unknown	6
Nariño	El Rosario	Unknown	6
Norte de Santander	El Zulia	Unknown	6
Tolima	Chaparral	Unknown	6
Antioquia	Amalfi	Self-defence	5
Antioquia	Carmen de Viboral	Self-defence	5
Antioquia	Retiro	Unknown	5
Antioquia	San Carlos	FARC	5
Antioquia	San Luis	FARC	5
Arauca	Arauquita	Unknown	5
Bolívar	El Carmen de Bolívar	Unknown	5
Bolívar	San Jacinto	ERP	5
Caldas	Viterbo	Unknown	5
Cauca	Rosas	Unknown	5
Cesar	Agustín Codazzi	Self-defence	5
Cesar	Curumaní	Unknown	5
Cundinamarca	San Bernardo	Self-defence	5
Cundinamarca	San Francisco	Unknown	5
Huila	Pitalito	Unknown	5
Magdalena	Aracataca	Unknown	5
Magdalena	Puebloviejo	Self-defence	5
Norte de Santander	Bucarasica	Self-defence	5
Norte de Santander	El Carmen	Self-defence	5
Norte de Santander	Los Patios	Self-defence	5
Norte de Santander	Tibú	Self-defence	5
Putumayo	Valle del Guamuez	FARC	5
Santander	Barrancabermeja	Self-defence	5
Sucre	Sincelejo	Unknown	5
Valle	Dagua	FARC	5
Antioquia	Betulia	Unknown	4
Antioquia	Caldas	Unknown	4
Antioquia	Caramanta	Self-defence	4
Antioquia	Giraldo	Unknown	4

<i>Department</i>	<i>Municipality</i>	<i>Perpetrator</i>	<i>Number of victims</i>
Antioquia	Guarne	Unknown	4
Antioquia	Heliconia	Self-defence	4
Antioquia	Medellín	Self-defence	4
Antioquia	Medellín	ELN	4
Antioquia	San Carlos	Self-defence	4
Antioquia	San Rafael	Unknown	4
Antioquia	Titiribi	Self-defence	4
Antioquia	Yali	Self-defence	4
Atlántico	Soledad	Unknown	4
Bolívar	Villanueva	Self-defence	4
Bolívar	Zambrano	FARC	4
Caldas	Marmato	Unknown	4
Caquetá	Currillo	FARC	4
Casanare	Villanueva	Self-defence	4
Casanare	Yopal	Unknown	4
Cauca	Caldono	Unknown	4
Cauca	Miranda	Unknown	4
Cauca	Patía	Unknown	4
Cauca	Popayán	Unknown	4
Cauca	Santander de Quilichao	Self-defence	4
Cesar	Aguachica	Unknown	4
Cesar	Aguachica	ELN	4
Cesar	Agustín Codazzi	Unknown	4
Cesar	Chiriguaná	Self-defence	4
Cesar	San Diego	Self-defence	4
Córdoba	Montería	Unknown	4
Cundinamarca	Anapoima	Unknown	4
Cundinamarca	Chipaque	Unknown	4
Cundinamarca	La Mesa	Unknown	4
Cundinamarca	Machetá	FARC	4
Guajira	Barrancas	Unknown	4
Magdalena	Guamal	Self-defence	4
Magdalena	Zona Bananera	Unknown	4
Norte de Santander	Cúcuta	Self-defence	4
Norte de Santander	Ocaña	Unknown	4
Putumayo	Mocoa	Unknown	4
Santander	Barrancabermeja	Unknown	4
Santander	Bucaramanga	Unknown	4
Santander	Hato	ELN	4
Santander	Rionegro	Unknown	4

<i>Department</i>	<i>Municipality</i>	<i>Perpetrator</i>	<i>Number of victims</i>
Sucre	Los Palmitos	Unknown	4
Sucre	Toluviejo	Self-defence	4
Tolima	Fresno	Unknown	4
Tolima	Melgar	Unknown	4
Tolima	Suárez	Unknown	4
Valle	Palmira	Unknown	4
Valle	Riofrío	Unknown	4
Valle	Tulúa	Unknown	4
Valle	Zarzal	Unknown	4
Vichada	Puerto Carreño	Unknown	4

Source: National Police.

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3. Homicides and armed conflict

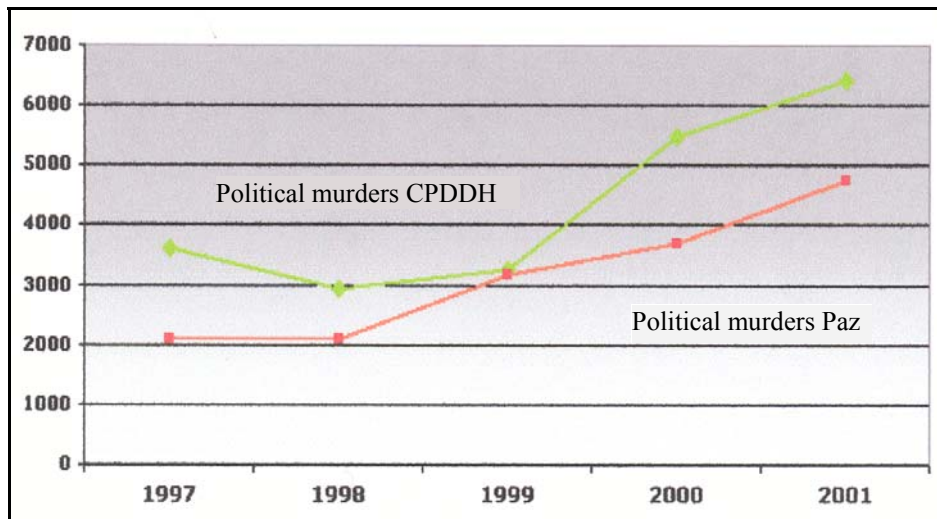
430. Bearing in mind that the overall homicide figures contain no information on the proportion committed by guerrilla and self-defence groups, information is taken from databases with the relevant data. According to information from the National Strategy Room of the Office of the President of the Republic, based on daily DAS bulletins, 4,322 homicides were committed by organized groups in 2001, making a 29% increase over the 3,683 homicides in 2000 and a 49.8% increase over the 3,169 in 1999.

431. On the basis of the CPDDH records, if massacres (of three or more victims) are added, as well as those killings deemed to be political murders (up to two victims) the total of 6,409 victims represents a 17% increase over 2000 (5,467). This is the highest figure given by any of the sources consulted and demonstrates organized groups' deep involvement in homicides. In 2001, 45% of the victims were killed by self-defence groups, 44% by unidentified armed groups, and 10% by guerrillas.

<i>Years</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
Political murders CPDDH	3 608	2 943	3 238	5 467	6 409
Political murders Paz	2 085	2 077	3 169	3 683	4 749

Source: Standing Committee on Human Rights - National Strategy Room of the Office of the President of the Republic.

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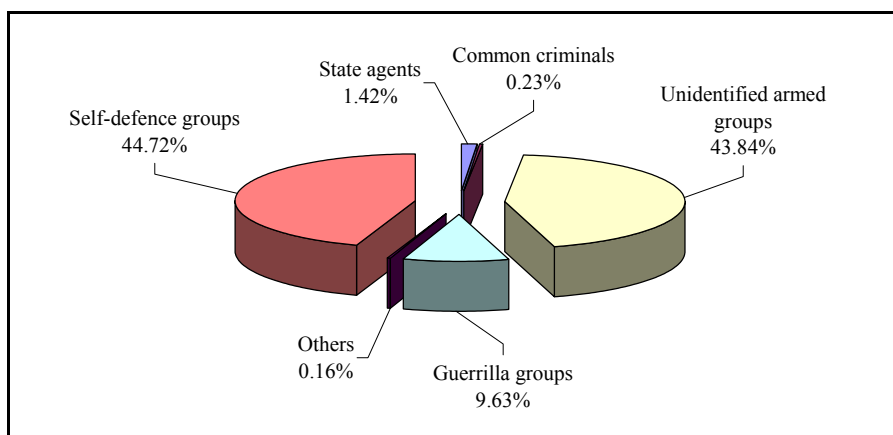
Percentage distribution of authors of homicides associated with political violence

<i>Authors</i>	<i>Massacres</i>	<i>Political murder</i>	<i>Total</i>	<i>Percentage</i>
State agents	25	66	91	1
Common criminals	14	1	15	0
Unidentified armed groups	994	1 816	2 810	44
Guerrilla groups	327	290	617	10
Others	3	7	10	0
Self-defence groups	1 680	1 186	2 866	45
Total	3 043	3 366	6 409	100

Source: Standing Committee on Human Rights - National Strategy Room of the Office of the President of the Republic.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

Percentage distribution of authors of homicides associated with political violence

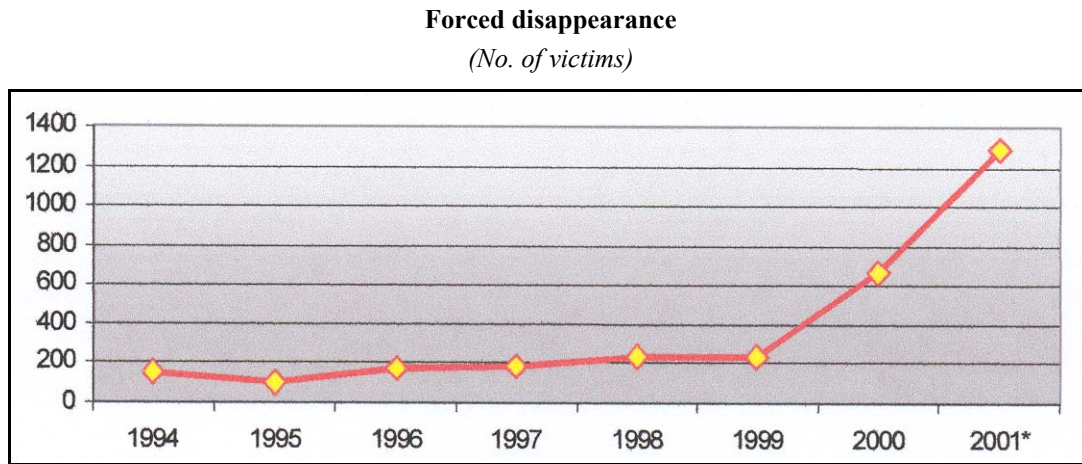


Source: CPDDH and SEN of the Office of the President of the Republic.

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4. Forced disappearance

432. Forced disappearance as a practice that violates personal freedom, integrity and life posted a significant increase in 2001.

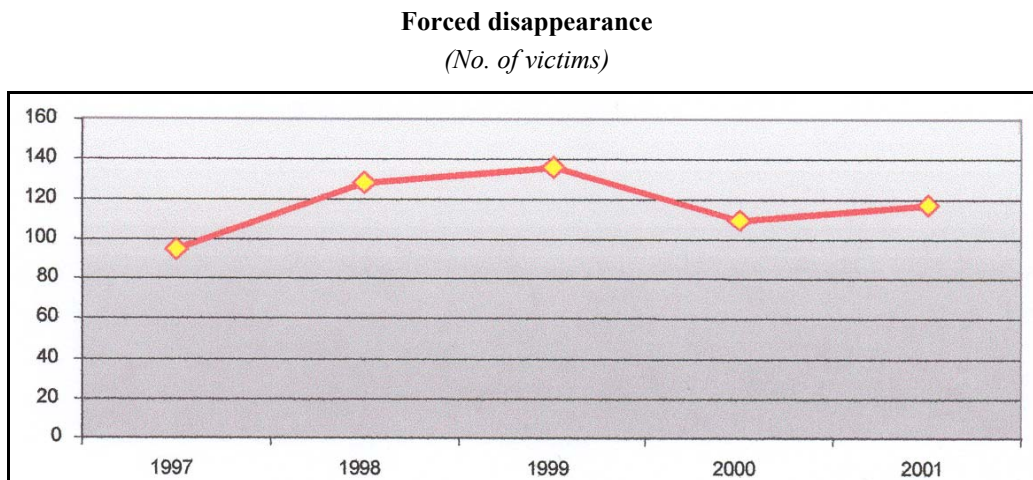


Source: ASFADDES.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

433. According to the Association of Relatives of Detainees and Missing Persons (ASFADDES), in 2001 the number of forced disappearances increased by 93% over the 2000 figure, from 664 to 1,283. It should be pointed out that, although that organization's data collection system has been perfected, it is still alarming to note the considerable increase, which is largely due to the armed conflict in departments like Santander and Antioquia with a strong presence of self-defence groups.

434. As far as official sources are concerned, in 2001 the Office of the Attorney-General received 117 complaints of disappearance, eight more than in 2000, indicating a slight increase in the number of cases where responsibility was attributable to State agents.



Source: Office of the Attorney-General: complaints of forced disappearance.

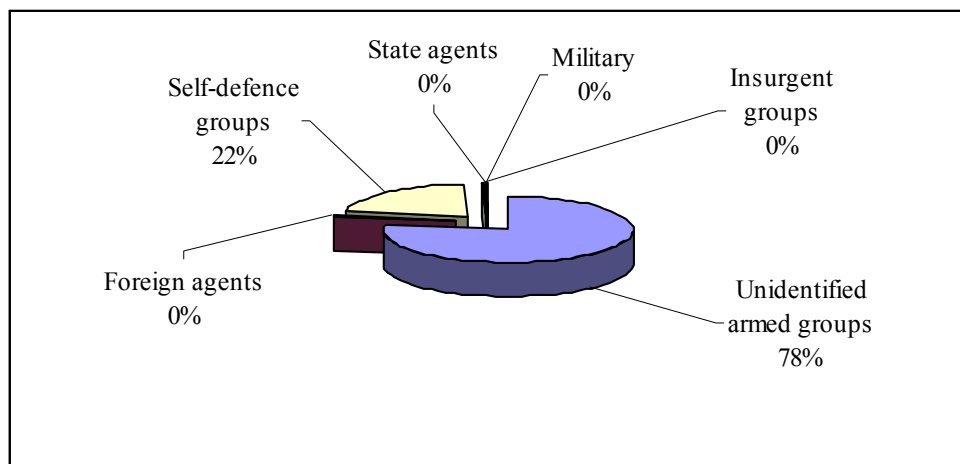
Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

435. The Office of the Public Prosecutor registered 3,143 complaints of disappearance, an increase of 145%. However, it should be borne in mind that this institution's criteria are broader and include cases cleared up - 1,357 for 2001.

436. One important fact is that the number of cases may be even more alarming owing to the high level of incidents not recorded, given the status of the victims and the places where the violation takes place (rural areas with no official presence).

437. Regarding the perpetrators of such violations, according to ASFADDES, the greatest responsibility is to be laid at the door of unidentified armed groups, responsible for 78% of disappearances, followed by the self-defence groups with 22%. This significant fact is closely linked to the geographical distribution of the victims: the same organization claims that the departments where most cases occurred are, in descending order: Santander (30%), Antioquia (13%), Cundinamarca (7%) and Cauca (6%), geographical areas with a strong presence of self-defence groups or areas where those groups are in conflict with guerrillas.

Disappearances in 2001, by perpetrator



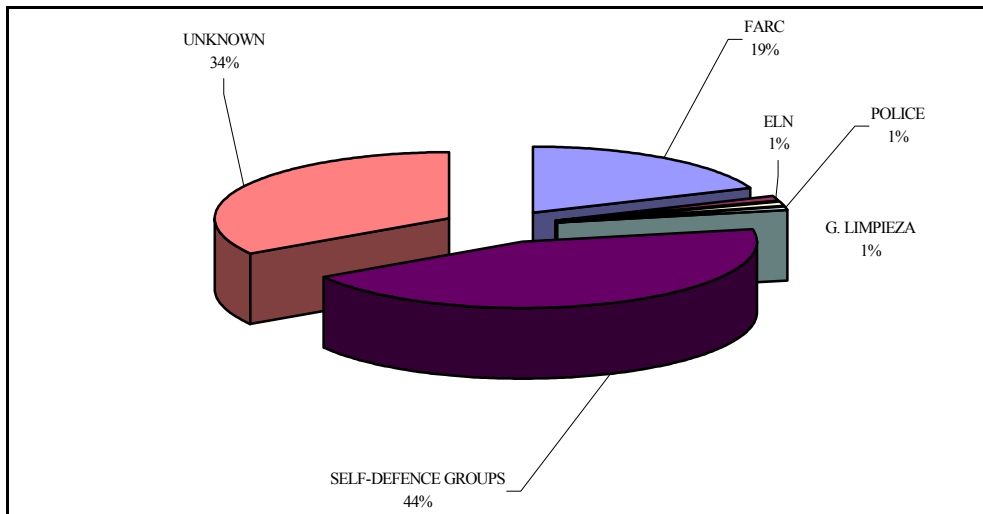
Source: ASFADDES.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law.

5. Torture

438. In 2001 torture continued to be practised by outlawed armed groups, for the most part against the civilian population. According to Cinep-Justicia y Paz, in its publication *Noche y Niebla*, 163 persons were tortured in the first half of 2001, 110 fewer than in the first half of 2000. The evident reduction notwithstanding, it is difficult to claim an improvement on earlier years, since the numbers of cases unrecorded are increasing owing to the presence of the perpetrators and their continued control over the non-combatant population. On this particular, it should be noted that 86.5% of the entries for tortured persons eventually involved the killing of the victims; in other words, only 13.5% of the cases were reported by the victims themselves.

Cases of torture by alleged perpetrator, first half of 2001



Source: CINEP- Justicia y Paz (review Noche y Niebla).

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

439. According to the information available, the self-defence groups are the principal perpetrators of violations of this type, with 44.1% of cases, followed by "persons unknown" with 34.3% and the FARC with 19%. This subversive organization's increased percentage should be noted: in 2000 it was responsible for 5% of cases of torture (25), but 31 in the first half of 2001 alone.

440. As reported in the review *Noche y Niebla*, 99% of the victims of that violation were civilians. In only one case was the victim a combatant: a soldier taken by the FARC, whose body bore signs of torture when it was found in San Carlos (Antioquia) on 14 February 2001.

441. The department of Córdoba occupied first place for the number of cases of torture, with 19% of the national total, followed by the department of Cauca with 17%, Valle with 14%, Norte de Santander with 13%, and Santander with 8%. Approximately 40% of torture victims came from four municipalities: Tierralta (Córdoba) with 18%, Cajibío (Cauca) with 11%, Buenaventura (Valle) with 6 per cent, and Tibú (Norte de Santander) with 4%.

6. Abduction

442. The number of abductions fell by 18% from 3,706 in 2000 to 3,041 in 2001. This represented a significant change, especially since there had been an interrupted rising trend since 1995. Of particular significance were the leaps between 1995 and 1996 and between 1997 and 1998 of 39% and 31% respectively; and special mention should be made of the enormous weight which mass abductions perpetrated by guerrilla groups have gradually come to represent in the total. .

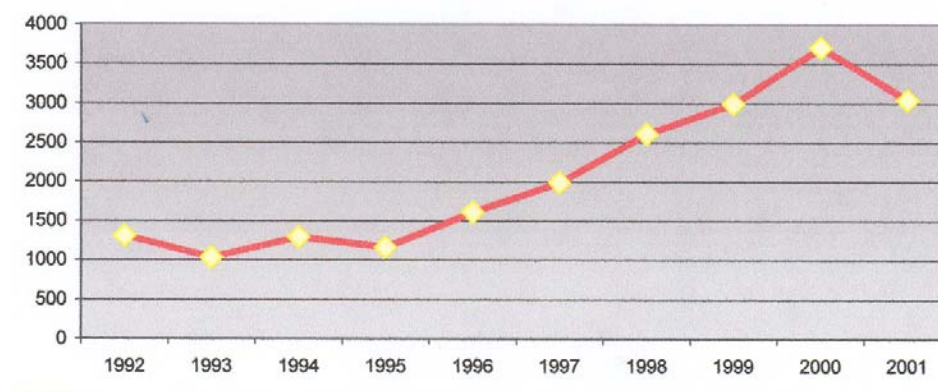
Abductions between 1992 and 2001, by perpetrator

Year	No. of victims	Self-defence groups	Unknown	Subversive groups						
				ELN	EPL	FARC	ERG	ERM	M-19	Other
1992	1 303	-	806	177	63	257	0	0	0	0
1993	1 031	-	646	149	38	180	0	0	1	17
1994	1 293	-	729	270	27	261	0	0	6	0
1995	1 158	-	623	227	30	265	0	0	13	0
1996	1 608	-	957	271	32	343	0	0	5	0
1997	1 986	43	818	534	34	532	3	19	3	0
1998	2 609	45	857	575	108	990	0	26	8	0
1999	2 991	106	1 273	700	169	710	4	28	1	0
2000	3 706	286	1 580	896	176	725	3	40	0	0
2001	3 041	262	856	917	42	840	11	112	0	1
Total		585	8 703	4 130	685	4 470	13	165	37	17

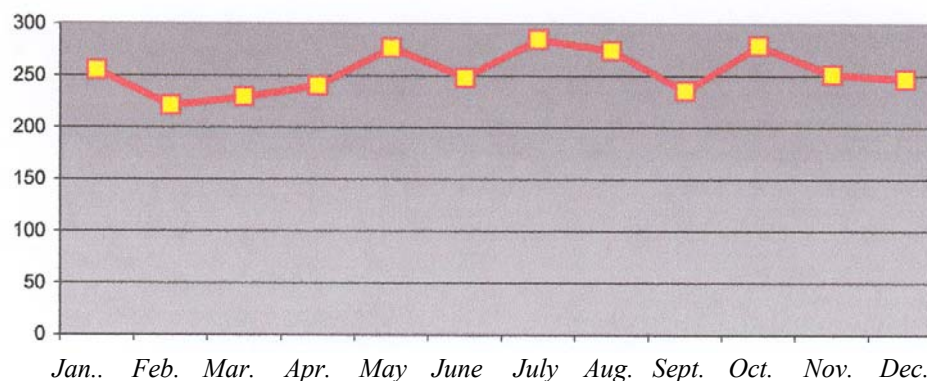
Source: National Police: Criminological Investigation Centre.

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ABDUCTIONS BY YEAR, 1992-2001



ABDUCTIONS IN 2001, BY MONTH

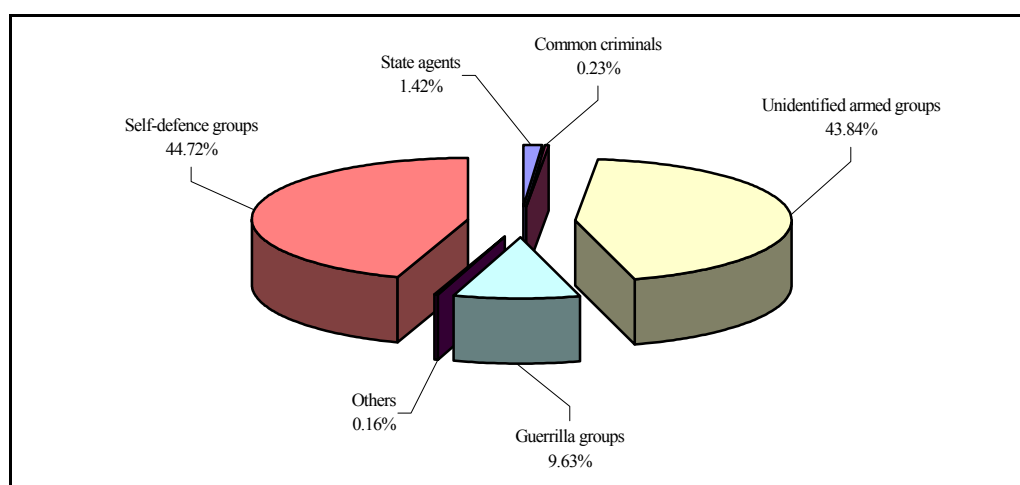


Source: National Police: Criminological Investigation Centre

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

Percentages of all abductions committed, by perpetrator

<i>Perpetrator</i>	<i>Total</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
Self-defence groups	5.82	2.23	4.72	7.56	8.48
Common criminals	9.77	9.74	10.21	9.82	9.27
Guerrilla groups	61.73	67.13	60.38	57.15	63.47
Undetermined	22.67	20.90	24.69	25.47	18.78



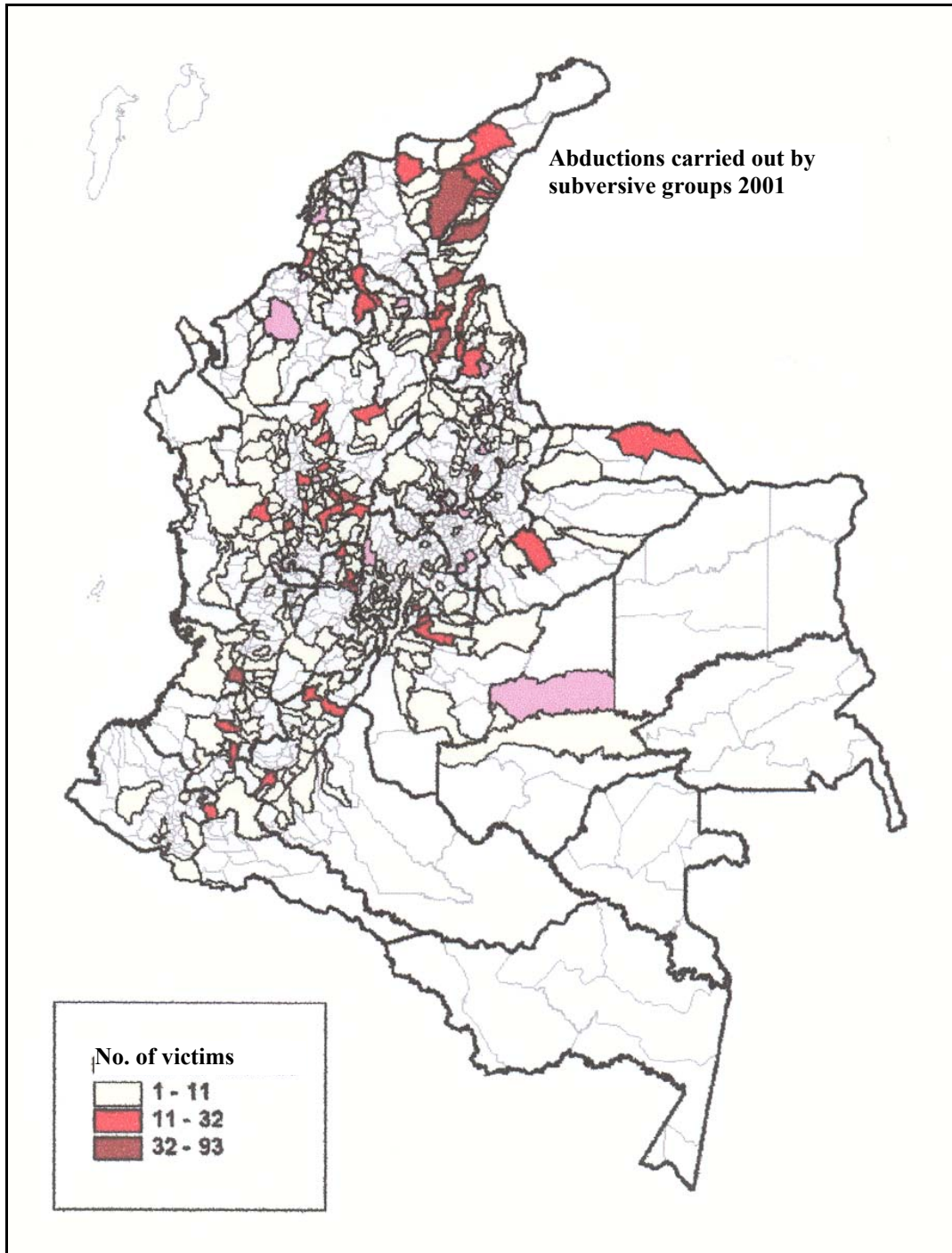
Source: FONDELIBERTAD, Ministry of Defence.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

443. As regards perpetrators, abductions by guerrillas decreased by 9% in 2001; but the percentage of the total accounted for by that group increased from 57% to 63%, - an indubitably significant indicator if one remembers that at the start of the 1990s they accounted for 40%. In 2000 and 2001 the ELN accounted for the highest proportion of all guerrilla abductions with 46% and 48% respectively, while the FARC accounted for 42% in 2000 and 43% in 2001. The situation had been the opposite in 1998 and 1999, when the FARC accounted for the largest proportion (55% and 47%) with the ELN in second place with 34% and 39%. The incidence of extortion and especially what is known as Law No. 002 and mass abductions are factors to be taken into account in explanation of these changes.

444. The number of abductions committed by self-defence groups also fell by 8% between 2000 and 2001. Their share of the total in 2001 remained at the same level at 8% compared with 2000, but the proportion was higher than the 5% of 1999 and the 2% of 1998. The number of abductions committed by common criminals and persons unknown taken together in 2001 was 35% down on 2000, giving confirmation of a downward trend in terms of percentage, which stood at 28% in 2001, whereas the figures for 1992 and 1993 had been 62% and 63% respectively. This confirms the weakening of the structures of common criminality in the practice of abduction, while the guerrilla groups and, to a lesser degree, the self-defence groups are gaining strength.

Abductions carried out by subversive groups 2001



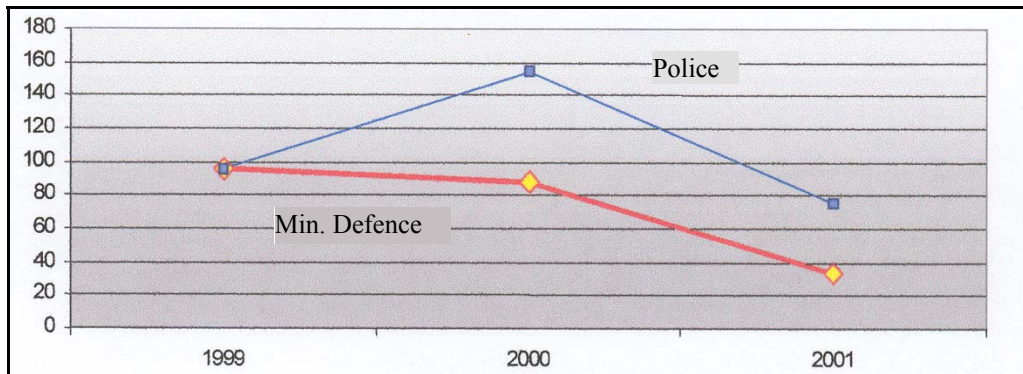
Source: National Police: Criminological Investigation Centre

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7. Attacks on the population

445. In the year 2001, attacks on the population diminished: according to the Ministry of Defence, 33 raids on population groups occurred in 2001 as against 83 in 2000, a reduction of 63%; according to statistics supplied by the National Police, in 2001 there were 42 attacks on population groups, 24 fewer than the previous year (in other words, a decrease of 36%).

Attacks on the population, 1999-2001



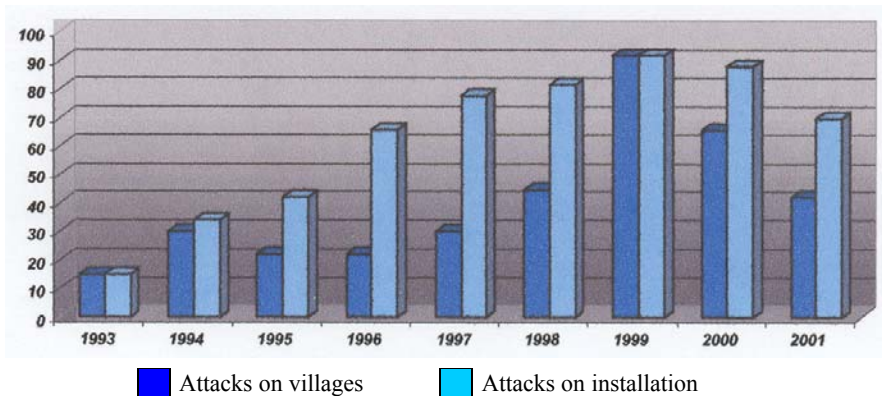
Source: Ministry of Defence.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

446. According to the National Police, of the 112 armed incursions in the year 2001 (not including attacks on police stations), 37.5% affected the population in some way; this has been a constant trend over the years owing to the use of illicit methods and weapons of war, including the use of explosive devices such as gas-cylinder bombs, which clearly have indiscriminate effects.

447. According to the Ministry of Defence, in the year 2001 over 300 civilian buildings (including hospitals, public buildings, churches and schools) were destroyed in attacks on villages carried out by outlawed groups, of which the FARC were responsible for 82%, followed by the self-defence groups, which were responsible for 15%, and the ELN with 2.56%.

Attacks on villages and attacks on installations, 1993-2001



Source: Police.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

448. One alarming category of incident that has been occurring with some regularity is the burning of homes by members of the AUC. This practice was recorded by the Press office of the Monitoring Centre of the President's Programme for human rights and international humanitarian law in large-scale incidents: on 17 January 2001 on the El Chengue footpath in the rural area of the municipality of Ovejas (Sucre), an armed AUC commando set fire to 30 homes; on 19 April of the same year, in La Argelia, in the municipality of Carmen de Atrato (Chocó), a group of men belonging to the AUC set fire to most of the homes in that village; on 2 May in a district situated in the mountains of El Picacho in Medellín (Antioquia), members of self-defence groups burned 40 dwellings housing a group of displaced persons.

449. According to the National Police, 50% of raids on villages affecting civilians took place in four municipalities: Huila and Tolima with 14% each, Cauca with 11% and Nariño with 9 percent.

8. Forced displacement

450. During the year 2000 the Social Solidarity Network (RSS) recorded 130,877 displaced persons, while in 2001 the number reported was 190,454, an increase of 31.28%.

451. The RSS estimates that on average the number of persons displaced per day stood at 352 in 2000, increasing to 421 in 2001.

452. It is worth noting that, although the Social Solidarity Network, CODHES and Pastoral Social use different methods of data collection and analysis they agree that the main responsibility for forced displacement in 2001 lies with the self-defence groups. The RSS is of the view that in 2001, actions by self-defence groups resulted in 599 cases of displacement, and those of the guerrilla groups produced 570. However, although the number of incidents is very similar, the self-defence groups caused the displacement of 91,380 persons, while the self-defence groups were responsible for the displacement of 36,217 persons. This means that, on average, 64 persons were displaced in each incident caused by guerrillas, and an average of some 153 persons in each incident generated by the self-defence groups.

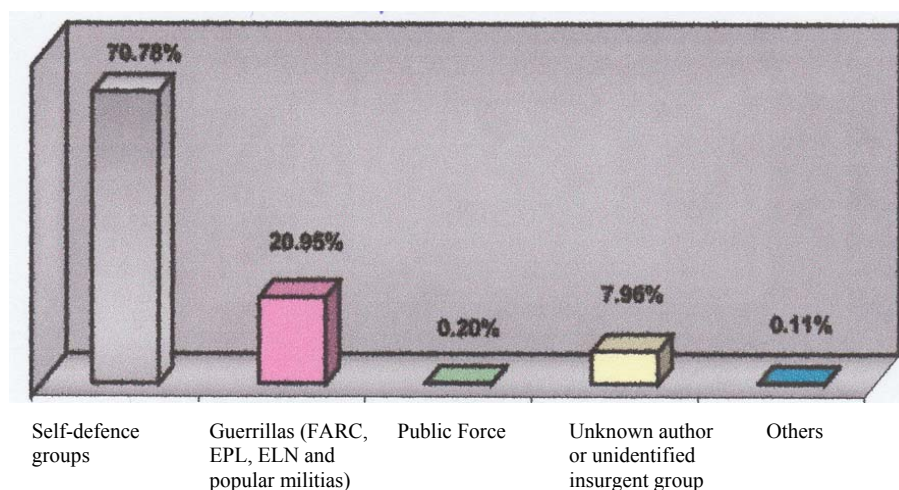
Authors of displacements in 2001

<i>Authors</i>	<i>Displaced persons</i>	<i>Percentage of all persons</i>	<i>Incident</i>	<i>Average no. of persons displaced</i>	<i>Percentage of total no. of incidents</i>
Self-defence	91 380	49.73	599	153	32.68
Guerrilla	36 217	19.71	570	64	31.10
State armed forces	2 165	1.18	22	98	1.20
Two or more authors	41 205	22.42	348	118	18.99
Unknown/no reply	12 418	6.76	282	44	15.38
Other authors	369	0.20	12	31	0.65
Total	183 755	100.00	1 833		

Source: Social Solidarity Network - SEFC.

453. According to information furnished by Pastoral Social, a substantial reduction took place in the proportion of responsibility for displacement attributed to the Public Force, which accounted for 6% of displacements in 2000 and only 0.20% in 2001.

Authors of forced displacements, January-December 2000



Source: Pastoral Social.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

454. In 2001, generalized threats, armed clashes and specific threats were adduced as the main causes of displacement. It should be noted that both in 2000 and 2001 generalized and specific threats made up over 50% of the possible causes of displacement.

Causes of displacement, 2001

<i>Cause</i>	<i>No. of persons displaced</i>	<i>% of all persons</i>	<i>No. of cases</i>	<i>Average no. of displaced persons per author.</i>	<i>% of all cases</i>
Generalized threat	86 583	47.12	633	137	37.10
Armed confrontation	41 355	22.51	281	147	16.47
Specific threat	20 362	11.08	618	33	36.23
Massacre	16 115	8.77	102	158	5.98
Seizure	5 059	2.75	30	169	1.76
Indiscriminate attack	1 980	1.08	18	110	1.06
No information	990	0.54	7	141	0.41
Forced recruitment	214	0.12	14	15	0.82
Torture	20	0.01	3	7	0.18
Other	3 112	1.69	55	57	3.22
Not known/no reply	7 965	4.33	72	111	4.22
Total	183 755	100.00	1 706		

Source: Social Solidarity Network - SEFC.

455. Antioquia, Magdalena, Cauca, Bolívar and Chocó were the departments that recorded the highest numbers of persons expelled in 2001.

456. In 2001, of the total displaced population, children under 18 accounted for 48.84%, 5% less than the previous year.

457. The percentage of indigenous and Afrocolombian persons displaced in 2001 was 17.37% of the total displaced population - 1.26% lower than in 2000. Valle del Cauca, Meta, Tolima and Guaviare were the departments recording the highest rates of expulsion among the indigenous population.

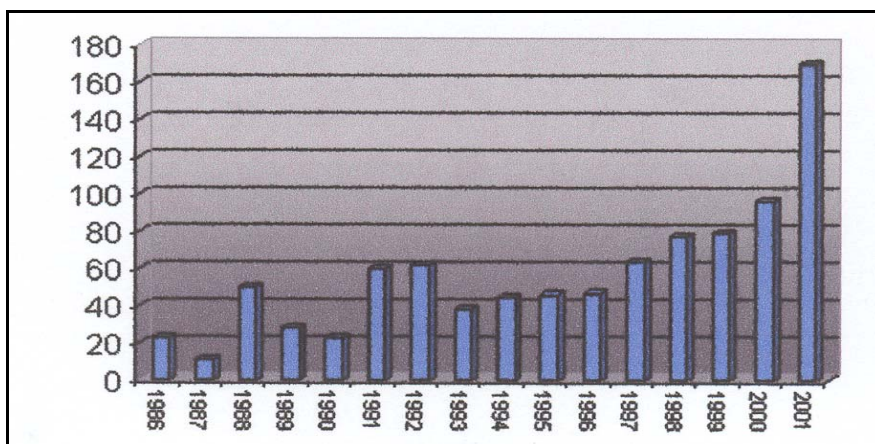
9. Damage to civilian property. Attacks on infrastructure

458. Outlawed armed groups, especially subversives, continued direct attacks on electrical, oil and road infrastructure in 2001.

459. According to information supplied by the Ministry of Defence, during that year there were 279 attacks on the electricity network. Those responsible were insurgent groups: the ELN carried out 76% of the attacks (214), followed by the FARC with 24% (65). The departments worst hit were as follows: Antioquia with 79% of the attacks (221), Norte de Santander with 6.8% (19) and Santander with 3% (11). It is worth noting that 40% of the damage to inflicted on the electricity network by subversive organizations was concentrated on five departments in Antioquia: Granada, Guatape, San Carlos, Campamento and Medellín.

460. Attacks on the oil infrastructure increased. The number of attacks on the Caño Limón-Coveñas pipeline alone, the most affected by subversive action, increased from 96 in 2000 to 170 in 2001, representing an increase of 77% and a record high. Losses caused are enormous not only in terms of barrels spilled and crude lost for production but also in the size of royalties not earned: the amount rose from 31 million dollars in 2000 to a little over 81 million in 2001. In addition, it cost 17 million dollars to repair the infrastructure and neutralize the effects of the spillage of crude.

Attacks



Source: ECOPETROL

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

461. According to the Ministry of Defence, attacks by subversive groups on the oil infrastructure as a whole numbered 304, 54% of which were carried out by the FARC and 46% by the ELN. That figure represents more than one attack every two days. This seriously affects the production and transport of crude, entailing grave repercussions for the national economy.

462. The road infrastructure was also affected by the activities of the insurgent groups. According to the same Ministry, the number of attacks increased significantly in 2000 and 2001, during which period 60 bridges were destroyed.

10. Anti-personnel mines

463. According to the Monitoring Centre for Anti-personnel Mines in the President's Programme for human rights and international humanitarian law, forming part of the Office of the Vice-President of the Republic, on average there was one victim of anti-personnel mines every 1.7 days in 2001.

464. Of the victims, 64.2% were members of the Public Force and 25.8% members of the civilian population.

465. Of the victims, 21.4% died, while the survivors were left with a permanent disability of some kind.

466. In 29.4% of cases there is no knowledge of what the victim was doing at the time of the accident. In the cases where this was known, most (64%) were performing army or police duties, 3% were playing or on their way to school and the rest were driving or walking by.

467. According to the Technical Secretariat for Health in the Ministry of Defence, 27 members of the armed forces died as a result of anti-personnel-mine accidents in 1999 and 180 were injured. In 2000 there were 36 deaths and 181 survivors who returned to civilian life with permanent disabilities, having an adverse impact on any family caused by the incapacity of one of its members.

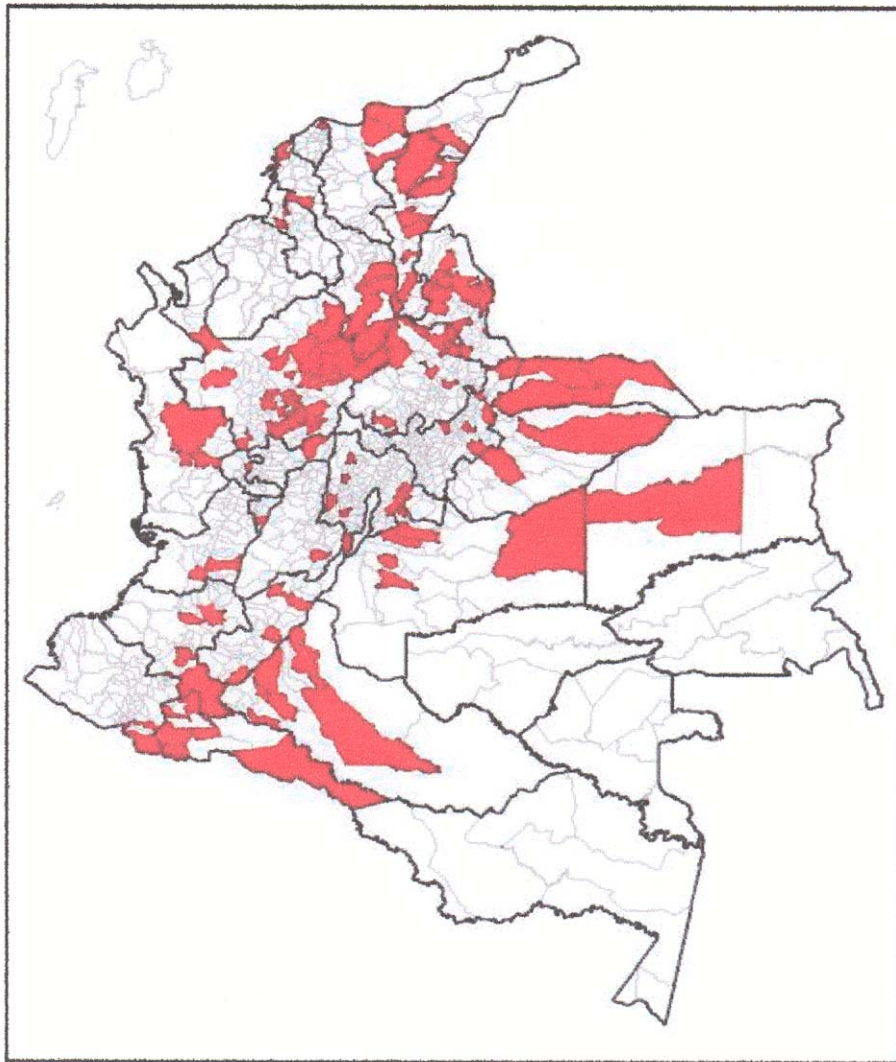
468. Medical care is hampered by the distance between the site of an accident and the care centre, by ignorance of first-aid measures, and by the limited availability social and economic rehabilitation facilities.

469. The municipalities that suffered the highest numbers of accidents and incidents are, in descending order: Arauquita - Arauca (15), Barrancabermeja - Santander (11), Tame - Arauca (10), Cocorná - Antioquia (10), San Carlos - Antioquia (7), San Pablo - Bolívar (7), Granada - Antioquia (6) and Arauca - Arauca (6).

470. Incidents that occurred in the countryside accounted for 88.2%. A great many took place in the urban areas of Santander, a department that accounted for 42.4 of incidents, with 20% and 7.7% respectively in Arauca and Antioquia.

471. The perpetrators of 39.2% of the incidents are unknown. Outlawed groups are responsible for 56.8%, of which 25.3% were carried out by the National Liberation Army (ELN), 30.1% by

the Revolutionary Armed Forces of Colombia (FARC), 1.4% by self-defence groups, and 3.7% by others such as common criminals and other insurgent groups.



Departments and municipalities in which accidents caused by anti-personnel mines occurred in 2001

<i>Department</i>	<i>Municipality</i>	<i>Accident</i>	<i>Incident</i>
Antioquia	Abejorral	1	
Antioquia	Amalfi		1
Antioquia	Andes		1
Antioquia	Anorí	1	
Antioquia	Barbosa		1
Antioquia	Bello		1
Antioquia	Briceño		2
Antioquia	Carolina		1
Antioquia	Casabe	1	1
Antioquia	Cocorná		5
Antioquia	Concepción		2
Antioquia	El Bagre	1	
Antioquia	El Carmen de Viboral		2

<i>Department</i>	<i>Municipality</i>	<i>Accident</i>	<i>Incident</i>
Antioquia	El Santuario		1
Antioquia	Frontino		1
Antioquia	Granada		1
Antioquia	Guatapé		1
Antioquia	La Unión	1	
Antioquia	Medellín		1
Antioquia	Montebello		1
Antioquia	Mutata		1
Antioquia	Peñol		2
Antioquia	Rionegro		1
Antioquia	San Carlos	1	3
Antioquia	San Francisco		2
Antioquia	San Luis		3
Antioquia	San Pedro de Urabá		1
Antioquia	San Vicente		2
Antioquia	Segovia		1
Antioquia	Yali	1	
Antioquia	Yarumal	1	
Antioquia	Zaragoza		1
Total Antioquia		9	46
Arauca	Arauca	1	2
Arauca	Araucita	2	10
Arauca	Puerto Rondón	1	
Arauca	Saravena		2
Arauca	Tame	4	3
Total Arauca		8	17
Bolívar	Arenal	1	1
Bolívar	Cantagallo	1	4
Bolívar	Morales		3
Bolívar	Río Viejo		1
Bolívar	San Pablo	1	1
Bolívar	Santa Rosa	1	
Bolívar	Santa Rosa del Sur		1
Bolívar	Simití	1	
Total Bolívar		5	11
Boyacá	Chita		1
Boyacá	Cubará		3
Boyacá	Labranzagrande		1
Boyacá	San Mateo		1
Boyacá	Tasco		1
Total Boyacá		0	7
Caquetá	Cartagena del Chairá		1
Caquetá	Florencia		2
Caquetá	Morelia	1	
Caquetá	Puerto Rico		2
Caquetá	Solita		1
Caquetá	Valparaíso	1	
Total Caquetá		2	6
Casanare	Paz de Ariporo		1
Casanare	Yopal	1	
Total Casanare		1	1
Cauca	Cajibío	1	4
Cauca	El Tambo	2	
Cauca	Santa Rosa		2
Cauca	Silvia	1	
Total Cauca		4	6

<i>Department</i>	<i>Municipality</i>	<i>Accident</i>	<i>Incident</i>
Cesar	Aguachica		1
Cesar	Agustín Codazzi	1	
Cesar	Chiriguaná		1
Cesar	Curumaní		1
Cesar	Pelaya		1
Cesar	Robles		1
Cesar	Valledupar		1
Total Cesar		1	6
Chocó	Managru		1
Chocó	San Francisco de Quibdó	1	2
Chocó	Tado		1
Total Chocó		1	4
Cundinamarca	Cabrera		1
Cundinamarca	Fómeque		1
Cundinamarca	Gama		1
Cundinamarca	Guataqui		1
Cundinamarca	Jerusalén		1
Cundinamarca	Junín		1
Cundinamarca	La Palma	1	
Cundinamarca	Ospina Pérez		1
Cundinamarca	Pulí	1	
Cundinamarca	Villeta		1
Cundinamarca	Viotá		1
Total Cundinamarca		2	9
Guajira	El Molino		1
Guajira	Riohacha		1
Total Guajira		0	2
Huila	Acevedo		1
Huila	Gigante		1
Total Huila		0	2
Magdalena	Ciénaga	2	
Magdalena	Fundación		1
Magdalena	Santa Marta	1	
Total Magdalena		3	1
Meta	Acacias	1	
Meta	El Castillo		1
Meta	El Dorado		2
Meta	Puerto Gaitán		2
Meta	San Juan de Arama		1
Meta	San Juanito	1	
Meta	Villavicencio		1
Total Meta		2	7
Nariño	Puerres	1	
Nariño	San Pablo		1
Total Nariño		1	1
Norte de Santander	Abrego	1	2
Norte de Santander	Arboledas		1
Norte de Santander	Cúcuta		1
Norte de Santander	Hacari	1	2
Norte de Santander	Herrán		1
Norte de Santander	La Playa		1
Norte de Santander	Ocaña		2
Norte de Santander	San Calixto	2	2
Norte de Santander	Sardinata		4
Total Norte de Santander		4	16
Putumayo	La Dorada		1

<i>Department</i>	<i>Municipality</i>	<i>Accident</i>	<i>Incident</i>
Putumayo	La Hormiga	1	4
Putumayo	Mocoa		1
Putumayo	Orito		1
Putumayo	Puerto Caicedo	1	1
Putumayo	Puerto Leguizamo		1
Putumayo	Santiago		1
Total Putumayo		2	10
Quindío	Pijao	1	
Total Quindío		1	0
Risaralda	Belén de Umbría		1
Total Risaralda		0	1
Santander	Albania		1
Santander	Barrancabermeja		12
Santander	Bucaramanga	1	
Santander	Capitanejo		1
Santander	Charta		1
Santander	Curiti	1	
Santander	Matanza	2	1
Santander	Puerto Wilches		1
Santander	Rionegro	1	
Santander	Sucre		1
Santander	Suratá	2	2
Santander	Tona		1
Santander	Zapatoaca	1	
Total Santander		7	21
Sucre	Ricaurte (coloso)		1
Sucre	Since		1
Total Sucre		0	2
Tolima	Prado		1
Total Tolima		0	1
Valle del Cauca	Santiago de Cali		2
Total Valle del Cauca		0	2
Vichada	La Primavera		1
Total Vichada		0	1

Source: Database on Violence of the National Strategy Room, Office of the President of the Republic, DAS and Press office of the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

Processed by the Anti-Personnel Mines Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

11. Indigenous populations, journalists, trade unionists and human rights defenders

11.1 The human rights situation of the indigenous population in 2001

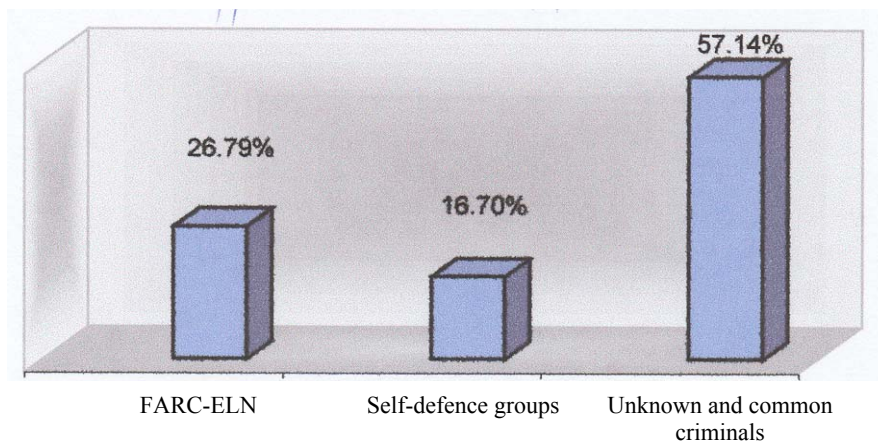
472. The National Government, through the Ministry of the Interior's Programme for the Protection of the Indigenous Population, has been working hard to protect the rights of the indigenous population; the result of its efforts has been a reduction in the number of homicides as compared with the year 2000, when the Administrative Department of Security (DAS) recorded over 25 homicides. The weekly Press release of the Monitoring Centre of the President's Programme on human rights and international humanitarian law claims that in 2001 there were

24 cases of violation of the human rights of the indigenous population in the country:
18 homicides, 4 threats, 1 abduction and 1 assault.

473. According to the same source, Cauca and Córdoba were the departments with the highest rates of acts against the indigenous population. In Cauca four homicides, 3 multiple homicides, 1 threat and 1 assault were committed, while in Córdoba there were 3 homicides, 1 threat and 1 abduction.

474. As regards the alleged perpetrators, according to information from the DAS, between January 1999 and June 2001, unknown perpetrators and common criminals were responsible for 57.14% of violations of the human rights of the indigenous population, the FARC and the ELN for 26.79% and self-defence groups for 16.7%.

**Violations of the human rights of the indigenous population by perpetrator,
January 1999 to June 2001**



Source: Administrative Department of Security (DAS)

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

475. In 2001, the Human Rights Unit of the Office of the Public Prosecutor of the Nation opened an investigation into the abduction of Kimy Pernía Domico of the Embera Katio community in Tierralta (Córdoba) on 2 June 2001. The investigation was added to the seven cases of proceedings opened in 2000: four for homicide, one for homicide and disappearance, one for homicide and abduction, and one for disappearance.

12. The human rights situation of journalists in 2001

476. Although the Programme for the Protection of Journalists and Social Communicators has been doing important work to preserve that profession's fundamental rights, the human rights situation of journalists and social communicators deteriorated considerably in 2001 as compared with 2000.

477. The weekly Press release of the President's Programme for human rights and international humanitarian law recorded that 24 human rights violations were committed against journalists in

the country in 2001. Of those, 11 were homicides, seven threats, three abductions and three assaults.

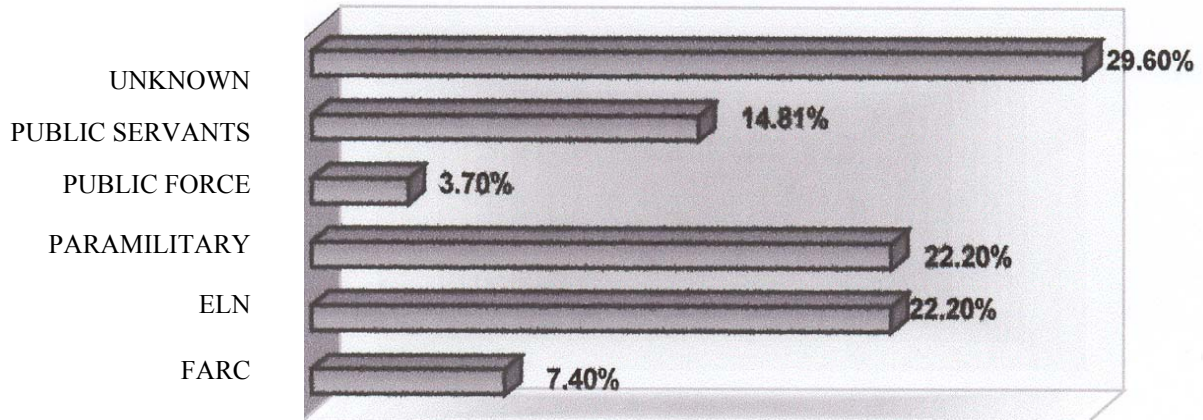
478. According to information from the same source, the department of Valle posted that highest homicide rate, while the greatest numbers of threats (5) occurred in Bogotá, Valle and Nariño.

479. The Foundation for Press Freedom (FLIP), for its part, recorded an increase in the number of journalists murdered compared with earlier years, with a total of 11 as against six in 2000 and seven in 1999.

480. FLIP recorded 54 threats to social communicators and journalists (twice the number in 2000), although it is thought that the number may be higher. Bogotá was again the place with the highest number of threats (12), although Cauca, Valle, Caldas and Caquetá were not far behind. FLIP also reported that 87.03% of the threats were against men, with barely 12.96% against women.

481. The list of alleged authors of threats is headed by self-defence groups with 42.5%, followed by unknown groups with 24.03%, the FARC with 9.25%, and the ELN with 5.5%. That data contrasts with the 2000 figures, in which unknown groups made up the majority of authors.

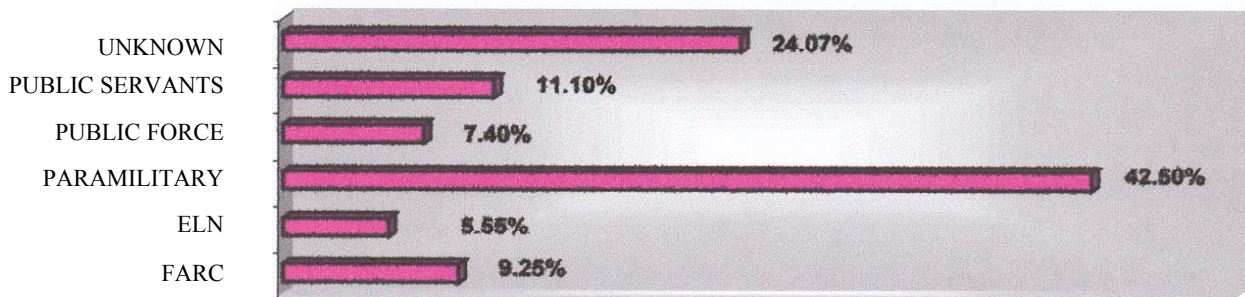
Alleged authors of threats to journalists in 2000



Source: Democratic Association for the Defence of Human Rights (ASDEH).

Processed by the Monitoring Centre for Human Rights and International Humanitarian Law, Office of the Vice-President of the Republic.

Alleged authors of threats against journalists in 2000



Source: Democratic Association for the Defence of Human Rights (ASDEH)

Processed by the Monitoring Centre for human rights and international humanitarian law, Office of the Vice-President of the Republic.

482. The Colombian State is engaged in shedding light on cases through in the courts. At the end of 2001 the National Human Rights Unit (UDH) of the Office of the Public Prosecutor was conducting proceedings concerning 35 cases in which journalists and social communicators were the victims - 28 of them homicide cases, one attempted homicide, five threats and one threat and abduction.

483. Among the cases concerning journalists investigated by the UDH, seven related to homicides committed in 2000; two in 2001 for the deaths of the journalists Flavio Iván Bedoya Sarría in Tumaco (Nariño) on 27 April and Yesid Marulanda Romero in Cali on 3 May. Orlando Sierra, Deputy Director of the daily *newspaper Patria*, was assassinated in Manizales on 30 January 2002.

13. The human rights situation of trade unionists in 2001

484. Trade unionists were the victims of a number of human rights violations in 2001. According to information provided by the weekly Press release of the Monitoring Centre of the President's Programme for human rights and international humanitarian law, in 2001 there were 24 homicides, five threats, three abductions, one disappearance and one attack on the human rights of trade unionists. Santander, with nine cases, was the department with the highest number of homicides, followed by Atlántico with three cases.

485. This information is at odds with data from the Inter-Agency Committee on the Human Rights of Workers, which claims that 128 trade-union leaders, activists and unionized workers were assassinated in 2000. It states that there were 54 homicides by June 2001.

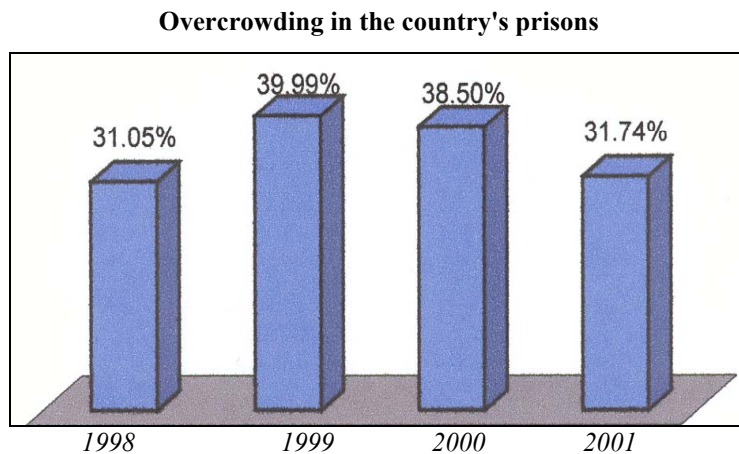
486. One of the most deplorable attacks on the fundamental rights of trade unionists was the abduction and subsequent assassination of the president of the Cartagena branch of the Workers' Trade Union - Unión Sindicalista Obrera (USO), Aury Sara Marrugo, and escort Enrique Arellano, on 5 December 2001 by Colombian Self-Defence Units, for alleged ties with the ELN.

487. Workers at the Colombian Oil Company - Empresa Colombiana de Petróleos (ECOPETROL) partially suspended work at the Cartagena refinery and other centres in the country in protest over the assassinations.

488. The Human Rights Unit of the Office of the Public Prosecutor opened nine cases for violation of the human rights of trade unionists in 2001, in addition to the eight investigations initiated in 2000.

14. The situation in the country's prisons in 2001

489. According to INPEC, the level of overcrowding in the country's prisons in 2001 was 31.74%, making it the year with the lowest level of overcrowding (since 1998) during President Pastrana's administration

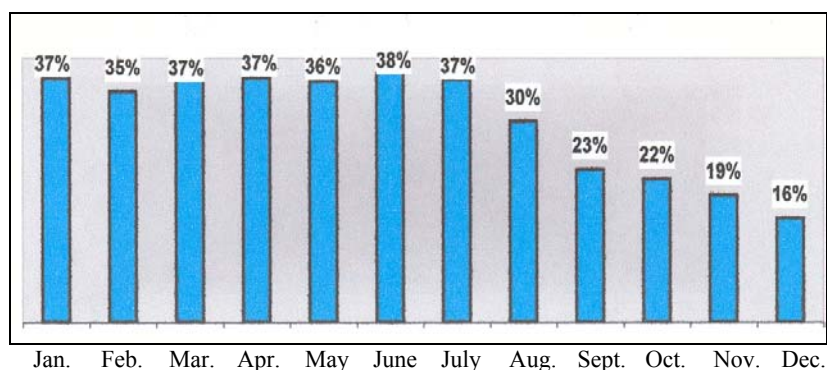


Source: INPEC.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

490. The level of overcrowding plummeted during the second half of the year, from 37% in July to 16% in December.

Overcrowding in Colombian prisons in 2001, by month

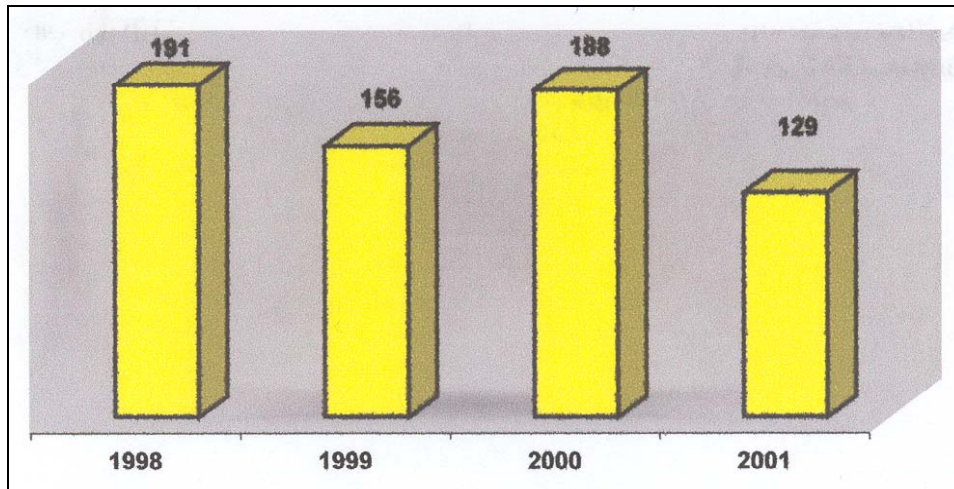


Source: INPEC.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

491. The number of violent deaths inside prisons in 2001 was 128, the lowest level recorded since 1998.

Violent deaths inside penal institutions, 1998-2001

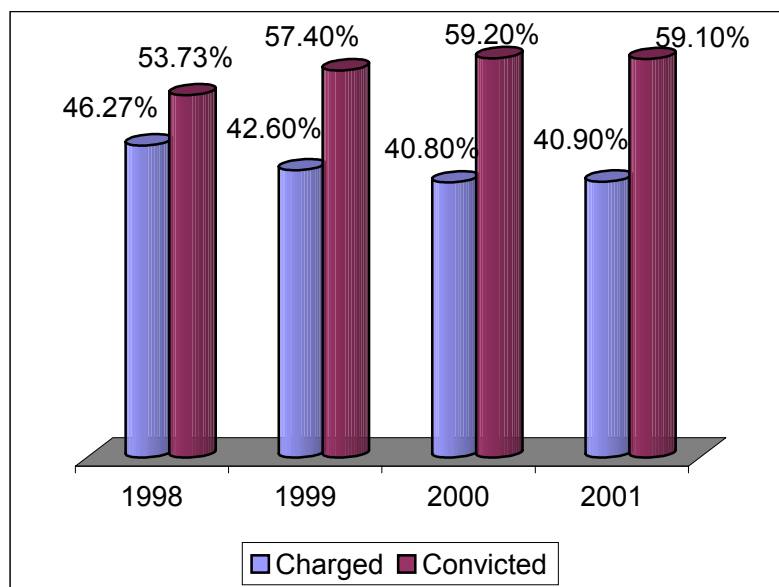


Source: INPEC.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

492. The legal situation of inmates remained the same in 2001 as in the preceding year, with 40.9% charged and 59.1 already sentenced.

Average legal situation of inmates, 1998-2001



Source: INPEC.

Processed by the Monitoring Centre of the President's Programme for human rights and international humanitarian law, Office of the Vice-President of the Republic.

493. During the period September-December 2001, INPEC carried out 41 inspections and searches of prisons throughout the country, in which 7,934 home-made knives were seized.

494. The INPEC management retired a number of officials. Between January 2000 and June 2001, 442 employees were investigated; 214 of them were removed on disciplinary grounds.

VI. SUBSTANTIVE PROVISIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1 – Right of peoples to self-determination

Provisions contained in the 1991 Political Constitution

495. Article 1, paragraph 1, of the Constitution provides as follows:

“Title I. Concerning fundamental principles

Article 1

Colombia is a social State governed by 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.”

Principle of legislative hierarchy

496. According to this principle, the Political Constitution takes precedence over any other norm issued by any authority.

497. The preamble and the fundamental principles of Title I of the Constitution set out the purposes of the nation, namely unity, ensuring the safety of its members, peaceful coexistence, work, justice, equality of all before the law, and the search for a just social, economic and political order.

Principle of solidarity

498. The Constitutional Court, in its Ruling T 533 of 23 September 1992, declared that: “The principle of solidarity has ceased to be an ethical requirement and has become instead a binding constitutional norm for all individuals in the community. The decision to raise the principle of solidarity to constitutional status was based on the rejection of social injustice and the conviction that its gradual elimination is a commitment for the whole of society and for the State.”

Principle of dignity

499. In its Ruling T 499 of 21 August 1992, the Constitutional Court reiterated the principle of dignity as being “the attitude of respect which must imbue all official acts. Public officials are under an obligation to treat every person, without any distinction, according to his intrinsic worth. The integrity of the human being constitutes the justification, the principle and the ultimate end of all State organization.”

Sovereignty

500. Sovereignty resides in the people, from whom public power emanates, as provided in article 3 of the Constitution. This power is exercised through direct or representative democracy:

“Article 9

The foreign relations of the State are based on national sovereignty, on respect for the self-determination of peoples and on the recognition of the principles of international law accepted by Colombia.”

501. With regard to paragraphs 2 and 3 of article 1 of the Covenant, the Constitution provides as follows:

Protection of natural resources

502. Natural resources are protected by article 80 of the Constitution, according to which the management and utilization of natural resources shall be planned in such a way as to guarantee their sustainable development, conservation and restoration. In addition, environmental degradation must be prevented and monitored, with the imposition where necessary of sanctions and reparations. An effort must be made to protect ecosystems in frontier areas.

503. The international standards ratified by Colombia in this respect include the following:

- Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the South-East Pacific, signed in Paipa on 21 September 1989 and approved by Act No. 12 of 28 July 1992;
- International Convention on Civil Liability for Oil Pollution Damage, approved by Act No. 55 of 1989;
- Montreal Protocol on Substances that Deplete the Ozone Layer, approved by Act No. 29 of 1992.

Colombian territory

504. According to article 101 of the Constitution, the borders of Colombia are those defined in international treaties approved by Congress and duly ratified by the President of the Republic, and those determined by arbitral awards in proceedings to which Colombia is a party.

505. The treaties concerning the borders which define Colombian territory, by decision of the Constitutional Court in its Ruling C-400 article 102 of 1998, form part of the “constitutional bloc”.

506. Mention should be made in this section of the archaeological resources which are part of Colombia’s cultural wealth. In this respect, account should be taken of article 72 of the Constitution and the relevant treaties ratified by Colombia.

Ownership of the subsoil and natural resources

507. According to article 332 of the Constitution, the State is the owner of the subsoil and of non-renewable natural resources, without prejudice to rights acquired.

Exploitation of non-renewable natural resources

508. According to article 360 of the Constitution, the law determines the conditions for the exploitation of non-renewable natural resources, as well as the rights of territorial entities over them. A system of royalties and compensations for the exploitation of those resources was laid down in Act No. 144 of 1994.

Provisions of the Penal Code

509. The new Penal Code (Act No. 599 of 24 July 2000), in Title XI, deals with the legal protection of natural resources and the environment. Chapter 1 of this title recognizes the following types of offences:

- Article 328. Illegal use of natural resources. Any person violating the rules of the Code of Natural Resources and supplementary legislation, by acts such as introducing, exploiting, transporting, trafficking, trading, making use of or benefiting from specimens, products or parts of fauna, forest, flora or hydrobiological resources, endangered species or genetic resources, may be liable to a penalty of imprisonment of between two and five years and a fine of up to 10,000 times the legal minimum wage.
- Article 329. Border violations for the exploitation of natural resources.
- Article 330. Illegal handling of harmful microorganisms.
- Article 331. Damage to natural resources.
- Article 332. Environmental contamination.
- Article 333. Unlawful environmental contamination through the exploitation of mining or oil deposits.
- Article 334. Illegal experimentation on animal or plant species.
- Article 335. Illegal fishing.
- Article 336. Illegal hunting.
- Article 337. Invasion of areas of special ecological importance.
- Article 338. Illegal exploitation of mining deposits or other materials.
- Article 339. Culpable offences subject to reduced sentences for attenuating circumstances.

Article 2 – Guarantee of rights recognized in the Covenant and non-discrimination

Provisions contained in the 1991 Political Constitution

510. Article 2 of the Constitution concerning the essential goals of the State defines the purpose of the Colombian State in the following terms.

511. The essential goals of the State are to serve the community, to promote the rights and duties stipulated by the Constitution, to facilitate the participation of all in the decisions that affect them and in the economic, political, administrative and cultural life of the nation; to defend national independence, maintain territorial integrity and ensure peaceful coexistence and the enforcement of a just order.

512. The principles guiding the behaviour of public officials, in all spheres of public life, are referred to in the second paragraph of article 2 of the Constitution, which states that: The authorities of the Republic shall be established to protect the lives, dignity, property, beliefs and other rights and freedoms of all residents of Colombia and to secure the fulfilment of the social duties of the State and of private individuals.

513. Regarding the right to equality, article 13 of the Constitution states 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.

514. The State shall take steps to ensure that equality is real and effective and shall adopt measures in support of groups that are discriminated against or marginalized.

515. 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.

516. The Constitutional Court has expressed the opinion that the effectiveness of the material equality referred to in that provision is related to the country's conversion to a social State under the rule of law enshrined in article 1 of the Constitution. In other words, formal equality is to the formal legal State as the effectiveness of material equality is to the social State under the rule of law.

517. It has also been made clear that the explicit recognition of equality reflects at least three dimensions in the Constitution: as a generality, as a comparative value and as a differential value:

- Equality as a generality: this is the recognition of equality before the law with respect to rights and duties, and to procedures. It is recognized in the Constitution in the following sections and provisions: a) through the reference to “persons” in articles 2, 8, 30, 38, 42, 46, 91, 92 and 95; b) through the reference to “all” in articles 13, 14, 15, 16, 19, 20, 23, 24, 25, 26, 28, 29, 36, 49, 52, 54, 67, 69, 74, 79, 86, 87 and 229; c) through the reference to “Colombians” in articles 24, 35, 57, 70, 95 and 216; d) through the reference to “no one” in articles 12, 18, 29 and 33; and e) through the reference to the term “citizen” in articles 40 and 95.
- Equality as a comparative value: this is recognized in articles 43 (Equality between women and men) (Equality of rights and obligations in the couple).
- Equality as a differential value: this refers to differences and is reflected in paragraphs 2 and 3 of article 13 (Adoption of measures in favour of groups which are discriminated against or marginalized), in article 58 (Criteria applied for determining compensation for expropriation: the interests of the community and of the affected

party), and in articles 95.9 and 362 (Principles of taxation: equity and progressiveness).

518. There is no doubt that one of the most significant constitutional principles to have emerged in the history of Colombian constitutionalism, with the promulgation of the 1991 Political Constitution, is that relating to the right of equality. The implementation of this principle had led to major changes in the legal and social structure of the country, which are now considered as models for the region.

519. In matters of gender, for instance, a number of attitudes have now been relegated to the past, insofar as they have been declared unenforceable by the Constitutional Court following the change in legislation to comply with the new legal order enshrined in the latest Political Constitution. Such changes could not have occurred under the 1886 Political Constitution, which was repealed by broad national consensus reflected in the Constituent National Assembly of 1990-1991, which promulgated the present Constitution of Colombia.

520. The advances made, for example, have consisted in the elimination of certain attitudes regarding women's rights, among which the following may be mentioned: recognizing grounds for annulment of marriage that laid the responsibility entirely on the woman⁶; simply denying all access for women to the only cadet school in the country⁷; having a social security body which allowed men and not women to affiliate their spouses⁸; maintaining the old requirement that marriages should be celebrated exclusively in the home of the woman⁹; or that women should not be allowed to work on night shifts¹⁰, amongst others.

521. Scope of the principle of equality: The concept of equality has evolved in the case law of the Constitutional Court. For instance, in a first ruling, the Court maintained that equality implied equal treatment among equal persons and different treatment between different persons¹¹. In a second judgment, the Court added that for a difference to be introduced, the difference had to be reasonable in the light of several factual assumptions¹². In a third ruling, the Court defended unequal treatment for minorities¹³. Still in its consideration of the possible scope of this principle, in a unifying judgment, the Court ruled as follows:

522. The principle of equality recognized in article 13 of the Constitution allows different persons to be treated differently provided that the following conditions apply:

- i) The persons should effectively be in a different factual situation;
- ii) The different treatment they receive should serve a purpose;

⁶ Constitutional Court Ruling C-082 of 1999. M.P. Carlos Gaviria Díaz.

⁷ Constitutional Court Ruling T-624 of 1995. M.P. José Gregorio Hernández Galindo.

⁸ Constitutional Court Ruling T-098 of 1994. M.P. Eduardo Cifuentes Muñoz.

⁹ Constitutional Court Ruling C-112 of 2000. M.P. Alejandro Martínez Caballero.

¹⁰ Constitutional Court Ruling C-622 of 1997. M.P. Hernando Herrera Vergara.

¹¹ Constitutional Court Ruling T-02 of 1992.

¹² Constitutional Court, Ruling T-02 T-422 of 1992.

¹³ Constitutional Court Ruling T-416 of 1992, reiterated in the judgement T-429 of that year.

- iii) Such purpose should be reasonable, that is to say, should be admissible with regard to constitutional values and principles;
- iv) The factual assumption – that is, the different situation, the purpose pursued and the unequal treatment– should be consistent with respect to each other, or, which amounts to the same, should maintain an internal rationality;
- v) This rationality should be proportional, in such a way that the legal consequence arising from the different treatment should not be absolutely disproportionate with regard to the factual circumstances and the justifying purpose.

523. According to the Court's ruling, if these five conditions apply, different treatment will be considered admissible and thereby constitute a constitutionally legitimate differentiation; failing that, meeting out unequal treatment will amount to discrimination contrary to the Constitution.

524. The chapter on advances in human rights policy and international humanitarian law given earlier in this report indicates the measures taken to guarantee the rights recognized in the Constitution.

Article 3 – Equality between men and women in the enjoyment of human rights

Provisions contained in the 1991 Political Constitution

525. According to article 43 of the Constitution:

“Women and men have equal rights and opportunities. Women may not be subjected to any type of discrimination. During pregnancy and following delivery, women shall be granted the special assistance and protection of the State and shall receive from the latter a basic allowance if they should thereafter find themselves unemployed or forsaken. The State shall especially support women heads of household.”

526. According to article 40, moreover, all citizens have the right to participate in the establishment of political power, without discrimination on grounds of sex or gender.

527. The Labour Statute law referred to in article 53 of the Constitution establishes among its principles that special protection must be given to women, maternity and underage workers.

Legislative provisions and other actions

528. There have been many signs in the country that women have become more closely associated with the socio-economic life of the country and with public affairs, thanks to the modernization in part of policies and institutions and in part of national standards of social justice. There is no doubt that women have benefited from these changes and that they have taken on new tasks and responsibilities, sometimes without the corresponding access to resources and services. The removal of barriers impeding the full participation of women has been the objective of institutions since 1990.

529. New policies, programmes and mechanisms have been developed on the basis of different theoretical and programming approaches and different points of view regarding the possible impact of macropolicies and the need for specific responses to gender issues. In this respect,

progress has been achieved through a new attitude to public policies, which have gradually been translating the goal of equal rights for women into practical measures.

530. During the period 1990-2001, successive governments made praiseworthy efforts to place gender issues on the agenda of public policies.

531. In 1994, Colombia began to seek ways of giving gender issues greater importance in its institutions. A number of national, sectoral and territorial bodies were therefore set up, such as the Advisory Commission on the Equality and Participation of Women (Decree No. 2055 of 1994), the Presidential Secretariat for Women and Gender and the Gender Unit of the Minister Responsible. The latter bodies operated as technical offshoots of the Advisory Commission until the end of 1995, when the National Directorate on Equal Rights for Women was created. This Directorate was later made into a Presidential Advisory Council by Decree No. 1182 of 29 June 1999.

532. Under the terms of its mandate, the Directorate has established a policy of institutionalizing equal rights for women in the social, economic, political and cultural agenda of the country. This policy is based on equality and equal rights principles that incorporate the specific needs of women in macropolicies, that recognize social, cultural and economic differences between men and women, and that admit a sexual division of labour from the material, cultural and symbolic point of view.

533. During this decade, policies have shifted from a populational approach (where women are treated as a group benefiting from specific actions) to a notion of public policies for women, where priority is given to undertaking positive actions on their behalf. Thus the type of institutional approach which favoured isolated initiatives has been overtaken and replaced by a transversal type of approach, which promotes and supports the mainstreaming of equal rights for women's issues in all sectoral policies and programmes.

534. The National Directorate on Equal Rights for Women (now a Presidential Advisory Council) was established by Act No. 188 of 1995 under the 1994-1998 National Development Plan as a special administrative unit, attached to the Administrative Department of the Office of the President of the Republic. The new Directorate, which was made administratively independent and provided with its own assets, is responsible for promoting gender policies and, within a broader framework, for promoting coexistence among citizens and contributing, through its specific mandate, towards strengthening the State as the guarantor of the political, civil, economic, social and cultural rights of women.

535. In the 1998-2002 National Development Plan "Change for building peace", the present Government's commitment and political will in favour of Colombian women was reflected in the adoption of the Plan for Equality between Men and Women. According to the Development Plan:

"(...) A Plan for Equal Opportunities between Men and Women is the means by which the Colombian State proposes to give effect to the constitutional principles of equality and to the international agreements signed by the country regarding the elimination of all forms of discrimination against women. It is to be given effect through the development and formulation in different sectors of strategies aimed at overcoming the limitations and obstacles that impede the participation of women in conditions of equality

with men in political, economic, family, social and cultural life, in decision-making positions and in the public authority ...”¹⁴

Legal equality

536. Advances have clearly been made with regard to effective recognition of equality between men and women.

537. Little by little women’s struggle to achieve recognition of legal equality, with the backing of government measures, led to a number of new rules that introduced substantial changes.

538. The new Penal Code (Act No. 599 of 2000), in Title IV on Offences against sexual freedom, integrity and education, refers in articles 205 *et seq.* to the following offences:

Chapter 1. Concerning rape

Violent carnal penetration.

Violent sexual penetration.

Carnal penetration or sexual act perpetrated against a person who is unable to resist.

Chapter 2. Concerning acts of sexual abuse

Abusive carnal penetration of a child under the age of 14.

Carnal penetration or act of sexual abuse perpetrated against a person unable to resist.

In article 212 of the Penal Code, carnal penetration is defined as anal, vaginal or oral penetration by the male member, or vaginal or anal penetration or of any other part of the human body.

In those offences, the perpetrator may be either a man or a woman.

539. In addition, the President of the Republic approved Act No. 731 of January 2002, “issuing rules in favour of rural women”. The purpose of the Act is to improve the quality of life of rural women, giving priority to those in low income sectors, and to introduce specific measures designed to speed up the achievement of equality between rural men and women. To that effect, the Act provides for a series of schemes, including the participation of rural women in rural credit facilities; the creation of quotas and lines of credit with preferential rates for rural women on low incomes; and the creation of the Rural Women’s Development Fund.

Recent advances on the labour front

540. Women account for 51% of the population. The current economic recession, by affecting family incomes, has led to an increased presence of women in the labour market. Towards the end of the 1990s, employment among women grew faster than among men. The rate of

¹⁴ Office of the President of the Republic, National Planning Department (1998). 1998-2002 National Development Plan “Change for building peace”.

employment of women rose from 37.6% in 1990 to 41.7% in 1999, while the employment rate of men remained stable.

541. The unemployment rate among women was much higher than among men in 1999, with more women becoming engaged in informal work, with the result that the quality of employment for women worsened.

<i>Year</i>	<i>Unemployment</i>		<i>Employment</i>		<i>Informal work</i>	
	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>	<i>Men</i>	<i>Women</i>
1997	9.8	15.1	65.5	41.6	–	–
1998	12.5	18.0	63.9	41.6	53.9	55.7
1999	17.2	23.3	61.1	41.7	–	–
2000	–	–	–	–	59.2	60.9

Source: DANE household survey, yearly in September, in Report on Human Development in Colombia 2000 DNP.

542. According to a joint survey by the Office of the People’s Advocate and the Institute for Human Rights and International Relations, discrimination against women takes the form of violence in the family and sexual aggression practiced against many women. In the labour field, the presence of women has increased substantially, but they are still at a disadvantage as far as pay conditions for equal work are concerned and access to political power. On account of the armed conflict, women are more affected by displacement, when they have to assume the duties and responsibilities of heads of household. Furthermore, women are frequently exposed to sexual violence perpetrated by armed men.

543. Fortunately, Colombia is now able to report a significant advance in the search for equity and equality of opportunities. This has taken the form of Act No. 581 of 2000, regulating the adequate and effective participation of women in decision-making in the various sectors and bodies of public authority. The purpose of the Act was to set up the necessary mechanisms to ensure that the authorities, in conformity with their constitutional mandates, should allow women the adequate and effective participation to which they are entitled at all levels of the sectors and bodies of public authority. Among other measures, the Act calls for the implementation of “positive actions aimed at understanding and overcoming the obstacles to women’s participation in decision-making in the private sector”.

544. Although it is not possible as yet to draw any conclusions regarding the practical effects of this law, it may be worth mentioning that it has already been reflected in the composition of the ministerial cabinet of the Administration ending on 7 August 2002, and that of the next cabinet, which is to include a significantly higher proportion of women. No less than six women have been appointed for a cabinet consisting of 13 officials, with a woman being appointed Minister of Defence for the first time in the country’s history.

545. Other actions in favour of women are referred to under the commentary on article 43 of the Constitution.

Article 4 – Protection of human rights in states of emergency

Provisions contained in the 1991 Political Constitution

546. Chapter 6 of Title VII of the Constitution regulates so-called states of exception, which include: the state or foreign war (art. 212), the state of internal disturbance (art. 213) and the state of social emergency and grave public calamity (art. 215), the latter being subsidiary to the first two. States of emergency were regulated under Statutory Act No. 137 of 1994.

547. The Constitutional Court has repeatedly asserted that the declaration of states of exception is not a political act subject to the Government's discretion, but in view of the indefinite legal provisions contained in articles 212 to 215 of the Constitution, the President of the Republic must act reasonably by relating the factual assumptions to the legal assumptions contained in those articles.

548. In other words, the Government disposes of powers which are only strictly necessary to overcome the causes of the disturbance.

549. A similar clause appears in article 27 of the American Convention on Human Rights, which was ratified by Colombia and approved by Act No. 16 of 1972.

550. *Case law.* The following is an extract of the Constitutional Court's Ruling C-466 of 18 October 1995 in this respect:

“The assessment of the factors determining an irregular situation should be made in principle by the President of the Republic as the person responsible for maintaining public order. It is up to the President, if he finds that certain factual conditions prevail, with the signature of all the government ministers, to declare the appropriate state of exception.

Such a declaration will temporarily upset the operation of the rule of law, so that in effect the separation of powers will become blurred, to the extent that the Government may act as legislator in areas affected by the factors giving rise to the disorder, precisely in order to counteract those factors. This must be the purpose of extraordinary decrees, which justifies their content (...).

It is for the President of the Republic, as the person responsible for preserving and maintaining public order, to determine in which circumstances disturbing the public order he may resort to the exceptional measure referred to in article 213 of the Constitution, namely declaring a state of internal disturbance, and to issue whatever rules are appropriate for the purpose of re-establishing order or preventing the spread of the disturbance.

In making use of these powers, the President of the Republic is not allowed absolute discretion, since with respect to the establishment of such a state of exception, “the President's freedom of action is limited to taking the decision to make the declaration, deciding the right moment to do so and explaining the factors that justify such a decision. With regard to the effective configuration of the objective assessment of the situation, however, the President is left no discretion whatever and there are no alternatives other than the existence or non-existence of the event”.

551. The Constitutional Court has also expressed an opinion on the subject in its ruling C-004 of 1992, as follows:

“... the constitutional rules governing states of exception (the state of foreign war, the state of internal disturbance and the state of emergency) reflect the decision by the Constituent Assembly to guarantee the application and effect of the Constitution even in abnormal circumstances. Necessity does not give rise to a source of law and, in our legal system, it is no use invoking the aphorism *salus reipublicae suprema lex est*, whenever, in extraordinary circumstances, it is necessary to adopt rules and measures to counteract those circumstances. States of exception constitute the legal response to this type of situation ...

States of exception, insofar as they give rise to a temporary extension of the powers of the President and the introduction of different types of restrictions and limitations with respect to the normal constitutional system, should infringe this system as little as possible, in the light of the extraordinary circumstances, and should ensure a rapid return to normality. This principle of the efficacy and economy of exceptional powers, in its consequences, includes the provision that human rights and fundamental freedoms must never be suspended...”

Position of the present Government with respect to states of exception

552. Despite the situation as regards public order which the country has been experiencing and the recent challenge of the whole institutional system by the FARC (Revolutionary Armed Forces of Colombia), it is worth highlighting the fact that during the administration of Dr. Andrés Pastrana Arango on no occasion was any state of exception declared.

Article 5 – Guarantee of the rights recognized in the Covenant

Provisions contained in the 1991 Political Constitution

553. The Constitution contains a great many references in this respect. Its article 94, in particular, confirms the existence of rights inherent in the human being other than those referred to among the rights and guarantees of the Constitution and in existing international agreements.

554. *Case law.* In its Ruling C-027 of 5 February 1993, in which it considered respect for fundamental rights as the mainstay of the Constitution, the Constitutional Court stated that:

“The intention of the Court has been to stimulate the effective application of the new Constitution at all the complex levels of our vast social fabric, in the belief that in this way it is not only fulfilling its mission as a guardian of the integrity of that fabric, but also reviving the faith of our citizens in the real possibilities offered by law as an instrument of justice.

(...)

On many occasions the Court has emphasized that the respect for and effectiveness of fundamental rights are a vital component of the axiology underlying the 1991 Constitution.

Thus the juridical supervision of constitutionality attributed to the Constitutional Court under the Constitution is combined with other mechanisms – such as its powers of protection (*tutela*) – basically to serve the purpose of defending fundamental rights.

The same concern would explain why the 1991 Constitution contains a series of provisions extending the Court's powers of protection in this respect, whereby the constituent legislators expressed the idea that values and principles should taken precedence over their positive application, in view of the protective mechanisms, of which examples are given below:

(...)

In article 94, the Constitution makes it quite clear that the enunciation of the rights and guarantees contained in the Constitution and in international agreements in force is purely indicative, and “shall not be construed as negating other rights inherent to the human person which are not expressly referred to therein.”

New Penal Code

555. The new Penal Code (Act No. 599 of 2000) was approved on 24 July 2000 and entered into force one year later.

556. In Title II headed “Offences against persons and property protected by international humanitarian law”, the Code lists the following types of offences:

- Article 135. Homicide of protected persons.
- Article 136. Injury to protected persons.
- Article 137. Torture of protected persons.
- Article 138. Violent carnal penetration of a protected person.
- Article 139. Violent sexual acts against protected persons.
- Article 140. Aggravating circumstances.
- Article 141. Forced prostitution or sexual slavery.
- Article 142. Use of the means and methods of war.
- Article 143. Perfidy.
- Article 144. Acts of terrorism.
- Article 145. Acts of barbarity.
- Article 146. Inhuman or degrading treatment, biological experiments on protected persons
- Article 147. Acts of racial discrimination.

- Article 148. Taking of hostages.
- Article 149. Illegal detention and denial of due process.
- Article 150. Enforced support for warlike activities.
- Article 151. Plundering on the battlefield.
- Article 152. Failure to provide first aid and humanitarian assistance.
- Article 153. Impeding medical and humanitarian tasks.
- Article 154. Destruction or appropriation of protected property.
- Article 155. Destruction of medical material or installations.
- Article 156. Destruction or illegal use of cultural assets and places of worship.
- Article 157. Attacks against works or installations containing dangerous forces.
- Article 158. Reprisals.
- Article 159. Deportation, expulsion, transfer or forced displacement of civilians.
- Article 160. Attempts against subsistence and devastation.
- Article 161. Failure to provide measures of protection for the population.
- Article 162. Illegal recruitment.
- Article 163. Arbitrary exaction or taxation.
- Article 164. Destruction of the environment.

Article 6 – Right to life

Provisions contained in the 1991 Political Constitution

557. According to article 11 of the Constitution: “The right to life is inviolable. There shall be no death penalty.”

Legislative provisions and other actions.

558. As explained in another section of this report, the internal armed conflict and violations of international humanitarian law have worsened in recent years. More offences against international humanitarian law have been recorded in the last three years. The most frequent of these offences is homicide and the number of killings has risen notoriously. Some of the actions taken by Colombia and its successes with regard to the protection of the right to life have been commented on at length in earlier chapters.

Education in human rights

559. This section explains some of the measures taken by the Colombian Government to promote a culture of respect for life and other fundamental rights, in line with the recommendation expressed by the Human Rights Committee in its assessment of Colombia's fourth report, with regard to the education and training programmes undertaken to encourage respect for human rights and human dignity.

Inculcating a culture of peace in Colombian schools

560. This programme, which is conducted on a national scale, is designed to encourage the adoption of knowledge and mechanisms related to the settlement of conflicts and to respect for the values of democracy, human rights and international humanitarian law, which apply to the school community as a whole. The aim is to involve as many actors of the educational community as possible, by preparing feasible, sustainable programmes of mediation, starting with experiments in pilot educational establishments, which are then taken up at national level.

561. The Culture of Peace programme relies on the training of future instructors in the following subjects: understanding and analysis of the conflict; development of communication abilities and development of a capacity for negotiation and mediation. A Conflict Settlement Programme is to be introduced in schools throughout the country.

562. The Culture of Peace programme was launched in the year 2000, with the support of the Secretariats of Education of the 33 departments in the country, the National Police, the Excellence for Justice Corporation, the Chamber of Commerce, the Ministry of the Interior, the United Nations Development Programme (UNDP) and the Canadian advisory service of the Conflict Resolution Network.

563. The bodies and organizations mentioned below undertake educational activities in human rights:

a) At governmental level: the Ministry of Education, the Ministry of the Interior, especially the General Directorate of Human Rights and the General Directorates of Black Communities and Indigenous Affairs, the Ministry of Foreign Affairs through the Diplomatic Academy, the Ministry of Defence, both in its training schools and through the human rights offices of the three armed forces and the National Police, the Office of the High Commissioner for Peace Diplomado U. Rosario, the Advanced School of Public Administration (ESAP), the Luis Carlos Galán Institute for Democracy, and the Social Solidarity Network;

b) At State level: the Office of the People's Advocate, the Attorney General's Office through the Institute of Studies of the Government Procurator's Office, and the Office of the Public Prosecutor.

c) At non-governmental level, educational activities are known to be conducted by the following national non-governmental organizations (NGOs) having the greatest experience, technical capacity and coverage: CINEP, Corporación Viva la Ciudadanía, Fundación Social, Fundación Presencia, Escuela Nacional Sindical, People's Training Institute (IPC), INDEPAZ, REDEPAZ, JUSTAPAZ, Peace and Democracy and Network of Initiatives for Peace, and the National Indigenous Organization (ONIC).

564. It is worth mentioning the work done by the ICRC in terms of education, information and promotion of international humanitarian law, in the community in general and more particularly with the State security forces.

565. The office in Colombia of the United Nations High Commissioner for Refugees also provides active support for educational activities among displaced populations carried out by State bodies.

566. The office in Colombia of the United Nations High Commissioner for Human Rights also provides technical assistance in the area of education to various State bodies, including the Attorney General's office.

With regard to formal education

567. In conformity with the provisions of the Constitution and of Act No. 115 of 1994, and in recognition of the vital role of education in the improvement of interpersonal relations, the Ministry of Education develops educational strategies to provide training for different sectors of society and especially for the educational community.

568. In this respect, the General Education Act, No. 115 of 1994, stipulates that every educational establishment must put forward its own Institutional Education Project (PEI), through which the principles and objectives of educational policy and study programmes are converted into concrete proposals for educational development, elaborated collectively by the educational community. This is a process designed to further both human development and development of the school system at local, regional and national level.

569. The PEI provides a method of rebuilding the school system around fundamental principles, such as the exercise of participative democracy, and the independence, recovery and enhancement of the establishment involved. It calls for a recognition of multiculturalism, flexibility and an open approach, while adding a recreational dimension as part of the working and learning methodology. This institution is an ideal vehicle for democratic participation.

Education for the public security forces

570. More than 100,000 members of the public security forces have received training in human rights and international humanitarian law in the course of their careers during the last five years. Many of them have been on active service in combat areas and, where necessary, these have been trained according to the methods of distance education.

571. The effort that has gone into training the security forces has been rewarded by a significant reduction in the number of human rights violations attributed to them. From an estimated share of 54% of all political violence in 1994, they accounted for only 2% in the year 2000. The effect of the 1,808 human rights courses and of the training in human rights of 103,545 members of the armed forces over the last five years, combined with the work of the 181 human rights and international humanitarian law offices present in all units of the public security forces, has been to reduce the number of complaints and court proceedings brought against members of the security forces in cases of human rights and international humanitarian law violations. Moreover, the attitude of Colombian citizens in general towards the security forces has become clearly more positive, as reflected in the results of recent surveys. The number of complaints received by the

Public Prosecutor's Office for human rights violations by members of the security forces fell from 3,000 in 1995 to just 289 by June 2001. Effective indictments of members of the security forces for presumed human rights violations occur infrequently: since 1995 and up to July 2001, 188 members were accused by the Public Prosecutor's Office, out of a total of more than 277,000 employed in the forces.

572. A great deal has been done as well to enhance the awareness of public officials in this respect. There is now a general level of knowledge regarding the rights recognized in the Constitution. The subject is frequently referred to in the media and higher education establishments have started to offer programmes.

With regard to officials of the Government Procurator's Office

573. The Institute of Studies of the Government Procurator's Office gives training courses in human rights to municipal advocates, lawyers, procurators, community leaders and ethnic communities. These training activities are carried out by means of teleconferences and seminars on human rights and international humanitarian law.

574. The seminars on human rights and international humanitarian law were intended for officials of the Attorney General's Office, municipal advocates, officials of other government offices and community leaders.

575. Generally speaking, each course lasted about 16 hours of teaching over two days.

576. Seminars with ethnic communities were conducted directly in their territories and the subjects covered were specifically related to human rights and the rights of minorities.

577. Under a cooperation and technical assistance agreement signed between the Office of the United Nations High Commissioner for Human Rights in Colombia, the Attorney General's Office and the Office of the People's Advocate, a national human rights programme has been completed for the benefit of municipal ombudsmen.

With regard to working children

578. A training programme has been launched in favour of the eradication of child labour, under the coordination of the Inter-Agency Commission on Child Labour, chaired by the Ministry of Labour and made up of the National Planning Department, the Administrative Department of the Office of the President of the Republic, the Ministries of Health and Education, the Colombian Family Welfare Institute (ICBF), the National Learning Services (SENA), Coldeportes (Colombia Sports Organization), Minercol (Colombian Mining Office), the Office of the People's Advocate, the Attorney General's Office, the Trade Union Confederation (CUT), the General Confederation of Democratic Workers (CGTD), the Colombian Workers Confederation (CTC), Asocolflores (Colombian Agricultural Association), the National Association of Industrialists (ANDI), the Colombian Confederation of NGOs and the ILO's IPECD Programme.

Media campaigns

579. The Office of the Vice-President of the Republic has been conducting a campaign of dissemination and education in human rights and international humanitarian law, in association with Citurna Producciones Ltda, INRAVISION, the USAID agency and the United Nations

Development Programme (UNDP). This programme included a television series under the heading “Colombia has the right to rights”. The series consists of 16 chapters and deals with the problems of human rights and international humanitarian law experienced by the country in the midst of the armed conflict. It also tries to show positive results with the exercise of human rights, showing ways for society to prosper with and to participate in the consolidation of democracy.

580. In addition, still as part of that campaign, a project known as Radio for Life (*Radio para la Vida*) has been run with the assistance of UNDP. The aim of this particular project is to create a human rights culture, which will generate a permanent awareness of the existence of those rights and will help them become part of individual and collective attitudes at all times and not only in response to specific violations. The series consists of 25 stories, grouped around five main themes (children, life, communication, culture and hope), in ten-minute radio programmes. The design and dissemination of the series through community broadcasting stations in five regions of the country has been conducted with the cooperation of community leaders, who not only recount their own experience but also produce the radio programmes. Printed material is distributed to accompany the project.

Another component of the campaign is the production of videos to support training courses

581. Two teleconferences were held in 1999, with the participation of the Vice-President of the Republic, on the subjects of: the 50th anniversary of the Geneva Conventions and the history of human rights.

582. In addition, the National Television Commission (CNTV) gave the Office of the Vice-President 30-second spots at peak hours on national channels for a period of six months. The contents of the messages broadcast were related to the rights to life, to education and to work.

Obstacles

583. One of the problems that arise with regard to education in general for human rights stems from the fact that the latter are perceived more in terms of an ideological and predominantly discursive dimension than as a mechanism of coexistence and democracy. This tendency has been aggravated by the persistence of an internal armed conflict, causing the polarization of some social sectors, which have tended to classify the issue as an “enemy” flag. One effect has been that, although the subject has been widely publicized, the ordinary citizen has not really become fully aware of his entitlement to rights and the possibility of exercising them as such.

584. Also, the issue of human rights has tended in general to be treated by placing the emphasis on its coactive and normative aspect rather than on a more basic and fundamental interpretation, namely the desirability of training citizens in civil society, so that every citizen, within his community, is aware that the more he demands his rights, the more his citizenship is worth.

585. Another problem has been that not enough account has been taken, either in formal education or in informal education in human rights, of the specific contexts in which the education has to take place (e.g. rural, urban or conflict area), or of the target population (such as vulnerable groups or particular job sectors). Even though many initiatives do take these aspects into consideration, the attention they give them is limited and insufficient.

586. There is not enough coordination between the many educational programmes and projects undertaken by the State, or between government programmes and those run by civil organizations. Basically there is no complete inventory of the courses taught by the State or by civil society, such as would enable programmes to be organized according to their radius of action, their potential impact, etc., nor are the programmes interlinked by permanent communication channels.

587. Similarly, there is not enough coordination between formal and informal education, in order to ensure that individuals after leaving school can continue learning about human rights problems in the community.

588. With regard to formal education, it has to be borne in mind that despite the considerable advances achieved by the country in terms of coverage in recent years, there are still considerable dissymmetries in that respect between rural and urban areas.

Article 7 – Prohibition of torture and cruel, inhuman or degrading treatment or punishment; prohibition of medical or scientific experimentation without consent

Provisions contained in the 1991 Political Constitution

589. According to article 12 of the Constitution: “No one shall be subjected to enforced disappearance, to torture or to cruel, inhuman or degrading treatment or punishment.”

Legislative provisions

590. Act No. 589 of 6 July 2000 increased the penalties for the offence of torture stipulated in the former Penal Code and defined torture in line with the recommendations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was approved by Colombia by Act No. 70 of 1986.

591. The details of the prohibition in the law are as follows:

“Anyone who inflicts severe pain or suffering, whether physical or mental, on another person for such purposes as obtaining from him or from a third person information or a confession, punishing him for an act he has committed or is suspected of having committed, or intimidating or coercing him for any reason based on discrimination of any kind, shall be liable to a prison sentence of between 8 and 15 years, to a fine of between 800 and 2,000 times the current legal minimum wage, and to be declared incapable of exercising public rights and functions for the duration of the term of imprisonment.”

Article 8 – Prohibition of slavery, servitude and forced labour and protection against such practices

Provisions contained in the 1991 Political Constitution

592. The relevant provisions of the Constitution are as follows:

“Article 16

All persons are entitled to their free personal development without limitations other than those imposed by the rights of others or by the legal system.

Article 17

Slavery, servitude and the slave trade in all forms are prohibited.

Article 25

Work is a right and a social obligation and in all its forms enjoys the special protection of the State. Every person is entitled to a job under decent and fair conditions.”

Case law - Aspects concerning the development of personality

593. The following is an extract of Constitutional Court Ruling T-014 of 28 May 1992:

“This fundamental right comprises two aspects: firstly, it gives a person the freedom or right to choose his profession, position or occupation, according to his preferences, attitudes, tastes or aspirations, with the proviso that the law might impose an obligation of competence or training qualifications required for the activity chosen (Constitution, art. 26). Secondly, it means that the freedom to work must not entail any impairment, loss or irrevocable sacrifice of a person’s freedom. In other words, it is essential that, in performing his work function, a worker must preserve his person and his freedom, subject to the proviso that he must perform his work under the authority of an employer, who may not on the other hand detract from the worker’s personal freedom.

Articles 16 and 17 of the Constitution provide for the right to the free development of personality, without limitations other than those imposed by the rights of others or by the legal system, and the prohibition of slavery and servitude respectively. This may be interpreted to entail the right to work, in accordance with the provisions of article 26 of the Constitution, according to which every person is free to choose a profession or occupation. According to the Constitution, freedom to work signifies the expression of personality in the choice of profession or occupation, which is voluntary and not subject to the authority or imposition of the State or of any individuals.”

Legislative provisions

594. Ratification of ILO Convention No. 138 concerning Minimum Age for Admission to Employment. In ratifying the Convention, Colombia opted for the exception provided for countries with a developing economy and educational system, establishing the minimum age for admission to employment at 14 years. This limit for the employment of minors had already in fact been stipulated in the national legislation.

595. In 1999, Colombia signed ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which is currently in the process of ratification. The Substantive Labour Code (CST) still contains rules stipulating that work is a free human activity, which is performed in accordance with the terms of an employment contract (CST, art. 5) and imposing absolute respect for the personal dignity of the

worker (CST, art. 57, No. 5). It also makes provision for disciplinary limitations (art. 11) and the equality of workers before the law, for whom the same protection and guarantees must apply (art. 10).

596. According to article 1 of the new Penal Code (Act No. 599 of 2000), the criminal law is founded on respect for human dignity.

597. The rules governing compulsory military service are contained in Act No. 48 and Decree No. 2048 of 1993. Under those rules, all Colombian men must decide their military options on the date they reach their majority. Colombian women may opt for voluntary military service, subject to the condition that the Government may decide to make it compulsory.

598. Military service lasts between 12 and 24 months. Indigenous communities living within their territory and who have preserved their cultural, social and economic integrity are exempted from military service (art. 27 of the above Code).

599. In addition to their military training, soldiers must be educated and instructed in the conduct of welfare activities for the community, including tasks for the preservation of the environment and ecological conservation (art. 13).

600. According to Act No. 548 of 1999, a minor under the age of 18 may not be engaged in the ranks of the military forces. As a consequence of that measure, 1,000 minors were released from the public security forces.

601. The protection of minors is regulated in the Minors' Code (Decree No. 2737 of 1989), which in article 14 establishes the right for any minor to be protected against economic exploitation or the performance of any work which may jeopardize his physical or mental health, or which prevents his access to education.

602. Within the framework of its policy of peace and of humanizing the armed conflict, the Government of President Andrés Pastrana has issued many appeals and summons to the insurgent organizations in order to avoid boys and girls being recruited by those outlawed armed groups, as a form of forced labour.

603. Act No. 470 of 5 August 1998 was passed "approving the Inter-American Convention on International Traffic in Minors", which was signed in the Federal District of Mexico on 18 March 1994.

604. In addition, last July, the Congress of the Republic approved a law introducing reforms of and additions to the Penal Code. A chapter has been added on Traffic of Persons, together with other useful provisions for combating the offences of trafficking in migrants and trafficking in persons. The new law is to be signed very shortly by the President of the Republic.

Other actions

Inter-Agency Committee for the Eradication of Child Labour and the Protection of Young Workers

605. On 18 February 2000, the Inter-Agency Committee for the Eradication of Child Labour and the Protection of Young Workers approved the 2000-2002 National Plan of Action. This Plan

gives expression to the commitments undertaken by the agencies belonging to the Committee to continue making progress in a joint and coordinated manner, in accordance with the priorities set out by Colombia after signing ILO Convention No. 182.

606. This National Plan of Action, headed by the ILO's IPEC Programme and by the Ministry of Labour and Social Security, is a response to the need to consolidate the progress achieved with the first Plan (1996-1998) and to continue encouraging the different sectors of society to develop more precise, focused and coordinated programmes and actions.

607. The general objective is to aim for the gradual eradication of child labour, giving priority to its worst forms, which include sexual exploitation, participation in the production, traffic and marketing of narcotic substances, participation in armed conflict, forced labour and slavery and other forms of work jeopardizing the physical and mental development of the child. The objectives also include protecting young workers between the ages of 14 and 17, in order to ensure that they are not employed in harmful or dangerous forms of work, by developing programmes to tackle the causes of premature employment, to provide for the comprehensive and equitable protection of boys and girls, and to guarantee the full restitution of their rights. This means coordinating actions under joint responsibility at different territorial levels, involving governmental, non-governmental, workers' and employers' organizations, the boys and girls themselves, their families and society in general.

Inter-Agency Committee to Combat the Traffic in Women and Children

608. This Committee was set up by Decree No. 1974 of 31 October 1996. It is attached to the Ministry of Justice as an advisory body of the National Government and as a coordinating body for actions undertaken by the Colombian State to combat the traffic, exploitation and sexual abuse of women and children. At the present time, the Committee is headed by the Technical Secretariat of the Ministry of Justice.

609. The Committee has prepared a Plan for the Prevention, Protection of Victims and Repression of the Traffic in Persons, which is to unfold in the period 1999-2002. Women and children are recognized in the Plan as belonging to a specially vulnerable sector of the population.

Project for the Design and Implementation of Models of Comprehensive Inter-Agency Care for Victims of Sexual Offences. Year 2000

610. This project was designed within the framework of the Government's policy *Haz Paz* (Make Peace) for the promotion of sexual and reproductive rights. It is placed under the guidance of the Advisory Presidential Council on Social Policy, with the backing of the United Nations Population Fund (UNFPA).

611. The aim of the project is to produce, validate and standardize models of care for victims of sexual offences, in conjunction with the National Family Welfare System (SNBF) at the regional and municipal levels, in order to stimulate cooperation and coordination between different agencies, sectors and disciplines.

612. The main bodies involved in the project, apart from the ICBF (Colombian Family Welfare Institute), are the Institute for Legal Medicine and Forensic Science, the Attorney General's

Office and the National Police. A pilot experiment has been conducted since the year 2000 in the municipalities of Santander de Quilichao, Montería, Sincelejo, Popayán and Bogotá (Kennedy).

Inter-Agency Cooperation Agreement to join efforts to provide comprehensive care for the victims of sexual offences, Bogotá, 1999

613. In the Capital District of Bogotá, an Inter-Agency Cooperation Agreement was concluded in 1999, with the basic objective of coordinating actions and resources in order to ensure the operation of the Comprehensive Care Centre for Victims of Sexual Offences, whose purpose is to offer the persons affected by those offences timely and adequate comprehensive care in fulfilment of their psychological, juridical, medico-legal and protection rights.

614. The agencies involved in the agreement, apart from the ICBF, are the Attorney General's Office, the National Institute for Legal Medicine and Forensic Science, the Office of the People's Advocate, the Town Hall of Bogotá and the Office of the Advocate of Bogotá.

Plan of Action in favour of the Rights of Sexually Exploited Children and against the Sexual Exploitation of Children

615. This plan was drawn up in September 1997 by the ICBF with the support of UNESCO, the Universidad Externado de Colombia and other government bodies. It proposes a series of activities involving all governmental and non-governmental sectors, in order to create awareness and provide information through the mass media, with a view to tackling the factors underlying the problem. It also provides for the design and start-up of supervision and monitoring systems, run by the Police and the community, and Care Systems following a model designed to restore the rights of children and young persons. Unfortunately, this plan has been developed by different institutions in isolation, so that no assessment has been possible to date regarding the impact it has produced.

616. Act No. 360 was passed on 7 February 1997, concerning Offences against sexual freedom and human dignity. This imposes an obligation on all State bodies to safeguard the rights of the victims of sexual offences. The Act introduced amendments to the Penal Code, the effect of which was to increase penalties, to define the rights of victims, and to establish institutional powers for its enforcement. Special supervisory units were also set up, including a technical investigation service, to deal with this type of offence. Release on parole was prohibited in the following cases: illegal commercial exploitation, illegal deprivation of liberty, torture, abusive carnal penetration against helpless persons, sexual acts with children under the age of 14, induced or forced prostitution, traffic in persons, encouragement of child prostitution, and injuries giving rise to functional or mental disorders (Act No. 360/97, art. 17).

617. The Act provides guidance to the Family Welfare Institute (ICBF) and other government bodies regarding the basic rules of action in these cases, within a framework attaching due importance to respect, privacy and human dignity.

618. With regard to the ICBF, Act No. 360 added a new article to the Penal Code, whereby whenever the victim is a minor, who either lacks a legal representative or has a legal representative who fails to fulfil his obligations, or who lacks the necessary means or moral and mental qualities to ensure the proper education of the minor, the ICBF will be called in to ensure that the family counsellor in charge of such cases should adopt protective measures as necessary and should initiate whatever court actions are required, on behalf of the minor and the family

concerned. A clause is added to ensure that the State will set aside sufficient resources to allow the ICBF to perform these duties.

619. Advances in legislation for the protection of minors. In this respect, it is worth mentioning the Penal Code, which has added important new forms of criminal behaviour and has incorporated existing ones, aimed at the protection of minors, with the effect of adding further guarantees in this respect.

620. The section on Offences against persons and property protected by international humanitarian law, in article 162 on Illegal Recruitment, imposes penalties of imprisonment and fines on any person who, on the occasion of or during an armed conflict, recruits minors under the age of 18 or obliges them to take a direct or indirect part in hostilities or in armed operations. This in fact implements the legislation applicable to armed conflict, especially with respect to children, contained in article 38 of the Convention on the Rights of the Child, which was approved by Act No. 12/91.

621. Title II, Single Chapter, article 138 of the Special Part imposes a penalty of between 10 and 18 years of imprisonment and a fine of between 500 and 1,000 current monthly legal minimum wages on any person who, during an armed conflict, perpetrates carnal penetration using violent means on a protected person. Protected persons include amongst others¹⁵ all members of the civilian population.

622. Moreover, article 139 imposes prison sentences of between four and nine years and fines of between 100 and 500 current monthly legal minimum wages on anyone who, during an armed conflict, perpetrates a violent sexual act other than carnal penetration on a protected person. Both articles make provision for aggravating circumstances, whereupon the penalties are increased by between a third and a half, for instance, if the victim of the acts described above is aged less than 12 years or if the person perpetrating the act holds a status, position or responsibility giving him special authority over the victim or inducing an attitude of trust in the victim.

623. The code also penalizes forced prostitution and sexual slavery. Article 141 imposes a prison sentence of between 10 and 18 years and a fine of between 500 and 1,000 current monthly legal minimum wages on any person who, using force or on the occasion of or during an armed conflict, obliges a protected person to furnish sexual services.

624. Title IV deals with behaviour directly affecting the freedom, integrity and sexual education of the minor. Chapter 1 of the Title, in article 205, penalizes violent carnal penetration, with prison sentences ranging from 8 to 15 years, while article 206 penalizes any violent abusive sexual act that does not constitute penetration with prison sentences ranging from three to six years.

625. Chapter 2 of the Title, in article 208, punishes abusive carnal penetration of a minor under the age of 14 with a prison sentence of between four and eight years.

¹⁵ All members of the civilian population. 2) Persons not taking part in hostilities and civilians in the power of the adverse party. 3) Wounded, sick and shipwrecked persons who are *hors de combat*. 4) Medical and religious personnel. 5) Journalists on mission and accredited war correspondents. 6) Combatants who have laid down their arms through capture, surrender or for a similar reason. 7) Persons who prior to the hostilities were considered as stateless or refugees. 8) Any other person possessing that status under Geneva Conventions I, II, III and IV of 1949 and Additional Protocols I and II of 1977 and any others which may be ratified in future.

626. In article 209, it also punishes anyone perpetrating sexual acts with minors under the age of 14 other than carnal penetration or in the minor's presence, or inducing the minor to perform sexual practices, with prison sentences ranging from three to five years.

627. All the offences referred to in the above-mentioned Title II make provision for aggravating circumstances, for which penalties are increased by between a third and a half.

628. With regard to minors, the aggravating circumstances include the fact: 1) that the act is committed with the help of another person or other persons; 2) that the perpetrator holds a status, position or responsibility giving him special authority over the victim or encouraging a feeling of trust in the victim; 3) that the act leads to contamination by a sexually transmitted disease; 4) that it is perpetrated with a minor under the age of 12; and 5) that it leads to pregnancy.

629. In view of the gravity of these offences and in order to ensure that offenders should not be left the option of house arrest, in the new Code of Penal Procedure, also recently approved, this form of detention is prohibited for such offences, so that the sentences must be served in a penitentiary establishment.

630. Furthermore a bill (No. 085 of 1999) has also be tabled before the Congress in order to pass a law preventing and counteracting the practice of child prostitution and sexual tourism with children, in conformity with article 44 of the Constitution.

Consideration of the revised draft United Nations Convention a against Transnational Organized Crime

631. Through its Ministry of Foreign Affairs, Colombia has been considering the Protocols in the United Nations General Assembly supplementing the United Nations Convention against Transnational Organized Crime, with special reference to articles 2.2*bis* (paragraph a only), 4*bis*, 9, 10.10*bis*, 14.14*bis*, 15 and 16 on organized networks of traffic for the purposes of sexual exploitation, child pornography and sexual tourism. Colombia has already signed the United Nations Convention against Transnational Organized Crime and its Additional Protocol to prevent, suppress and punish trafficking in persons, especially women and children, which were approved at a second reading in plenary in the Senate of the Republic, in June 2002, with a view to ratification.

Article 9 – Right to liberty and security of person; guarantee against arbitrary arrest

Provisions contained in the 1991 Political Constitution

Personal freedom – Pre-trial detention

632. According to article 28 of the Constitution:

“All persons are free. No one may be subjected to interference with his person or his family, to arrest, detention or imprisonment or to have his home searched, except in accordance with written order from the competent legal authority, in due form and for reasons previously defined by law.

A person in pre-trial detention shall be placed at the disposal of the competent judge within the next 36 hours so that the latter may make an appropriate determination within the time-limit established by law.

In no case may there be arrest, detention or imprisonment for debts or penalties or security measures that are not subject to the statute of limitations.”

Due process

633. According to article 29 of the Constitution:

“Due process shall apply in all legal and administrative proceedings.

No one may be tried except in conformity with the relevant laws that predate the act of which the person is accused, before a competent court or tribunal and in accordance with the procedure appropriate to each case.

In criminal matters, permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws.

Everyone is presumed innocent until proven guilty according to law. Anyone who is accused is entitled to the right of defence and to the assistance of counsel of his own choosing or assigned by the court during the investigation and trial; to a fair and public hearing without undue delay; to submit evidence and to examine witnesses for the prosecution; to challenge a conviction; and not to be tried twice for the same act. Evidence obtained in violation of due process is null and void as of right.”

Habeas corpus

634. According to article 30 of the Constitution: “Anyone who is deprived of his liberty and believes it to be unlawful is entitled to apply at any time to any judicial authority for habeas corpus on his own or through a third party and the judicial authority shall decide within 36 hours on the lawfulness of the detention.”

Legislative provisions

635. Act No. 40 of 19 January 1993 approved the National Statute against Abduction, which was amended by the new Penal Code (Act No. 599 of 2000), in Title III, Offences against individual freedom and other guarantees, Chapter 2, on Abduction.

“Article 168. Simple abduction: anyone who, for purposes other than those referred to in the following article, seizes, removes, retains or conceals another person shall incur a prison sentence of between 10 and 20 years and a fine.

Article 169. Abduction for extortion: anyone who seizes, removes, retains or conceals a person for the purpose of demanding a benefit or any profit in exchange for his release, or in order to have any act done or omitted, or for publicity or political purposes, shall incur a prison sentence of between 18 and 28 years and a fine.”

636. Articles 170 and 171 stipulate either aggravating or attenuating circumstances.

637. If acting for humanitarian reasons, it is permitted to arrive at an agreement for the payment of the release of an abducted person, or to act as negotiator or intermediary for the release at the request of an abducted person (art. 173).

Code of Penal Procedure

638. The new Code of Penal Procedure, which was approved by Act No. 600 of 2000 and which entered into force on 24 July 2001, maintains the same structure as the previous code, whereby the Attorney General's Office remains responsible for investigating and bringing charges, while the judges retain the power to pass judgment, except where the Constitution provides otherwise. Pre-trial detention may be imposed whenever there are at least two serious indications of guilt on the basis of evidence legally produced at the trial. The previous code required at least one serious indication. Under article 3 of the new Code, everyone is entitled to respect for personal liberty. Any situation affecting a person requires a written order by the competent authority.

639. The main rules are contained in the Preliminary Title of the Code of Penal Procedure. They concern: human dignity, integration, liberty, habeas corpus, equality, legality, presumption of innocence, defence, judicial proceedings, access to the administration of justice, natural judge, autonomy and independence of the judiciary, adversarial proceedings, public hearings, speed and efficiency, purpose of penal procedure, loyalty, two-tiered jurisdiction, *res judicata*, full investigation, restitution and reparation of right, cost-free proceedings, remission and prevalence.

640. The lawfulness of detention is also guaranteed under article 4 of the Code of Penal Procedure, in its definition of habeas corpus, as follows:

641. Anyone who is illegally deprived of his liberty is entitled to apply at any time, on his own or through a third party, for habeas corpus to any judicial authority, who shall issue a ruling within not more than 36 hours of receiving the request.

Criminalization of forced disappearance

642. On 6 July 2000, President Andrés Pastrana approved Act No. 589, recognizing the offences of genocide, forced disappearance, forced displacement and torture, and containing other provisions of major significance for ensuring respect for human rights in the country.

643. This law is of great significance insofar as it provides the legislative conditions required for an effective defence and protection of human rights, for combating impunity and for strengthening the rule of law.

644. The Act represents an extremely important step forward in the development and implementation of the policy in favour of promoting, respecting and guaranteeing human rights and applying international humanitarian law. It reflects a genuine commitment on the part of the Administration to these principles, to which it has given priority ever since it took office, besides complying with the recommendations put forward by the international community.

645. The Act recognizes the offences of forced disappearance, genocide and forced displacement of people, while recognizing the offence of torture and increasing the penalty for that offence. It also includes those offences among the most serious aspects of the offences of conspiracy and instigation to perpetrate an offence and the offence of aiding and abetting. Further still, major steps have been taken in terms of criminal policy to deal with these offences, such as setting up

special working groups on disappeared persons, creating a national registry of disappeared persons, administering their property, recognizing a permanent obligation on the part of the State to search for disappeared persons, keeping a register of arrested and detained persons, introducing the machinery of urgent search, and prohibiting any amnesty or pardon for the offences referred to in the Act.

646. According to the description given of the offence of forced disappearance, the perpetrators of the offence may be public officials, or individuals acting under their orders or with their consent, or individuals belonging to armed groups, or any private individual. This differentiation between subjects reflects the real criminal nature of the offence, while complying with international rules requiring an explicit reference to subjects.

647. The Inter-American Convention on the Forced Disappearance of Persons, of 9 June 1994, as well as the United Nations Declaration on the Protection of all Persons from Enforced Disappearance, of 18 December 1992, limited the perpetration of that type of offence to agents of the State and persons related to them. The law passed in Colombia goes further by distinguishing between different kinds of offenders, as mentioned above.

648. Other aspects of international rules concerning the forced disappearance of persons are incorporated in the ordinary Penal Code and in the Military Penal Code, which entered into force in August 2000. In effect, a regulation was passed to exclude forced disappearance from military jurisdiction, together with the offences of genocide and torture.

Implementation of the law on forced disappearance of persons

649. As soon as Act No. 589 of 2000 was approved, the various government agencies dealing with the problem combined their efforts with those of non-governmental organizations in order to set up the bodies required by the new law, including the Commission on the Search for Disappeared Persons.

Commission on the Search for Disappeared Persons

650. The task of the Search Commission is to support and promote the investigation of the offence of forced disappearance, without infringing the powers of institutions or the rights of subjects in proceedings, as well as to devise, assess and support the implementation of searches for disappeared persons and to set up working groups for specific cases. The Commission is made up of the Public Prosecutor, the People's Advocate, the Minister of Defence, the Director of the Presidential Programme on Human Rights and International Humanitarian Law, the Director of the Programme for the Defence of Personal Liberty, the Director of the Forensic Medicine Institute, a representative of the Association of Relatives of Detainees and Missing Persons (ASFADDES) and a representative of non-governmental organizations chosen by themselves. The NGOs appointed the Colombian Commission of Jurists to represent them on the Commission.

651. The Search Commission was formally inaugurated by the Vice-President of the Republic on 25 October 2000. At its inaugural meeting, the Commission considered details related to its mandate which were not explicitly covered in the legislation, such as the chair of the Commission, the technical secretariat, the place and frequency of meetings, consideration of and proposals for more concrete functions, as well as preparatory elements for search plans and

working groups. At the first meeting, the People's Advocate was chosen to chair the Commission; it was decided to prepare a draft regulatory decree for the Commission and a working group was set up to initiate an urgent search for a recent case of forced disappearance.

652. Since then the Commission has been meeting regularly and has prepared draft rules of procedure. This set of rules will be submitted for the consideration of the President of the Republic, with a view to the latter issuing a presidential decree.

653. As a result of the various commitments undertaken in the Commission, the following steps were taken:

654. The Office of the Public Prosecutor gave instructions for Act No. 589 of 2000 to be brought to the attention of and to be implemented by all the Office's branches, through the sectional divisions. The Office intends to proceed in the same way with the country's courts and tribunals through the Supreme Council of the Judiciary.

655. The Government Procurator, in Circular No. 004 of 20 February 2001, gave instructions to all regional, provincial and district procurators to make whatever visits and take whatever steps were necessary in order to draw attention to the content of the Act and to determine whether the authorities in charge of maintaining a register of arrested and detained persons were implementing the terms of article 12 of the Act referring to the registration of arrested and detained persons. He also requested that, in all cases of disappeared persons of which they had knowledge, the procurators should gather information as stipulated in article 9 on the National Registry of Disappeared Persons, and should transmit the information to the Office of the Government Procurator for the data to be incorporated in the National Registry.

656. In his capacity as Chairman of the Search Commission, the People's Advocate requested the assistance of the authorities concerned to issue instructions to all members of the institutions under their responsibility, in order to ensure strict compliance with the terms of article 12 of the Act relating to the registration of arrested and detained persons.

657. He also requested the Governors of Departments to issue instructions to rural physicians to send in copies of all autopsies as prescribed by the law.

658. In order to give effect to the new procedures instituted under the Act, a study was initiated on ways of regulating the Urgent Search Procedure established under article 13 of the above Act.

659. The People's Advocate, still acting as Chairman of the Search Commission, has also undertaken to further inter-agency coordination, for instance by ensuring that the National Civil Registry and the Colombian Institute of Forensic Medicine should reinitiate the task of identifying persons so far classified by the Institute as unidentified.

660. For its part, the National Government, with a view to furthering the implementation on the above Act, has been supporting the Office of the People's Advocate, through the Presidential Programme on Human Rights, in the preparation and management of an international cooperation project designed to strengthen the attributes of the Office of the People's Advocate as the institution chairing the Search Commission.

Article 10 – Rights of persons deprived of their liberty

Provisions contained in the 1991 Political Constitution

661. It is safe to say that all the fundamental rights recognized by the Constitution continue to protect persons held in detention, especially with respect to article 29 concerning due process in all judicial proceedings.

Legislative provisions

662. The new Code of Penal Procedure (Act No. 600 of 24 July 2000) in article 1 stipulates that all persons taking part in criminal proceedings shall be treated with the respect due to the dignity of the human being.

663. The new Single Disciplinary Code (Act No. 734 of 2002), which entered into effect in May, establishes a special type of serious misconduct by public servants in positions of directing, administering, monitoring and supervising penitentiary establishments and prisons.

Other actions

664. Efforts to improve the Penitentiary and Prison System, by increasing the number of places in prisons and overcoming administrative problems in detention centres, are being made by the Prison Infrastructure Fund and the Council of the National Prison System Institute (INPEC), with later assistance by the National Criminal Policy Council.

665. Consideration is also being given to drafting a new Penitentiary and Prison Code more in line with international standards and principles. It may be added that this problem is being tackled more through the improvement of implementation mechanisms rather than changes in the actual content of the law.

666. In coordination with the programme for the modernization of justice in Colombia, the Office of the People's Advocate prepared a "Handbook on the rights of persons deprived of liberty – 1996", giving an explanation for the intention of detainees of the following rights, in simple language all could understand:

667. Persons deprived of liberty are protected by fundamental rights, with the exception of a few explicit limitations. These rights may be claimed at the time of arrest, interrogation, detention, trial and sentencing, and the corresponding pages are referred to in the Handbook.

- Right to life, dignity and name;
- Right to minimum conditions of existence;
- Right to health;
- Right to meet with other inmates, to freedom of conscience, expression and worship;
- Limited rights to work, education, learning, privacy, communication and free communication;

- Habeas corpus;
- Right to formulate respectful petitions;
- Appeal for protection of the law, in defence of fundamental rights;
- Right to defence and presumption of innocence;
- Knowledge of prison regulations and of formalities for reducing sentences;
- Rights of pregnant women.

Protection of the prison population

National Penitentiary and Prison Institute (INPEC)

668. Act No. 65 of 1993, organizing the National Penitentiary and Prison System, in article 20 classifies detention establishments as follows: prisons, penitentiaries, reformatories (*casas cárcel*), psychiatric wards, high-security prisons and penitentiaries, women's detention centres, prisons for members of the security forces, prison farms, and annexes or special cell blocks for minors under the age of 18.

Concerning penitentiary and prison policy

669. The National Government, being aware of the problem of keeping order in some of the country's detention centres, decided to investigate the underlying causes of unrest. The conclusions arrived at were that the main causes could be attributed to overcrowding, the obsolescence of prison establishments and the corruption prevailing among prison guards and administrative staff. In the view of experts contracted by the Office of the High Commissioner for Human Rights and the National Government, those lay at the root of human rights violations in detention centres.

670. In the circumstances, it was realized that there was an urgent need to deal with the underlying causes of the problem, by undertaking a policy of reconstructing, remodelling and redesigning the system. The academic qualifications of the new prison staff have been revised as one way of tackling the problem at its roots. Furthermore, in order to combat corruption among administrative staff, INPEC undertook to obtain the ISO 9000 certification, which is a familiar means of combating the phenomenon of corruption through specified procedures. Other measures were taken, such as retiring more than 300 guards on grounds of unsuitability. An agreement was signed with the United States Government for the improvement of the prison system, one of whose main objectives is to improve measures for combating corruption within the system. In addition, a direct anticorruption telephone line has been set up with the management of the Institute, through which either inmates or their relatives can report dishonest acts and human rights violations. For the same purpose, a special complaints and claims office has been established in the INPEC, with a view to diminishing the occurrences of punishable conduct within detention centres.

671. It will be remembered that the new Single Disciplinary Code makes provision for a special type of serious misconduct by public servants who are in charge of directing, administering, monitoring and supervising penitentiary and prison establishments.

672. Actions have also been taken to improve respect for the dignity of inmates. The officials in charge of supervising and dealing with inmates have been given training and instructions in order to ensure that their conduct in the treatment of prisoners is respectful and in line with the principles established in national and international standards.

673. Constant efforts have been made to improve the management of the system, by giving priority to the building of new detention centres and the improvement of existing ones. These policies are part of the Strategic Prison Plan, itself related to the National Development Plan. The new plan is contained in document CONPES 3086 of 14 July 2000, prepared by the Ministry of Justice and Law, the INPEC and the National Planning Department, in conformity with the Constitutional Court's Ruling T-153 of 1998.

674. One of the objectives pursued with the expansion of the country's prison system is to allow due separation between convicted prisoners and accused, which was not possible before the construction of new prisons and the repair of existing detention centres. This separation between convicted prisoners and accused persons awaiting trial has now been implemented in the Modelo prison in Bogotá and at La Picota penitentiary.

675. According to the studies undertaken, overcrowding is the main problem affecting the national prison system. Since it has been found that the worst shortage of places arises in the section of convicted prisoners, a decision has been taken as a matter of priority to build medium security jails, in addition to improving prisons and penitentiaries throughout the country.

676. Within the Ministry of Justice and Law, the Criminal and Penitentiary Policy Directorate is chiefly responsible for strategies aimed at the efficient and effective operation of the prison system, caring for the minimum requirements of its inmates. In effect, the Ministry has devised and implemented policies such as to provide inmates with conditions that ensure that their term of imprisonment takes place within the framework of respect for human dignity, so that alongside the construction of new prison establishments, the inmates may be offered the sort of treatment that is due to them.

677. Both the Ministry of Justice and Law and the INPEC have been extremely concerned with the prison problem, which is why they have initiated a process of modernization within the INPEC aimed at providing the necessary infrastructure, with a view to updating, modernizing and humanizing all the procedures implemented within establishments responsible for the enforcement of sentences.

678. It is also worth noting, lastly, that the possibility has been considered of reforming the Penitentiary and Prison Code, in the belief that the current code is due for some improvements.

679. As the Ministry of Justice found that a high percentage of prisoners did not have access to the aid of counsel to protect their rights and interests uninterruptedly and diligently, it signed an inter-agency cooperation agreement with the INPEC and the Office of the People's Advocate, the purpose of which is to cooperate in implementing the constitutional and legal functions of the Office of the People's Advocate, with a special emphasis on public defence lawyers registered with the National Public Counsel System. The object is to provide prison inmates with legal advice to achieve efficient protection of their fundamental rights and the effective exercise of their legal entitlements in all the country's prisons.

680. In addition, in conformity with the order issued by the Constitutional Court in its Ruling T-847 of 2000, 9,000 detainees have been transferred from police stations to detention centres. Measures are also being taken to solve any problems arising in such places, although the task is by no means easy in view of the need for greater efficiency among police officials combined with problems of logistics.

681. All forms of unlawful conduct affecting prisoners are being investigated by the authorities set up for the purpose, as well as by the internal disciplinary control office of the INPEC, which has undertaken to obtain the ISO 9000 quality certification. Moreover, as mentioned earlier, secure procedures have been established for lodging complaints against irregularities.

682. A number of administrative measures have been taken to regulate the visits to which inmates are entitled. Rules have been introduced to check disorderly entry to the prisons, with improved procedures thanks to the acquisition of modern equipment, which avoid direct contact between prison staff and visitors. This equipment has been installed chiefly in the new detention centres, but its use is being extended to the main prisons in the country as circumstances allow.

683. Among the preventive measures adopted, surprise checks are carried out with a view to locating and removing forbidden objects. This type of search has been carried out in centres such as the Modelo Prison of Bogotá and the Penitentiary of La Picota. Recent checks have been carried out exclusively with prison guards, without the help of the National Police, which has meant the possibility of carrying out more frequent checks, thus improving the standards of security and control in the prisons.

684. It is worth recalling that, whenever the need has arisen, the National Government has requested and authorized the entry of police and public security forces in prison establishments, in order to protect the lives and integrity of all the inmates, as well as those of prison staff. The public security forces and the Guard Unit have intervened on occasions to control outbreaks of violence that have occurred in prisons, acting on all occasions with great caution and respect for the human rights of inmates and in compliance with their duties.

685. With regard to the prison of Valledupar, this was the first really purpose built detention establishment, designed in accordance with modern technical specifications that bring it into line with international models. It should be borne in mind that before that prison was built, miscellaneous welfare establishments, hospitals, convents and other buildings were used whenever necessary to house prisoners, with minimum facilities. This has been typical of most of the prisons and detention centres in the country, which do not possess the required infrastructure or facilities needed to serve as proper prisons.

686. With regard to the food made available to prisoners, the INPEC has created supervisory units to check the quality of food offered in detention centres. Food committees have also been set up, attended by representatives of prisoners from each cell block and one official representing the prison. The persons in charge of preparing the food are also constantly being subjected to medical examinations and laboratory tests.

687. With regard to the health of prison inmates, some important measures have been taken, such as the following:

For the fiscal year 1999, the Ministry of Health, through the SIAS (Comprehensive Health Care System) Agreement, allowed an appropriation of COP 5,500 million

(equivalent to approximately USD 2.5 million) in order to meet the health costs of prisoners nationwide.

To the above budget was added an equivalent contribution from the INPEC, thanks to which a system of social security was established to cover the health needs of all prisoners in all the country's prisons. The scheme works as follows:

Medical staff are contracted to provide services directly in individual prisons.

The pharmacies of all the prisons are provided with enough drug supplies to meet the requirements of outpatient level I of the Compulsory Health Plan (POS).

In the case of procedures and activities which could not be catered for in prisons owing to their technical complexity, the INPEC established a wide ranging and well structured network of health service providers, by signing contracts with most of the public hospitals of the country located in the same municipalities as prison centres.

An insurance policy was taken out to cover financial risks arising from the treatment of expensive diseases, which are described in level IV of the Compulsory Health Plan.

The Health Division of the INPEC has been put in charge of all the coordination, supervision and monitoring of the health services provided under contract to care for prisoners, and of medical staff providing services in all the country's prisons.

688. In this way the whole of the prison population is ensured the right levels of care as established in the Compulsory Health Plan of the contributory Social Security System (SGSSS).

- For 1999, the INPEC had resources worth COP 11,102,143,332 (approximately USD 4.9 million) to meet the cost of comprehensive health care at levels I, II, III and IV of complexity.

Level I includes the following activities: medical attention and treatment for outpatients - general medical consultation, initial treatment, stabilization, cure or referral of patient to emergencies, dental care, X-rays, basic medicines, cytology, internal and external promotion, prevention and monitoring activities, and surgical care.

Level II includes specialized care for outpatients defined as excluding surgery or operations, provided by a medical practitioner specialized in one or more medical disciplines, following consultations or referral by the physician in charge.

Level III consists of the same specialized medical examinations as for Level II, with the following additional forms of treatment: specialized clinical laboratory, X-ray, special examinations of the abdomen, joints, neuroradiology, cardiovascular, respiratory, ear, nose and throat examinations and ophthalmology.

Level IV, high cost and fatal diseases: cardiological pathologies of the thoracic and abdominal aorta, *vena cava*, lung and kidney blood vessels; pathologies of the central nervous system; and HIV infection.

With regard to expenditure on services for 1999, the sum of COP 600 million (approximately USD 264,500) was budgeted to meet the costs of medical staff nationwide to cover level I of complexity.

In addition, resources worth COP 1,420 million (approximately USD 625,000) were earmarked for the purchase of medicines, medical supplies, and dental and clinical laboratory equipment.

Under the 1998 SIAS (Basic Sanitation) project, resources worth COP 1,894,753,844 (approximately USD 835,000) were appropriated, for spending in 1999 on medicines, facilities for prison centres, etc.

For the year 2000, following applications to the Ministry of the Economy, the sum of COP 11,494,790,000 (approximately USD 5.1 million) was earmarked for the INPEC budget, under the heading of implementation of the Comprehensive Prison Health System, with a view to meeting the full cost of health care for the whole prison population in the country.

In view of the recognized need to improve health services, ways are being considered, in conjunction with the Ministry of Justice, of contracting health service providers, which can ensure direct coverage in prisons of all services corresponding to outpatient level II of the Compulsory Health Plan, and all services which can be provided using the prison infrastructure.

- The following facilities and standards were obtained or achieved in 2001:

Health care coverage of 99%.

Coverage of 97.5% of all prison establishments through health service contracts for levels I, II and III of the Compulsory Health Plan (POS).

Coverage of 100% of all prison establishments with sufficient resources to purchase medicines and health supplies and materials.

Coverage of 100% of all prison establishments by medical teams.

Coverage of 98% of the use of resources allocated for contracting health services.

Agreement between the International Red Cross and INPEC for the provision of care to prisoners in difficult humanitarian circumstances.

Agreement between UNAIDS and INPEC for the prevention of HIV/AIDS infection in the Modelo National Prison and the national penitentiary of La Picota, 830 inmates.

Joint International Red Cross-INPEC Programme for early treatment of breast cancer, currently with a coverage of 53% of all female prisoners in the country.

Acquisition of high-cost policy to cover 100% of all prisoners for level IV pathologies (very expensive and fatal diseases).

Fumigation and deratization of 90% of all prison establishments.

Implementation of individual health service records (RIPS).

Raising of the epidemiological standard of health statistics.

Vaccination against hepatitis B of 100% of the prison population.

Design of sanitation facilities in new prison establishments on the basis of essential requirements.

Preparation and approval of 17 treatment procedures as part of the ISO 9000 quality guarantee plan.

689. With regard to educational programmes aimed at re-socializing and training prisoners and making detention establishments more humane, it is worth mentioning that the INPEC and basically its Labour Development and Training Division have as one of their priorities the reintegration of prisoners in society through the development of productive activities in the areas of farming, industry, handicrafts and various services.

690. The farming projects occupy and train prisoners working in INPEC farms all over the country and produce income for them and for their families.

691. In order to relieve overcrowding in prisons and to offer occupations and training to prisoners from a rural background, the Ministry of Justice and Law and the INPEC have planned to set up a Llano Regional Development Focal Point centred on the new agricultural penitentiary colony of Vichada. The aim eventually is to offer jobs, on a land area of 2,500 hectares, in the longer term to 50 groups of some 500 prisoners each. A budget was authorized for the construction of a farming colony in document COMPES 3086 of 2000.

692. The kind of activities that would take place on these farms would be the rearing of cattle, pigs, birds and worms, production of organic compost, bio-digesters for the processing of organic waste and gas production, and the production of fodder.

693. Some 5,000 prisoners benefit from farming, industrial and service activities. In addition to serving their sentences, they receive daily pay which provides a suitable economic reward and incentive for the work they perform.

694. It is hoped to increase the employment of inmates by some 40% by expanding the areas of land under farming (crops and livestock) and by bringing private companies into the programmes.

695. Out of a prison population in the country of 50,165 detainees, 5,000 are employed in farming activities.

696. The technical guidance and instruction given to inmates employed in farming activities is being implemented under the terms of the framework cooperation agreement signed by the ICA, CORPOICA, INPA and INAT. This agreement is to be extended for another three years.

697. Altogether 560 inmates have received instruction and technical guidance under this programme.

698. Under an agreement between the SENA (National Learning Service) and the INPEC, theoretical and practical training is given in farming and industrial activities to approximately 4,500 inmates each year.

699. Support is also provided in terms of instruction and training for prisoners by the following institutions: UMATAS, Secretariat of Agriculture, Federations of Cocoa Planters and Coffee Planters and regional universities.

700. The INPEC will sign an inter-agency agreement with the SENA, the basic objective of which is to offer theoretical and practical training to inmates working in workshops, farms and various services of the 170 prison establishments under INPEC's authority.

701. A further method of increasing employment among prisoners is to make use of installed capacity in the following areas: industrial handicrafts, farming and various services.

702. On average, 23,747 inmates are employed in the above-mentioned areas nationwide, counting the 170 prisons as a whole. Special attention is to be given to 12 prisons with greater capacity, currently labouring under 50% of overcrowding, with a high coefficient of unemployment.

703. The plan is to sign new business agreements with the public and private sectors, in order to generate the production of goods and services using prison labour in the development of various productive activities both inside and outside the prisons.

704. Using methods of teaching basic reading and writing and arithmetic, prisoners have been offered literacy and primary education programmes, in the hope of bringing in greater percentage of prisoners up to those basic educational standards.

705. In terms of informal education, prisoners are offered preparation and training to sit the validation examination of the ICFES (Colombian Institute for the Furtherance of Higher Education).

706. In order to extend the training options, courses are being developed in bakery, mechanics, manufactures and woodwork. This training takes account of the capacities and characteristics of the regions where the prisons are situated, and relies on the support of bodies such as the SENA, the education secretariats and technical industrial colleges.

707. Prison work is organized according to two different systems:

1. *Direct administration.* With this approach, the management of the establishment provides inmates with the public productive resources required for the pursuit of industrial, farming and service activities on a business-like footing and remains in charge of the economic and social development of those activities.

According to this system, the Institute's Sub-directorate of Development and Treatment lays down guidelines each year for the purpose of creating or reorganizing farming, workshop or service activities with a view to improving the use made of existing resources and producing income and social welfare for the prisoners.

Thanks to this working arrangement, some 1,500 inmates have been permanently employed under direct management in workshops and farms and another 400 in services (such as yard and office cleaning, decoration and upkeep of rented areas, vehicles, maintenance and sundry services).

2. *Indirect administration.* In this case, the prison management provides either natural or legal persons with the necessary resources from the prison to carry out productive activities using prison labour. With this approach, the manufacturing and training processes are placed directly under the control of the private individual or company.

Whatever work the inmates perform for those private sectors must be previously authorized by the Director of the prison establishment, under contract duly drawn up in accordance with the law.

Under this arrangement, some 2,500 inmates are given work in the private or public sector in kitchens, workshops and farms. The system allows prisoners to work outside the prison as an administrative benefit that is specifically stipulated in prison legislation for convicted inmates, who may be authorized to perform agricultural or industrial work with reputable companies or individuals.

Another type of work is that carried out by inmates on an independent basis. This is the most widespread in our prison system. It takes the form of handicraft work, or activities using technical facilities, such as woodworking, doll making, tailoring, painting, sculpture, ceramics and articles made of plant fibres. It is estimated that some 13,000 prisoners are engaged in this type of work in practically all the prisons in the country under INPEC's authority.

An effort is also being made to promote primary, secondary, higher and technical education, in order to turn inmates into productive individuals.

With regard to sport, leisure and culture, sporting activities have been encouraged, as well as games, leisure activities, artistic and literary work and reading, which all generate a spirit of integration, healthy competition and a better use of free time.

In order to run these activities, account is taken of the resources available, existing premises and areas, inter-agency support and the interests expressed by the prisoners themselves, on the basis of which timetables are drawn up to combine the working routine with sporting and recreational activities in the open air or indoor games.

In the cultural sphere, encouragement is given to the creation and promotion of theatrical, musical, painting, sculpture, literary and other activities, which lead to competitions held each year in the regional directorates and at central headquarters.

Through the library programme, inmates are encouraged to read and are allowed to borrow books to read in their cells, in the yards or in whatever premises are made available for the activity within the prison establishments.

In addition, in response to the concern for prisoners originating in indigenous communities, welfare programmes have been conducted in 15 of the country's prisons, including Leticia, Florencia, Popayán and Caloto.

It should be pointed out that there has definitely been an increase in criminal legislation, which is reflected in a rising prison population. One reason has been the recognition that such legislation is a basic, though not the only, tool of importance in combating criminality. It has been found that criminal activity has increasingly affected legal rights which are of vital importance to the State, such as the right to life and to personal integrity. New legislative measures have had to be adopted as a result in response to this phenomenon, especially if one considers that one of the main purposes of punishment is to ensure general prevention.

While this has affected the number of persons deprived of liberty, there have been offsetting administrative and judicial advantages, as well as policies and programmes which have been introduced with a view to ensuring that prisoners are treated with dignity, in such a way as to lead gradually to their resettlement in society.

In addition, the Ministry of Justice and Law has been particularly keen to look for ways of establishing mechanisms for the settlement of conflicts out of court, either by conciliation or by programmes such as the "Houses of Justice" (*Casas de Justicia*), which are mainly designed to assist underprivileged persons by bringing them into closer touch with justice.

Article 11 – Prohibition of imprisonment for contractual obligations

Provisions contained in the 1991 Political Constitution

708. According to article 28 of the Constitution:

“In no case may there be arrest, detention or imprisonment that are not subject to the statute of limitation.

This guarantee is immediately applicable by all courts of law.”

Article 12 – Freedom of movement

Provisions contained in the 1991 Political Constitution

709. Article 24 states that: “Within the limits established by law, all Colombian citizens are entitled to move about freely within the national territory, to enter and leave the country and to remain and reside in Colombia.”

Actions

710. As was pointed out earlier, the forced displacement of persons has unfortunately been affecting the full application of this right in the country. The way this problem has been dealt with - one of the areas of highest priority in the policy of promoting, respecting and guaranteeing human rights and implementing international humanitarian law - has been explained in an earlier chapter of this report.

Article 13 – Protection of aliens from arbitrary expulsion

Provisions contained in the 1991 Political Constitution

711. According to article 100 on the rights and guarantees of aliens:

“Aliens in Colombia shall enjoy the same civil rights as Colombian citizens. Nevertheless, for reasons of public order, the law may impose special conditions on or nullify the exercise of specific civil rights by aliens. Similarly, aliens shall enjoy, in the territory of the Republic, guarantees granted to citizens, except for the limitations established by the Constitution or by law.

Political rights are reserved for citizens, but the law may grant aliens resident in Colombia the right to vote in municipal or district elections and referenda.”

Legislative provisions

712. The rules governing the issue of visas to aliens and immigration procedures were laid down in Decree No. 2371 of 27 December 1996. This was then overtaken by Decree No. 2107 of 8 October 2001. According to article 1 of the latter Decree, the admission of aliens, their residence in and departure from the national territory are governed by Decree No. 2107.

713. Article 6 of the Decree tries to encourage the entry of immigrants who already possess experience, as well as technical, professional or scientific qualifications, as a way of assisting the development of economic, scientific and cultural or educational activities which are beneficial to the country.

714. Article 28 defines the types of visas which may be issued to aliens, as follows:

- Temporary visas:
- Preferential: A diplomatic, B official and C service;
- Courtesy;
- Business;
- Immigrant;
- Crew;
- Temporary;
- Worker, student, spouse of Colombian national, steady partner of Colombian national, religious, medical, social, special, business, visitor, refugee or asylum seeker;
- Resident: skilled, relative of Colombia national, investor;
- Tourism.

715. Article 137 allows the Director of Alien Affairs and the sectoral directors and other officials of the Administrative Department of Security (DAS) to impose fines for the reasons given in the article, by means of a decision giving reasons, against which administrative appeal may be brought with suspensive effect.

716. Article 140 authorizes the Director of Alien Affairs of the DAS, by means of a decision giving reasons, to order the deportation of aliens who have been charged on any of the grounds established in article 195 of the Decree.

717. Article 143 of the Visas Statute regulates the expulsion of foreigners from the national territory, for expressly determined reasons and by decision explaining those reasons, subject to appeal through administrative channels.

Article 14 – Equality before the law, guarantees of due process and principles governing the administration of justice

Provisions contained in the 1991 Political Constitution

718. The Constitution contains the following provisions regarding due process:

“Article 29

Due process shall apply in all legal and administrative proceedings.

No one may be tried except in conformity with the relevant laws that predate the act of which the person is accused, before a competent court or tribunal and in accordance with the procedure appropriate to each.

In criminal matters, permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws.

Everyone is presumed innocent until proven guilty according to law. Anyone who is accused is entitled to the right of defence and to legal assistance of his own choosing or assigned by the court during the investigation and trial; to a fair and public hearing without undue delay; to submit evidence and to examine witnesses for the prosecution; to challenge a conviction; and not to be tried twice for the same act.

Evidence obtained in violation of due process is null and void as of right.”

719. With regard to the administration of justice, the Constitution provides as follows:

“Article 228

The administration of justice is a State function. Its decisions are independent. Proceedings shall be public and permanent, with the exceptions established by law, and substantive law shall prevail. Time limits for the proceedings shall be scrupulously observed and failure to comply with them punished. The functioning of the judiciary shall be decentralized.

Article 229

The right of every person to have access to the administration of justice is guaranteed. The law shall stipulate in which cases this may be done without the representation of counsel.

Article 230

In their decisions, the judges shall be bound exclusively by the rule of law.

Equity, case law and the general principles of law and legal doctrine shall be auxiliary criteria of judicial proceedings.”

Actions – National Human Rights Unit of the Office of the Public Prosecutor

720. The National Human Rights Unit of the Office of the Public Prosecutor, established under Decision No. 275 of 9 December 1994, specializes in the most serious cases of violations of human rights and international humanitarian law. For logistical and budgetary reasons, the Unit only began operations in October 1995. Its jurisdiction extends over the whole of the national territory. Its work has been supported by the creation of satellite units in Neiva, Cali, Villavicencio and Medellín, with others planned for Cúcuta, Bucaramanga and Barranquilla.

721. In its investigations, the Human Rights Unit takes account of the following characteristics of defendants:

- If the suspected offender is a State official who, by abusing his authority, has infringed fundamental rights;
- If the person is acting under the protection, by incitement or with the acquiescence of State officials;
- If the person is a member of the subversive forces who disregards the rules of international humanitarian law through acts that are clearly specified in Colombia’s criminal law;
- If members of unlawful associations, acting outside legitimate authority, attack the civilian population;
- If an individual, even without any form of authority, acts with a disregard for human principles which is unacceptable to society.

722. In other words, persons who violate human rights may be: State officials, individuals acting with the consent of State officials, subversives, self-defence forces or private individuals.

723. The Office of the Public Prosecutor investigates not only officials working for governmental organizations, but also organized criminal organizations which are engaged in the internal conflict and violating the fundamental rights of the civilian population.

724. As far as the acts investigated are concerned, attention was focused on the three most serious types of human rights violations, namely forced disappearances, extrajudicial executions

and torture. In addition, attention is given to massacres perpetrated against different sectors of the population, involving indistinctly members of the insurgency, self-defence groups and criminal gangs in general, always bent on spreading fear and terror.

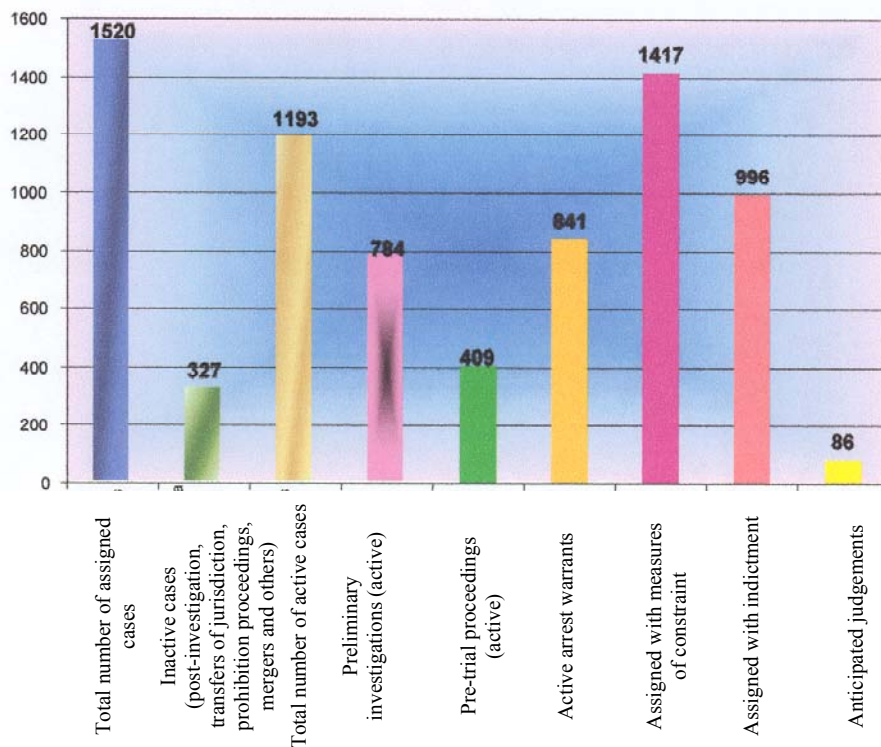
Composition and operation of the Human Rights Unit

725. The National Human Rights Unit is currently made up of 30 specialized prosecutors, 25 investigators of the Technical Investigation Corps, 5 investigators of the Administrative Department of Security (DAS) and 3 investigators of the Judicial Police Section (SIJIN).

726. The work of the Unit has been shared among investigating subunits, made up of two or three prosecutors in view of the complexity of the investigations undertaken. This approach ensures that the officials concerned are provided with sufficient logistical and legal support in their investigations and decisions.

727. Four judicial procurators, who closely accompany all the proceedings that are planned and undertaken as part of the assigned investigations, have been attached to the Human Rights Unit as delegates of the Government Procurator’s Office, with responsibility for safeguarding the constitutional and legal rights of defendants and a more effective protection for society in general. In some cases, it has been necessary in addition to appoint a special agent.

General management statistics [captions from left to right]



728. Some departments of the National Government, also involved in the frontline struggle against violations of human rights and international humanitarian law, such as the Office of the Presidential Adviser for Human Rights and the Ministry of Foreign Affairs, which contributed an account of cases investigated by international courts, also worked on some of the cases initially assigned to the Human Rights Unit.

729. Thanks to the way it is organized, the Human Rights Unit has been able to reduce the rates of impunity for grave violations of human rights and international humanitarian law, in which individuals belonging to the different parties to the conflict have been deeply involved.

Current statistics

	<i>Number of investigations</i>	<i>Persons concerned</i>	<i>Arrest warrants issued by HR and IHL judges</i>	<i>Arrested on behalf of HR Unit</i>
<i>Public security forces</i>				
National Army	39	85	37	4
National Navy	4	13	3	0
Air Force	0	0	0	0
National Police	24	113	23	1
National Prison System Institute (INPEC)	0	0	0	0
Technical Investigation Unit (CTI)	2	2	1	0
Administrative Department of Security (DAS)	3	20	4	0
<i>Organized crime</i>				
FARC	104	284	266	30
ELN	10	36	25	8
JEGA	1	1	1	0
EPL Dissidence	1	2	2	0
AUC	166	675	442	135
Civilians	55	99	39	17
Total	409	1 330	843	195

Statistics of decisions from October 1995 to 31 May 2002

	<i>Assigned with measure of constraint</i>	<i>Assigned with charges</i>
<i>Public security forces</i>		
National Army	104	103
National Navy	23	15
Air Force	0	0
National Police	96	77
National Prison System Institute (INPEC)	7	2
Technical Investigation Unit (CTI)	7	5
Administrative Department of Security (DAS)	9	25
<i>Organized crime</i>		
FARC	229	116
ELN	45	20
JEGA	1	0
EPL Dissidence	9	6
AUC	748	531
Civilians	139	96
Total	1 417	996

Impunity according to the Office of the Public Prosecutor

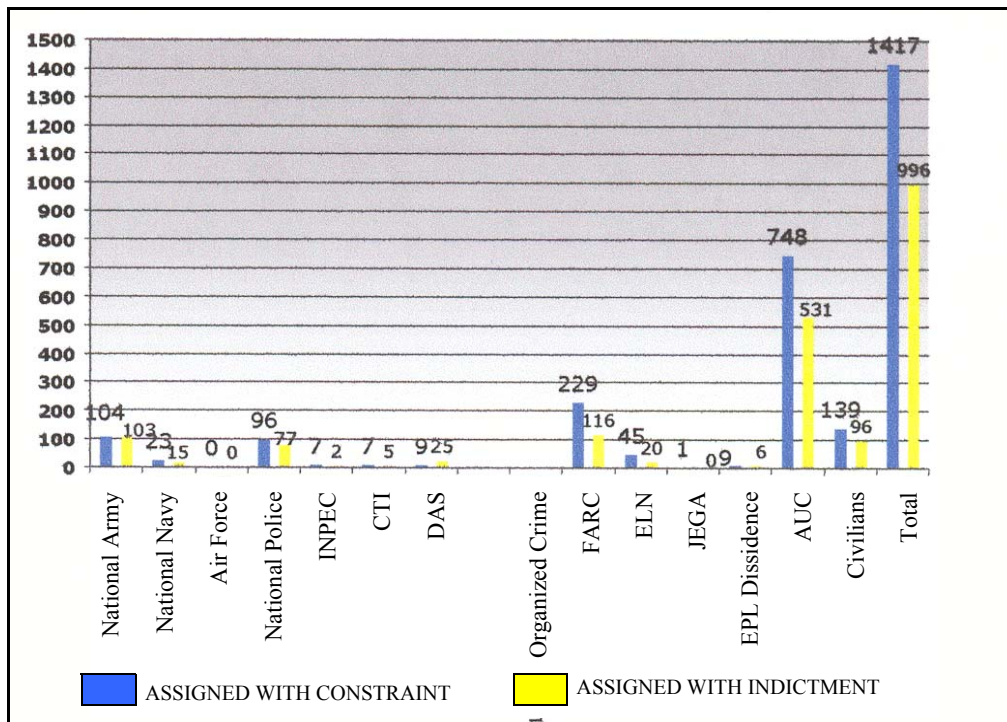
730. The report by Prosecutor Alfonso Gómez Méndez on his years of management indicated that the impunity rate related to the investigative work of the Office of the Public Prosecutor is 55.4%, a high percentage for the country. This figure was derived from an analysis of the National Census of Active Cases carried out in 1999.

731. The census covered 699,039 cases, of which 55.4% exceeded the time limits on proceedings as laid down in the Code of Penal Procedure. Out of this proportion, 41.2% of cases were at the preliminary investigation stage and 14.2% at the stage of the investigation proper. Altogether, 425,689 persons were charged in cases investigated by the Office of the Public Prosecutor. This figure is alarming, since if only 10% of these people were convicted over the coming years, the prison population would double, which would of course still further aggravate the crisis in the prison sector.

732. As far as the gender breakdown was concerned, the National Census found that out of the total of 425,689 defendants, 375,060 were men (88%), and 50,629 women (12%).

733. Among the cases of offences against the administration of justice, the Office of the Public Prosecutor issued the following decisions between July 1997 and March 2001: 23,065 preliminary investigations, 22,729 investigations, 7,398 measures of constraint, 8,952 foreclosures, 9,086 prohibition proceedings and 8,939 indictments. In the year 2000, six types of offences against the public administration were the most investigated: peculation by appropriation, unlawful conclusion of contracts, violence against official employees, peculation by extension, perversion of the course of justice and aggravated peculation.

Decisions taken since the Unit was established



National plan to relieve overload pressure with quality

734. In 1997, a study undertaken into the overload conditions prevailing in the Office of the Public Prosecutor found a state of imbalance in terms of distribution, historical accumulation, rate of criminality and limitations of staff and logistical resources.

735. A start was made on relieving the historic accumulation of cases, as follows:

- Between July 1997 and June 1998, there were 897,010 incoming investigations and 902,972 outgoing.
- Between July 1998 and June 1999, there were 977,843 incoming and 949,337 outgoing.
- Between July 1999 and June 2000, there were 923,216 incoming and 974,890 outgoing.
- Between July and December 2000, there were 498,224 incoming and 506,824 outgoing.

736. The Office of the Public Prosecutor found that in the year 2000 308,460 preliminary investigations had been initiated and 366,364 investigations had been conducted. The decisions included 142,960 prohibition proceedings, 48,703 foreclosures and 98,158 indictments in the country as a whole. Altogether the Divisions of the Office of the Public Prosecutor (including human rights, offences against the public administration, copyright, drug prevention, maritime interdiction, termination of the right of ownership and money laundering) issued 2,009 constraint orders, 1,149 indictments and 1,464 arrest warrants.

737. According to the Office of the Public Prosecutor, the offences occurring most frequently in Colombia are as follows:

1	Aggravated theft	19%
2	Failure to provide support	19%
3	Homicide (single/multiple)	9%
4	Domestic violence	8%
5	Firearms/ammunition manufacture and trafficking	6%
6	Personal injury	5%
7	Theft	5%
8	Fraud	5%
9	Aggravated personal injury	5%
10	Forgery of private document	5%
11	Drug trafficking, manufacture or possession	4%
12	Personal forgery	3%
13	Manslaughter (including traffic accident deaths)	2%

Military criminal justice in Colombia

738. The Military Penal Code (Act No. 522 of 12 August 1999) on the whole represents a step forward towards a more impartial, more objective, more effective, more transparent and more expeditious form of military criminal justice. In order to achieve this, the aspects of this special form of justice which are more sensitive by international standards have been treated in the latest reform in such a way that Colombia is now situated among the leading countries as far as military penal codes are concerned.

739. One of the critical aspects with respect to military criminal justice is that related to the principle of “due obedience”. According to the way the new Colombian Military Penal Code has dealt with this principle, the perpetrator of a punishable act may be relieved of responsibility, provided that he acted in compliance with a legitimate order and provided that the order was issued by a competent authority in conformity with legal procedures. This excludes the possibility that members of the security forces should carry out patently illegal orders, which contravene the constitutional and legal function of the country’s security forces.

740. Another area where the modernization of Colombia military justice has produced clearly positive results is the clear separation between the functions of command and those of investigation and trial. In effect, unlike the situation that still prevails in many countries of the world, including some developed countries, the new Code draws this distinction in order to guarantee the absolute independence and impartiality of military justice, by ensuring that the authority pronouncing a judgement is not the same as that in which powers of command are vested.

The military system of justice

741. Under the Colombian Constitution, the public security forces have been entrusted with the mission of defending the sovereignty, independence and integrity of the national territory and the constitutional order, as well as favouring the maintenance of the necessary conditions for citizens to exercise their rights and public freedoms, and for the enjoyment of peaceful coexistence.

742. The performance of this complex mission entails the implementation of tasks of a very special nature, which may sometimes run the risk of encroaching on the individual rights of persons. Similarly, the organization and discipline inherent in the military system imply the observance of a series of standards specific to the armed forces, which do not apply in other State institutions. For this reason, the observance of laws and standards, both in the performance of their constitutional duties in their obedience to internal rules, must be monitored by the members of the public security forces themselves.

743. According to the Supreme Council of the Judiciary, the highest authority of the Colombian judicial system, the reason for having military courts outside ordinary justice clearly stems from the principle of specialization, based unequivocally on the fact that those who are best acquainted with certain aspects of military-type organizations are best able to judge the behaviour of their members.

744. Again according to the Supreme Council of the Judiciary, the intention in the Political Constitution in instituting military courts was not to defend a privileged form of justice, nor to cover up any sort of impunity, but to allow an organization with its own very special characteristics and procedures to deal with the offences committed by its own members, in accordance with its strict operating and hierarchical rules and the special sense of discipline and deference to rank which it inspires.

745. This means, according to that same authority, that far from establishing a system of privileged treatment, military justice has on the contrary supplemented the ordinary criteria by which human conduct is normally assessed with further elements, which turn the disciplinary and criminal judgement of members of the public security forces into a highly specialized procedure. This is left in the charge of judges who, while possessing all the qualities required for discharging such a high responsibility in normal circumstances, in addition offer the advantage of being acquainted with all the characteristics of an organization such as the army, which is so different from other State institutions.

746. The Constitutional Court has taken a similar view in pointing out that military justice cannot be understood to be associated with the idea of privilege, prerogative, sinecure or special favour in the trial of members of the public security forces for offences they commit in the course of their service, under material and legal conditions that differ from those applied to other people who may be exposed at some point to the punitive action of the State, and that are conducive to impunity, since that would imply special treatment, which would be contrary to the principle of equality and the notion of justice.

747. According to the Constitutional Court, military justice should be interpreted rather as a system whereby an independent and impartial judicial authority, such as the military courts or tribunals, is instituted as the natural seat of judgement, which has constitutionally and legally been entrusted with the task of judging those types of offences. That authority, even though it belongs to the judicial system from a material point of view, since its task is to render justice in a specific field and in specific matters, is not directly attached to the ordinary system of justice, even though the possibility of a functional link with that system is not excluded. Such a case may arise, for instance, as may be seen below, if the Criminal Review Division of the Supreme Court of Justice conducts judicial reviews in last instance of judgements handed down by lower courts.

748. Thus military criminal justice is a system which administers justice, but does so under exceptional conditions, not only from the point of view of the persons called upon to act as judges, but also from that of the matters dealt with by the military courts. In all cases, military judges, like any other judges, must be guided in the performance of their duties by the criteria of impartiality, objectivity, effectiveness and expeditiousness, amongst others.

Operation of military criminal justice

Scope

749. The system of military criminal justice is a special judicial sector of the general system of justice in Colombia, which is in charge of investigating and punishing offences committed by members of the public security forces on active service and in connection with that service. Civilians are excluded from military justice, since in Colombia in no event may they be investigated or tried by military courts. This is not so in some of the other military criminal

justice systems in other countries, for instance in Peru, where the separate military courts are responsible both for investigating and for trying civilians accused of terrorism or treason. In the United States, the military courts try civilians who have committed offences against the military institution or its members.

750. *Offences related to service* are understood to mean those committed by members of the public security forces arising from the performance of their own military or police duties. According to the Supreme Court of Justice, offences are said to be service-related when there is a link between military or police activity and the offending act. Offences related to service occur by means of acts inherent in military activity, or in obedience to orders issued by a person in a position of command.

751. Thus under the concept of *service-related acts* should be considered only those related to the fulfilment of the objectives of the armed forces, that is to say, the defence of sovereignty, independence, integrity of the national territory and the constitutional order, or the primary objectives of the national police force, that is, the maintenance of conditions required for the exercise of rights and public freedoms, and ensuring that the inhabitants of Colombia live together in peace. According to Colombian law, in no event may service-related acts be understood as including the offences of torture, genocide or forced disappearance, in the sense given to those terms in the international agreements and treaties ratified by Colombia.

752. In 1997, the Constitutional Court ruled that crimes against humanity did not fall within the scope of military criminal justice because they are unrelated with the duties of the public security forces, since all the offences concerned constitute grave violations of human rights and fundamentally exceed the purpose of the armed institutions. The Constitutional Court therefore decided that such offences should be brought before the ordinary criminal courts. The debate as to whether, in a particular case, the offence concerned may be considered or not to be service-related hinges basically on the circumstances in which the offending conduct has taken place, and the appreciation of that fact, in view of the judicial elements which have to be taken into account, must lie solely with the judge.

Separation between prosecutors and judges and the line of command

753. Offences related to service are brought before the Courts Martial or military courts, which are made up of judges acting in conformity with the provisions of the Military Penal Code. Under the new legislation, the military prosecutors and judges who characterize, investigate, charge and judge members of the public security forces involved in service-related offences are detached from the line of command, in order to ensure the complete independence and impartiality of this form of justice, so that the authority conducting a case is not the same as that vested with powers of command. Thus commanders do not act as judges and judicial functions are performed by military judges, who belong to a structure removed from military operations.

754. This separation between military judges and commanders will improve the trust felt towards judicial decisions and will put an end to any suspicion that military command might influence the military courts.

Indictment system

755. The indictment system has also been incorporated into military justice with the institution of military prosecutors, whose function is to determine and bring charges in proceedings, with the

ability to decide the foreclosure of proceedings if that appears justified. Lastly, the trial systems have been changed, leaving only court martial proceedings without examining officers or special procedure. In both systems judgements are pronounced by law.

756. The new Military Penal Code established which bodies and authorities should conduct criminal proceedings in the case of offences committed by members of the public security forces in the course of active service and in connection with that service. The bodies concerned are: the Supreme Military Court, courts of first instance, military prosecutors, military examining magistrates, military assessors and the Criminal Judicial Review Chamber of the Supreme Court of Justice. The general qualifications for these offices are the same as for equivalent positions in the ordinary system of justice, but adapted to the requirements and circumstances specifically related to military criminal justice.

757. As part of the structure of military justice attached to the Ministry of Defence, the Supreme Council of Military Criminal Justice was established to advise the Ministry of Defence in all matters relating to military justice, and to recommend policies, plans, programmes and assessment systems with a view to making the administration of justice more efficient. The Executive Directorate of Military Criminal Justice was also established to implement the policies and programmes adopted by the Ministry of Defence with respect to the administration of justice.

758. The military system of justice is recognized in Colombia as an expeditious and efficient form of justice, which is free of judicial corruption and where time limitation, which is minimal, has not been a factor of impunity. The system does not suffer either from the problem of an excessive backlog of cases.

759. In 1998, the military justice system processed 6,221 cases and handed down 4,917 judgements. Among the decisions taken in these cases, 32.6% were convictions, 16.6% acquittals, 33.9% suspensions, 5.3% annulments and 11.4% interlocutory orders. The ten most frequent offences by order of occurrence were: desertion (38%), homicide (13%), personal injuries (10%), dereliction of duty (5.6%), disobedience (4.5%), sentry offences (4.1%), abandonment of service (3.5%), peculation (2.4%), extortion (2%) and assault of a subaltern (1.7%).

760. In 1997, sentences were passed in 113 criminal cases for offences which might be considered as violations of human rights, such as arbitrary detention, attempted homicide, homicide, personal injuries, abuse of authority and unlawful deprivation of freedom.

761. In 1998, sentences were passed in 127 cases for the same offences. In 1997, the heaviest sentence for homicide was 168 months of imprisonment, while the average sentence was 54 months of imprisonment. In 1998, the heaviest sentence for this offence was similar to that of the previous year and the average was 58 months of imprisonment.

762. In 1997, 1,175 cases that did not come to judgement were deferred to the following year, while in 1996 the similar figure was 1,385 cases. This means that in the last four years the number of unresolved cases deferred to the following period has diminished.

763. The expeditiousness of military justice has always ensured strict compliance with the rules of procedure and the decisions it has handed down have always been in conformity with the law, as reflected in the fact that no official of the judicial system has ever been penalized on account

of a decision he has taken. In other words, no military criminal magistrates have ever been convicted in ordinary courts on charges of having perverted the course of justice.

764. It may be recalled that the Office of the Public Prosecutor and the Circuit Criminal Courts are responsible for investigating and trying offences attributed to officials of the military justice system, whenever wrongful conduct is suspected.

765. It should also be remembered that the task of supervising the evidence presented in trials and the impartiality of military officials in their investigations and judgements is the responsibility of officials of the Procurator's Office, who are appointed by the Office of the Government Procurator. These must supervise and charge any officials of the military courts who in any way infringe the legal rules provided in the procedures laid down in the codes governing the implementation of criminal law.

766. There has been no single case in which a judicial procurator has brought charges against or requested a disciplinary inquiry with respect to a military judge for irregularities in the conduct of cases in which human rights violations have been investigated, even when a disciplinary inquiry has been initiated by the military courts.

Supervisory mechanisms

767. In addition, military justice in Colombia is placed under the supervision of the Attorney General's Office, the body in overall charge of the Procurator's Office, which is responsible, amongst other tasks, for ensuring compliance with the Constitution, the laws, court rulings and administrative decisions. The Office intervenes at all stages of trials conducted by the military courts, through the Government Procurator, the armed forces and national police divisions, and the prosecutors in the military courts of first and second instance. The latter, who are directly appointed by the Government Procurator, act directly in the trials, so that they may request evidence or challenge the decisions adopted, just like any other party to the proceedings. The involvement of the Government Procurator's Office provides the basic guarantee of society's right to initiate just proceedings against members of the public security forces who have perpetrated an offence, and to ensure that such acts are effectively punished.

768. The duties of the representative of the Procurator's Office, when acting in proceedings before the military courts, notwithstanding any other tasks arising from his supervisory functions, are as follows:

- 1 To ensure that in all proceedings human rights are respected and the guarantees of due process are fulfilled.
- 2 To ensure that in cases of withdrawal the persons involved in the proceedings act freely.
- 3 To request the suspension of proceedings whenever conditions are appropriate.
- 4 To intervene in all trials conducted by military courts, in order to request either the acquittal or the conviction of the defendants, as appropriate.

- 5 To ensure the fulfilment of obligations and conditions imposed by judges in cases of the grant of benefits, release on bail, alternates, securities, periodic appearances and other commitments.
- 6 To ensure that the general principle whereby there always has to be a separation between judicial duties and command where judges are concerned is applied at all times.
- 7 To ensure that due guarantees are offered to victims and to defend their right of real access to justice.
- 8 To request the production of evidence or bring forward evidence whenever pertinent or relevant.

769. The functions described above in paragraphs 3, 4 and 8 apply only when required to defend the legal order, the public heritage or fundamental rights and guarantees.

770. As far as the intervention of the Government Procurator's Office in military justice is concerned, Colombia's case is exceptional in the region insofar as such action may be taken by an independent civil body. In countries like Bolivia, Chile, Ecuador, Peru and Venezuela, these supervisory and monitoring tasks are performed by military prosecutors, in other words officers who are active members of military legal bodies or officers on active service, but never civilians.

771. The military prosecutors and judges, on the other hand, are answerable to the above-mentioned supervisory bodies with respect to all their acts and decisions. They will be subject to investigation and punished if any of their acts are contrary to the rules governing the substantive application of the law or the probative value contained in the case files.

Criminal indemnification claimants (*parte civil*) in trial proceedings

772. In order to make military justice even more transparent, the new Code allows the victims of an offence to be present at the proceedings, acting as criminal indemnification claimants (*parte civil*). As far as the defendant is concerned, one substantial improvement has been made, insofar as the new Code establishes that in any trial the accused must be assisted by counsel, in conformity with the ruling of the Constitutional Court whereby counsel must be a qualified lawyer.

773. In criminal proceedings before the ordinary courts, it is possible for the victim of the offence or injured party to exercise a right of petition before the judicial authority in order to obtain information, make specific requests or bring forward evidence. These persons admitted to the proceedings may then initiate a civil action to obtain compensation for any individual or collective damage or loss caused by the punishable act. In the case of military justice, the Constitutional Court supported the possibility of action being initiated by indemnification claimants in trials brought before military courts, starting with the examination stage, throughout the trial and after sentence has been passed, on the grounds that it would help guarantee access to justice, which is very closely related to the right of due process.

774. Defendants, on the other hand, must be defended by qualified lawyers, in order to ensure that their defence rights are fully protected.

Aspects of criminal proceedings

775. From the time they are initiated, military criminal proceedings must fulfil all constitutional and legal requirements, which, in the Colombian democratic system, imply the guarantee of due process for the accused and complete independence for judges and prosecutors with respect to the legislative and executive powers. The independence of the judiciary has been taken so far that, unlike in other systems, in Colombia the Office of the Procurator is part of the judiciary and is not subordinated to the executive branch.

776. If it receives a report of a punishable act with criminal connotations, a military criminal court will initiate a preliminary investigation to determine whether any unlawful act requiring investigation has been performed by any members of the armed forces. Following that preliminary investigation, either the matter will be shelved if the judge finds no merits, or he will initiate a criminal investigation. In the latter case, the military judge must determine jurisdiction, for which he will examine evidence related to the facts of the case in order to establish how, when and where the offence was committed.

777. The judge must then establish whether the acts were really perpetrated as a result of an operation or action conducted by the military or police forces, that is to say, if they were service-related. If he deems that the act was truly service-related, the judge will undertake the investigation, which would then fall within his jurisdiction. Otherwise, he will transfer the case to the ordinary courts.

778. Nevertheless, at this stage of proceedings conflicts of jurisdiction may occur, with either positive or negative effects. The effects will be positive if both the judges concerned claim jurisdiction, and they will be negative if both reject it. In such an event, the case will be referred to the Supreme Council of the Judiciary, which has the power to resolve a conflict of jurisdiction. The Council will in the end return the case either to the military judge or to the ordinary courts, according to its appreciation of the evidence.

779. The indemnification claimant (*parte civil*) in the criminal proceedings may challenge the competence of the judge in charge of the case, requesting that the judge should consider whether he is competent to exercise jurisdiction in the case in question. The same challenge may be made by the Procurator's Office. In either case, the Supreme Council of the Judiciary will have the last word.

780. A preliminary investigation is initiated whenever it has to be determined whether the act reported to the authority has really taken place and whether it is described in the law as punishable. Depending on the finding, the court authority will then proceed to initiate an investigation by means of an initiating order or to issue a refusal order. In the former case, the authority will proceed to summon for interrogation whoever, according to the evidence gathered on the case, appears to be the suspected offender. If the person does not appear for interrogation, the judge will issue a summons to appear, followed by an interlocutory order, declaring the person to be absent and appointing counsel for the defence. Once this formality has been completed, the examining magistrate refers the case to the military prosecutor to determine whether it should be sent for trial, once a clear analysis has been produced as to whether there is at least one statement by a witness offering serious grounds of credibility or substantial evidence such as might establish the liability of the defendant as the perpetrator or accomplice in the

offence, or whether, on the contrary, there is not sufficient evidence on the basis of which to convene a court martial, which would then entail the suspension of proceedings.

Second instance

781. Once the court martial meets, its president will initiate the corresponding oral hearings, of which written records are kept, and will issue a ruling within eight days following the conclusion of the hearings. The decision of this court may be reviewed in second instance by the Military High Court, before which the case will be brought either for opinion or on appeal.

782. Similarly, the rulings issued in second instance by the Military High Court, or concerning offences entailing sentences of imprisonment exceeding eight years or exceptional sentences, may be appealed to a totally civilian court, the Criminal Judicial Review Chamber of the Supreme Court of Justice. The grounds that may be alleged by a plaintiff in a military criminal trial are generally those that apply in ordinary criminal cases, that is to say, the infringement of a substantive law, the lack of conformity of the sentence with the charges brought or the pronouncement of the sentence in proceedings which have been invalidated. The existence of this remedy in military justice and the quality of the civilian persons responsible for deciding the case stand as guarantees of the impartiality and objectivity of judges in their decisions, criteria which have already been mentioned as being as fundamental in military trials as they are in any criminal proceedings.

783. The new legislation introduced with respect to military criminal justice aims to strengthen and modernize it in order to improve its efficiency and its deserved credibility before public opinion, adding adjustments and greater detail in some aspects which had been the subject of controversy in the past.

Service-related acts

784. A precise definition is given of what may be considered to be offences related to service and what are not. The purpose is to provide judges with guidelines to help them establish unequivocally whether a case should be judged by the military courts. Whenever there is any doubt regarding the jurisdiction that applies to any given offence, the Supreme Council of the Judiciary, another body which is part of the judiciary and therefore independent of the executive power, will resolve the conflict of jurisdiction. The proportion of cases referred by the Supreme Council of the Judiciary to the ordinary courts has been tending to increase, which would indicate a gradual change in the criteria applied, so that the military courts are judging cases for which they are competent because they arise from acts really related to service.

Due obedience

785. Similarly, the rules governing the principle of due obedience eliminate any possibility that members of the public security forces should obey orders which are clearly unlawful, because they violate the constitutional and legal function of the military institutions of the State.

**Article 15 – Principles of legality, non-retroactivity and benefit
of criminal law**

Provisions contained in the 1991 Political Constitution

786. Regarding due process, the constitutional rules are as follows:

“Article 29

Due process shall apply in all legal and administrative proceedings.

No one may be tried except in conformity with the relevant laws that predate the act of which the person is accused, before a competent court or tribunal and in accordance with the procedure appropriate to each case.

In criminal matters, permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws.

Everyone is presumed innocent until proven guilty according to law. Anyone who is accused is entitled to the right of defence and to legal assistance of his own choosing or assigned by the court during the investigation and trial; to a fair and public hearing without undue delay; to submit evidence and to examine witnesses for the prosecution; to challenge a conviction; and not to be tried twice for the same act.

Evidence obtained in violation of due process is null and void as of right.”

Article 31

Any lawful conviction may be appealed or reviewed, except where provided by law.

When the accused is the sole appellant, the higher court may not impose a heavier penalty.

Article 32

An offender who is caught *in flagrante delicto* may be apprehended and taken before a judge by any person. Should he be pursued by law enforcement officials and take refuge in his own home, the law enforcement officials may enter the domicile to apprehend the offender; should he seek shelter in somebody else’s home, a request must be made to the resident before entering.

Article 33

No one may be forced to testify against himself or his spouse, permanent companion or kin to the fourth level of consanguinity, affinity two ranks removed or one rank removed in civil law.

Article 34

Deportation, life imprisonment and confiscation of property shall be prohibited.

Nevertheless, a judicial ruling may nullify ownership of property acquired by unlawful enrichment, at the expense of the Public Treasury or to the serious detriment of social morality.”

Legislative provisions

787. The new Penal Code (Act No. 599 of 2000) in Title I sets out the following rules governing Colombian criminal law:

- The foundation of criminal law shall be respect for human dignity.
- All constitutional and legal norms and those contained in human rights treaties shall be considered part of the Code.
- Security penalties or measures shall comply with the principles of necessity (prevention), proportionality and reasonableness.
- The purposes of a penalty are general prevention, just retribution, special prevention, social resettlement and protection of the convicted person.
- The objectives of security measures must include prevention, treatment, protection and rehabilitation.
- The terms of article 29 of the Constitution concerning due process are confirmed, whereby no one may be tried except in conformity with the relevant laws that predate the act of which the person is accused, before a competent court or tribunal, and in accordance with the procedure appropriate to each case. The pre-existence of the law also applies to the rejection of matter concerning theoretical offences.
- Permissive or favourable laws, even if they postdate the act, shall be applied in preference to restrictive or unfavourable laws. This principle also applies to persons who have been convicted.
- The analogy shall apply only in permissive matters.
- In accordance with the principle of equality, the law shall apply to persons without taking into account any considerations other than those established in the law.
- No person may be charged twice for the same offence or punishable conduct.
- An offence must be characterized, unlawful and culpable.

788. The Code of Penal Procedure (Act No. 600 of 2000) in its preambular title sets out the following rules:

- The parties in proceedings shall be treated according to the principle of respect for human dignity.
- The guarantees contained in the Constitution and in international treaties in force shall be applied.

- No one may be deprived of freedom and no one's home may be searched without a written warrant being issued by a competent judicial authority in accordance with legal formalities.
- The right of habeas corpus shall apply to unlawful detentions.
- The parties in proceedings shall be considered equal.
- Investigations and judgements shall be conducted in accordance with the procedural law in force at the time of the proceedings concerned. Substantive permissive or favourable effects of procedural law shall be applied in preference to restrictive or unfavourable effects even if they postdate the proceedings.
- Procedural law shall take general and immediate effect.
- A person's criminal liability shall be established only by a final sentence of conviction.
- In criminal proceedings, any doubt must be resolved in favour of the accused.
- Convictions handed down in enforceable court judgements shall be considered part of criminal and police records.
- The right of defence shall be guaranteed in all proceedings and shall be complete, uninterrupted, technical and material.
- No one may be held incommunicado.
- The fundamental rights of persons in proceedings and the effectiveness of the administration of justice shall be respected.
- Cost-free access to penal justice shall be guaranteed.
- A person may be tried only by a judge or court whose jurisdiction predates the act of which that person is accused.
- Judicial officials shall be independent and autonomous.
- Interlocutory sentences and measures may be subject to appeal or review.

Article 16 – Recognition of the legal personality of all human beings

Provisions contained in the 1991 Political Constitution

789. According to article 14 of the Constitution:

“Every person is entitled to recognition of his legal personality.”

Legislative provisions

790. The Colombian Civil Code, in article 74, establishes that persons include all individuals of

the human species, of whatever age, sex, origin or condition. According to article 90 of the Civil Code, the legal existence of every person begins at birth, that is, upon complete separation from his mother. Article 91 of the Code protects the life of the unborn, so that protection applies from the moment of conception, with the explicit consequence that abortion is considered an offence. The Constitutional Court, in a ruling issued in 2001, diminished criminal responsibility in some cases where abortion was practiced without the consent of the victim.

791. The organization of the civil register and the identification of persons is the responsibility of the National Civil Status Registry.

Article 17 – Right to privacy, protection of private correspondence, inviolability of the home and the protection of honour

Provisions contained in the 1991 Political Constitution

792. The Constitution establishes as follows:

“Article 15

All persons are entitled to their personal and family privacy and to their good name and the State shall respect them and ensure they are respected. They are also entitled to know of, update and rectify any information about them contained in data banks and in the records of public and private entities.

Freedom and other guarantees enshrined in the Constitution shall be respected in the collection, processing and transfer of data.

Correspondence and other forms of private communication are inviolable. They may be intercepted or recorded only pursuant to a court order, in those cases and complying with the formalities required by law.

For tax or legal purposes and for cases of inspection, supervision and intervention, the State may require the submission of accounting ledgers and other private documents, under the conditions specified by law.”

Article 16

All persons are entitled freely to develop their personality subject to no limitations other than those imposed by the rights of others and the legal order.

Article 21

The right to honour is guaranteed. The law shall indicate the appropriate form of protection.”

793. *Case law.* The Constitutional Court, in its protection ruling T-261, issued on 20 June 1995, expressed the view that:

“... This right, which is derived from human dignity and the natural tendency of every person towards freedom, independence and self-preservation, protects the private sphere of

the individual, and of his family as his closest human nucleus. Either of these must be able to claim minimum personal and public consideration for their privacy, which means that others should refrain from inquiring into or interfering with the private sphere of the individual or his family, which consists of matters, problems, situations and circumstances exclusively of importance to them. This private sphere is not part of the public domain and therefore should not give rise to information supplied to third parties, or to intervention or analysis by outside groups, or to disclosure or publication.

This private sphere may not be intruded upon by other members of the community to which the personal family belongs, or by the State. Even within the family, each member thereof is entitled to require of others respect for his identity and personal privacy ...”

Legislative provisions

794. In the new Penal Code (Act No. 599 of 2000), the following types of offences were established in order to protect the legal provisions of the above article of the Covenant:

“Article 220 - Insult. Anyone making dishonourable imputations about another person shall incur a prison sentence of between one and three years and a fine of between 10 and 1,000 minimum wages.

Article 221 - Calumny. Anyone who falsely accuses another of committing an offence shall incur a prison sentence of between one and four years and a fine of between 10 and 1,000 current monthly legal minimum wages.

Article 221 - Indirect insult and calumny.

Article 226 - Insult with assault.

Article 189 - Forced intrusion of a private home. Anyone who arbitrarily, deceitfully or clandestinely gains access to another’s home or to its immediate dependencies, or who, by any undue means, overhears, observes, records, photographs or films aspects of the domestic life of the occupants thereof, shall incur a fine.

Article 190 - Forced intrusion in another’s home by a public official. Any public official who, abusing his authority, gains access to another’s home, shall incur a fine and shall forfeit his public employment or office.

Article 191 - Forced intrusion in the workplace. When the acts described in this section occur at a workplace, the corresponding penalties shall be reduced by half, though not being less than a single unit of fine.

Article 192 - Unlawful violation of communications. Anyone who unlawfully takes, hides, mislays, destroys, intercepts, monitors or impedes private communication intended for another person, or unduly learns of its contents, shall incur a prison sentence of between one and three years, provided that the act does not constitute an offence liable to a greater penalty.

If the perpetrator should disclose the contents of the communication, or use it to his own or to another’s advantage at someone else’s expense, the penalty shall be imprisonment of between two and four years.

Article 193 - Offer, sale or purchase of any instrument suitable for intercepting private communications between persons. Anyone who, without permission from the competent authority, should offer, sell or purchase instruments suitable for intercepting private communications between persons, shall incur a fine, provided that the act does not constitute an offence liable to a greater penalty.

Article 194 - Dissemination and use of confidential documents. Anyone who, for his own or another's benefit or to the detriment of another should disseminate or use the content of a document which should remain confidential, shall incur a fine, provided that the act does not constitute an offence liable to a greater penalty.

Article 195 - Abusive access to a computing system. Anyone who abusively gains entry to a computing system protected by a security system or remains therein against the wishes of whoever is entitled to exclude him, shall be liable to a fine.

Article 196 - Unlawful violation of official communications or correspondence. Anyone who unlawfully takes, hides, mislays, destroys, intercepts, monitors or impedes official communications or correspondence shall incur a prison sentence of between three and six years.

The above penalty shall be increased by up to a third if the communication or correspondence is intended for or sent to the judicial system or to State supervisory and security organizations.

Article 197 - Unlawful use of transmitting and receiving equipment. Anyone who, for unlawful purposes, possesses or makes use of radio or television apparatuses, or of any electronic means designed or adapted for the emission or reception of signals, shall, on that count alone, incur a prison sentence of between one and three years.

The above penalty shall be increased by between a third and a half if the act described in the foregoing paragraph is intended for terrorist purposes.

Article 18 – Freedom of thought, conscience and religion

Provisions contained in the 1991 Political Constitution

795. The Constitution establishes as follows:

“Article 18 - Freedom of conscience. Freedom of conscience is guaranteed. Everyone shall have the right to hold convictions or beliefs without interference. No one shall be compelled to reveal them or be obliged to act against his conscience.

Article 19 - Freedom of worship. Freedom of worship is guaranteed. Every individual has the right freely to profess his religion and to propagate it individually or collectively. All religions and churches are equally free before the law.

Article 27 - Freedom of instruction. The State guarantees the freedom of instruction, learning, research and academic lecturing.”

Actions

796. Freedom of worship was enshrined in the 1991 Political Constitution, which allows every person the right freely to practice his religion and to propagate it individually or collectively.

797. In order to enforce this rule, a Subdirectorate on Freedom of Worship and Religion was established within the Ministry of the Interior. According to the Public Registry of Religious Entities held by that office, to date Colombia has 716 organizations of that kind.

798. Nevertheless, the Colombian Government and the religious organizations are currently having to combine their efforts to defend the members of some churches who, in the midst of the grave situation of violence affecting the country, have now become the victims of intolerance by outlawed armed bands, who have chosen them as a target of their barbaric acts. One of the most recent deeds to be perpetrated, which upset the whole of the country, was the murder of the Bishop of Cali, Monsignor Isaías Duarte Cancino. The murder took place in March 2002 as the bishop was leaving a religious service. Subsequently another prelate of the Catholic Church was shot to death as he was conducting mass.

799. Article 19 of the Constitution guaranteeing freedom of worship and every person's right freely to practice his religion is enforced through Act No. 133 of 1994, whereby the Ministry of the Interior recognizes the legal capacity of churches, faiths, religious denominations, and their federations, confederations and associations of ministers.

800. The Ministry of the Interior in turn issued appropriate regulations, in the form of Decree No. 1319 of 1998, establishing the conditions which religious entities must fulfil if they apply for recognition of a special legal capacity, as well as the terms with which those entities must comply if they wish to enter into agreements under internal public law with the Colombian State.

801. In addition, the Ministry of the Interior, in accordance with its power to pursue negotiations for the signing of agreements under internal public law, coordinated the conclusion of Internal Public Law Agreement No. 1, signed between the Colombian State and some non-Catholic Christian entities and approved by Decree No. 354 of 19 February 1998. The Ministry subsequently issued appropriate regulations and under the terms of the agreement with the entities concerned issued the following provisions :

Presidential Directive No. 12 of 5 May 1998, on the regulation and implementation of the Agreement;

Decree No. 1321 of 13 July 1998, establishing the Inter-Agency Committee for the regulation of internal public law agreements;

Circular No. 0021 of 23 July 1998, establishing measures conducive to the free exercise of the right of religious freedom and worship in health service providers;

Decree No. 1519, of 4 August 1998, establishing measures conducive to the free exercise of the right of religious freedom and worship in prison and detention centres;

Decision No. 03074, of 6 August 1998, establishing measures conducive to the free exercise of the right of religious freedom and worship for members of the military and police forces.

802. Among other aspects, the agreement regulates all matters related to receiving or imparting religious education and information, either orally, in writing or by any other means, to whoever wishes to receive it, and to receiving such education or information or refusing it, as well as to offering religious assistance, through chaplaincies or similar institutions, organized independently by the corresponding church or religious denomination, to the latter's members when placed in public educational or military establishments, hospitals, welfare establishments or prisons.

803. For the record, two draft decrees are currently under study to regulate the agreement: the first "by which procedures are established for the celebration of marriages by ministers of worship of the non-Catholic Christian religious entities which have signed Internal Public Law Agreement No. 1 of 1997"; and the second "issuing regulations pertaining to Chapter II, on non-Catholic Christian religious instruction, education and information, of Internal Public Law Agreement No. 1 of 1997, approved by Decree No. 354 of 19 February 1998."

Article 19 – Freedoms of opinion and expression and duties and responsibilities in exercising those freedoms

Provisions contained in the 1991 Political Constitution

804. The Constitution establishes as follows:

“Article 18 - Freedom of conscience. Everyone shall have the right to hold convictions or beliefs without interference. No one shall be compelled to reveal them or be obliged to act against his conscience.

Article 20 - Freedom of expression and information. Every person is guaranteed the freedom to express and propagate his thoughts and opinions, to transmit and receive true and impartial information, and to establish mass media.

The mass media are free and bear a social responsibility. The right of correction, under equitable conditions, is guaranteed. There shall be no censorship.

Article 21. The right to honour is guaranteed. The law shall indicate the appropriate form of protection.

Article 73. Journalism shall enjoy protection in order to guarantee its freedom and professional independence.”

805. *Case law.* In its Ruling C 033, of 17 June 1992, the Constitutional Court analysed article 20 of the Constitution in the following terms:

“... It is observed in above article 20 that freedom of information constitutes a fundamental right, the exercise of which is legally protected, but which also implies obligations and responsibilities. It may therefore be said to be a right/obligation, that is to say, a right which is not absolute but entails an obligation which conditions its enjoyment.

For whoever uses or receives the information, the full enjoyment of his fundamental constitutional right is guaranteed to the extent that the information fulfils three requirements, that it be accurate, objective and timely:

- Information is accurate when it tells the truth, that is, when it is based on true facts.
- Information is objective when its form of transmission or presentation is not biased, tendentious or arbitrary. As the Constitutional Court has established, the information has to be free of any manipulation or arbitrary treatment; free of any tendentious or deliberate bias; free of any intention to obtain through the information effects which arise not as may be expected from the facts or opinions contained therein, considered in themselves, but through the means used by the media to distort them.
- Information is timely when there is no time lapse between the events and their publication, that is, when the time elapsed is not greater than that required to produce the information technically, or if the time elapsed between the event and its publication is not so great that the news becomes devoid of any impact or interest, becoming “history” rather than “news” ...”

Legislative provisions

806. Information, communication media and radiocommunication systems are regulated by Act No. 104 of 1993.

807. Under the terms of article 5 of Act No. 104 of 1993, the authorities guarantee the free development and free expression and action of social movements and protests by the people, which are carried out in accordance with the Constitution and the law.

808. It is also worth mentioning the legislation currently in effect relating to the application of the principles of freedom of opinion and expression in the telecommunication sector. Even though the rules were issued prior to April 1997, they still apply and are relevant to article 19 of the Covenant.

Decree No. 1900 of 1990

Article 3: Telecommunications shall be used as an instrument to promote Colombia’s political, economic and social development, with the aim of raising the standard and quality of life of its inhabitants.

Telecommunications shall be used responsibly to help defend democracy, to promote participation by Colombians in national life, and to safeguard human dignity and other fundamental rights enshrined in the Constitution, thereby ensuring peaceful coexistence.

Article 6: The State guarantees diversity in the dissemination of information and the presentation of opinions as a fundamental right of the person, from which the right to free access to the use of telecommunication services is derived.

In this respect, the National Government will aim to achieve national coverage of telecommunication services and their modernization, as well as to ensure that low income population sectors, the inhabitants of marginal or border urban and rural areas, cultural ethnic groups and in general the weaker or minority sectors of society gain access to the use

of this type of service, in order to promote their socio-economic development, the expression of their culture and their integration in Colombian society.

Article 7: The State guarantees any person or group of persons considering themselves adversely affected by inaccurate information transmitted through telecommunication services the right to rectify such information, without prejudice to any civil, criminal or administrative proceedings which may ensue.

Paragraph: The National Government will guarantee the exercise of this right within the terms laid down by law.

Article 8: The State guarantees the inviolability, privacy and confidentiality of telecommunications, in conformity with the Constitution and the law.

Article 9: The State guarantees as a fundamental right of the person the privacy of the individual and his family against any interference occurring through the exercise of telecommunication activities, which is not in conformity with the implementation of legal requirements.

Operation of television services

809. The freedom of operation, expression and dissemination of television services was established in Act No. 182 of 1995. Article 29 of the Act stipulates that the right to operate and exploit television media must be authorized by the State and be dependent on the electromagnetic spectrum, service requirements and the efficient and competitive operation of the service. The National Television Commission is responsible for intervening in, directing, supervising and monitoring television services.

Other actions

810. According to article 73 of the Constitution on freedom of the press, the safety of journalists who accept responsibility for the dissemination, defence, preservation and restoration of human rights and the implementation of international humanitarian law, must be guaranteed, in order to ensure their professional independence and their freedom.

811. In Decree No. 1592 of 2000, President Andrés Pastrana's Government launched the Programme for the Protection of Journalists and Social Communicators, who in the exercise of their professional activity, undertake responsibility for the dissemination, defence, preservation and restoration of human rights and the application of international humanitarian law, and who on that account find themselves in situations where they risk their lives, integrity, security and liberty, owing to causes related to political and ideological violence or to the internal armed conflict the country is experiencing.

812. Since 18 August 2000, the Risk Control and Evaluation Committee, set up under article 2 of the above-mentioned Decree and attached to the Ministry of the Interior, has introduced security measures to protect the population at risk, and has been fulfilling the State's obligations in this respect. Unfortunately, journalists continue to be seriously threatened by violence.

813. In addition, on the basis of the organizational statute of the Ministry of the Interior, in Decree No. 2546 of 23 December 1999, the General Directorate on Human Rights has been given

the task of drafting and coordinating general programmes for the protection of human rights defenders and trade union leaders.

Article 20 – Prohibition of propaganda for war and of advocacy of national, racial and religious hatred

Provisions contained in the 1991 Political Constitution

814. In article 7, the Constitution establishes that: “The State recognizes and protects the ethnic and cultural diversity of the Colombian Nation.” In article 22, the Constitution further stipulates that: “Peace is a right and a mandatory duty.”

Legislative provisions

815. The following offences and aggravating factors are characterized in the new Penal Code (Act No. 599 of 2000):

1. According to article 58, No. 3, aggravating circumstances apply if 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.
2. Article 101 provides as follows:

“*Genocide*. Anyone who, for the purpose of totally or partially destroying a national, ethnic, racial, religious or political group which is acting within the bounds of the law, should bring about the death of its members, because they belong to the group, shall incur a prison sentence ...”
3. The following provisions are contained in Title II on Offences against persons and property protected by international humanitarian law, single chapter, article 147:

“*Acts of racial discrimination*. Anyone who, during and in pursuit of armed conflict, practices racial segregation or inflicts inhuman or degrading treatment on grounds of other unfavourable discrimination entailing an insult to personal dignity, with regard to any protected person, shall be liable to imprisonment ...”
4. In Title III on Offences against individual freedoms and other guarantees, article 166, No. 4, stipulates that whenever an offence is committed, on account of their qualities, against the following persons: public servants, communicators, human rights defenders, candidates or applicants for elected office, trade union leaders, politicians or religious leaders, persons who have witnessed acts liable to punishment or discipline, magistrates, or any other person on account of their beliefs or political opinions or for any motive whatever implying a form of discrimination or intolerance, that fact shall be taken into account as an aggravating circumstance with respect to punishment.
5. In Chapter 2 on Abduction, article 170, No. 9, stipulates as follows:

“Circumstances leading to aggravated penalties. The penalties referred to in the previous articles shall be increased by between a third and a half if any of the following circumstances hold:

9. If the offence was committed on a person who is or has been a journalist or a community, trade union, political, ethnic or religious leader on account of that fact.”
6. Article 178 stipulates as follows:

“Torture. Anyone who inflicts pain or serious physical or mental suffering on a person, in order to obtain from the latter or from a third person information or a confession, or to punish him for an act he has committed or is suspected of having committed, or to intimidate or coerce him for any reason entailing any form of discrimination shall be liable to imprisonment ...”

7. According to article 179, No. 4:

“Circumstances leading to aggravated penalties. The penalties referred to in the previous article shall be increased by up to a third in the following cases:

(...)

4. If the offences are committed on account of their qualities against the following persons: public servants, journalists, social communicators, human rights defenders, candidates or applicants for elected office, civic, community, ethnic, trade union, political or religious leaders, ...”

Article 21 – Right of peaceful assembly

Provisions contained in the 1991 Political Constitution

816. According to article 37 of the Constitution:

“Any group of individuals may gather and demonstrate publicly and peacefully. The law alone may expressly establish cases in which the exercise of this right may be limited.”

No law or regulation prohibits assembly on private premises and the existing regulations refer to assemblies in public places and thoroughfares.”

817. *Case law.* In its ruling T-456 of 14 July 1992, the Constitutional Court expressed the following opinion:

“... Henceforth, only the legislator may establish in which cases the exercise of the right to assemble and to demonstrate may be restricted. Although the approved law does not expressly provide requirements for prior notice to be given ahead of public meetings, as is the case in other European and Latin American constitutions, thanks to the latitude allowed in the 1991 Constitution, the legislator may regulate this right and establish that prior notification must be given to the authorities, as he may determine in which cases such notification is required and the form in which it should be presented to convey the date,

hour and place of the meeting or demonstration. It is important to point out that the purpose of prior notification, in the light of the 1991 Constitution, can in no way be to offer grounds for prohibiting a meeting or demonstration. Its purpose is rather to inform the authorities, so that they may take appropriate measures to facilitate the exercise of the right without thereby significantly hindering the normal conduct of communal activities.”

Legislative provisions

818. The National Police Code (Decree No. 1355 of 1970), stipulates in its article 102:

“Any person may meet with others or parade in a public place for the purpose of expressing common interests and ideas of a political, economic, religious or social nature or for any other lawful purpose.

For these purposes, notice shall be given in person and in writing to the local administrative authorities. The communication shall be signed by at least three persons.

The notice shall specify the date, time and place of the proposed meeting and be submitted 48 hours in advance. In the case of parades, the planned route shall be specified.”

“*Article 104.* Any public assembly or parade that degenerates into a riot or causes a breach of the peace or public safety shall be dispersed.

Article 105. The police may prevent the holding of public meetings and parades of which due notice has not been given. They may also take this measure if the meeting or parade fails to comply with the objectives specified in the notice.”

819. It may also be mentioned that the municipalities and departments have issued their own police codes, which, following the example of previous national rules, have regulated the powers of mayors and governors to authorize meetings and demonstrations in public places.

Article 22 – Freedom of association and, in particular, the freedom to form and join trade unions

Provisions contained in the 1991 Political Constitution

820. The Constitution provides as follows:

“*Article 25.* Work is a right and a social obligation and in all its forms enjoys the special protection of the State. Every person is entitled to a job under decent and fair conditions.

Article 53. The Congress shall issue the labour statute. The corresponding legislation will take into account at least the following minimum fundamental principles:

Equality of opportunity for workers; minimum remuneration that is basic for subsistence, flexible and proportional to the amount and quality of work; stability in employment; irrevocability of minimum benefits established in labour regulations; the possibility of compromise or agreement regarding doubtful and debateable rights; interpretation in favour of the worker in case of doubt regarding the application and

interpretation of the formal sources of law; primacy of facts over established formalities for the subjects of labour relations; guarantees of social security, training, instruction and adequate rest time; special protection for women, maternity and under-age workers.

The State guarantees the right to timely payment and the regular readjustment of legal retirement benefits.

Duly ratified international labour conventions shall form part of domestic legislation.

Neither the law, nor contracts, nor agreements, nor labour settlements may infringe on the freedom, human dignity or rights of workers.”

821. With regard to the right to form trade unions, the following constitutional provisions apply:

“*Article 39.* Workers and employers have the right to form trade unions or associations without intervention by the State. They shall acquire legal recognition simply by registering their constituent instrument.

The internal structure and functioning of the trade unions and social and guild associations shall be subject to the legal order and democratic principles.

The annulment or suspension of legal capacity may only be effected through judicial means.

Trade union representatives shall be recognized as having the privileges and other guarantees necessary for the performance of their functions.

Members of the public security forces shall not have the right to form or join trade unions.

Article 55. The right of collective bargaining to regulate labour relations, subject to exceptions provided by law, is guaranteed.

It is the duty of the State to promote negotiation and other measures for the peaceful settlement of collective labour disputes.

Article 56. The right to strike is guaranteed, except in the case of essential public services as defined in the law.

This right shall be regulated by law. A permanent commission composed of Government, employers’ and workers’ representatives, shall promote sound labour relations, contribute to the settlement of collective labour disputes and coordinate wage and labour policies. The membership and functioning of the commission shall be regulated by law.

Article 57. The law may establish incentives and means to ensure that workers participate in the management of enterprises.”

822. *Case law.* In its ruling T-568/99 of 10 August 1999, the Constitutional Court expressed an opinion on the rights of trade unions, drawing a distinction between those and the rights of union

members, and the need for prior recourse to internal remedies to defend those rights. The following is a summary of the issues dealt with in the ruling, with an extract thereof:

“Complaint before an international body. Orders may not be ignored on the grounds of *res judicata*. The exhaustion of internal remedies for the defence of violated rights is a pre-condition for applying to international bodies, stipulated in the international instruments ratified by Colombia and in several rulings of the supreme court for international affairs. This means that any decision by the international bodies in charge of supervising the application of treaties and agreements must be subsequent to internal administrative decisions, as well as to national rulings regarding the legality of such decisions. Any judgement issued by those bodies will necessarily constitute a new fact.

Trade union. Right to recognition of legal capacity/due administrative process of a legal person. It is clear that an association such as a trade union enjoys a fundamental right to the recognition of its legal capacity. In addition to such recognition, a condition without which rights cannot pertain to the association as such, legal persons are entitled to the fundamental right of due process, since, with respect to the current Constitution, there would be no sense in stating that someone has a right, if that person has no means of making it effective, nor guarantees regarding the appropriate formalities. Moreover, the Constitution is known to have extended the scope of the fundamental right to due process to all administrative proceedings.

Principle of good faith. The State cannot declare strikes illegal. If the State is the employer, it would be contrary to the principle of good faith, in the fulfilment of the international commitments undertaken by Colombia with the ratification of ILO Conventions No. 87 and 98, for a government body to declare a strike illegal, since by doing so it would be depriving the workers of a right, namely that of having access to an impartial third party, which can decide in cases where the conflict between the workers and their employer regarding the conformity of the strike with the regulations in force cannot be settled between the parties to the dispute.

Labour rights. Fulfilment in good faith of acquired international obligations. Where labour rights are concerned, fulfilling in good faith international obligations acquired by States consists in extending as far as possible the range of protection afforded to workers' rights in the domestic system, to keep pace with the progress of international legislation and case law. It must be assumed that States must abstain from passing domestic laws which are contrary to the relevant ratified treaties.

International treaty on labour rights. Consequences of the application of domestic rules that are contrary to acquired commitments.

In contravention of article 27 of the Vienna Convention, the Colombian Government in this case applied internal rules which were opposed to its established international commitments, with two serious consequences: the first is that any State could demand, by lodging a complaint, that Colombia should adopt a correct position with regard to established commitments; the second is that workers, who are the direct beneficiaries of human rights treaties in general and of conventions on working conditions in particular, may – as they did in this case – bring a claim before the international bodies to make the rights they possessed “on paper” effective in practice.

The trade union of Empresas Varias de Medellín E.P.S. (EEVVM) lodged an application for the protection of its constitutional rights to work, to trade union freedoms (to associate, organize and strike) and to due process, allegedly infringed by the acts and omissions of the Ministry of Labour and Social Security, the Ministry of Foreign Affairs, the Municipality of Medellín and Empresas Varias de Medellín.

(...) *Right of association and right to form trade unions*: In the chapter on fundamental rights, the Political Constitution, in article 39, establishes the right of workers (and employers) to form trade unions, free of State interference. This right is in conformity with the Universal Declaration of Human Rights (1948)(art. 23.⁴¹⁶), the International Covenant on Economic, Social and Cultural Rights (1966), which calls on the States Parties to ensure the right of everyone to form trade unions and join the trade union of his choice (art. 8), and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador, 1988), which incorporated in the Convention the duty for States Parties to ensure “a) The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests” (art. 8).

Furthermore, the Constitution of the ILO, in its Preamble, considers that one of the purposes of the Organization in combating social injustice is to improve the conditions of workers – amongst other aspects – with regard to freedom of association. In confirmation of this commitment and with the consensus of the international community, Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize was signed, which expressly states: “Article 1. Each Member of the International Labour Organization for which this Convention is in force undertakes to give effect to the following provisions.” The Convention goes on to confirm the right of workers to establish independent trade unions, and warns the public authorities that they must “refrain from any interference which would restrict this right or impede the lawful exercise thereof”¹⁷. Later

Convention No. 98 reiterated this right and the obligation of non-interference from outside¹⁸.

Right to strike. This is derived from the right of association. The Political Constitution, in accordance with its international commitment under the International Covenant on Economic, Social and Cultural Rights and the Additional Protocol to the American Convention¹⁹, guarantees this right subject only to a prohibition regarding essential public services as defined in the law.

¹⁶ This article states that: “Everyone has the right to form and to join trade unions for the protection of his interests.”

¹⁷ Convention concerning Freedom of Association and Protection of the Right to Organize, article 3.2.

¹⁸ Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949).

¹⁹ Article 8 of both instruments.

Scope of the constitutional bloc in this case.

If, as the Constitution stipulates, all rights and obligations enshrined therein must be interpreted “in conformity with international treaties on human rights ratified by Colombia (art. 93), and if “duly ratified international labour agreements form part of domestic legislation” (art. 53, para. 4), then the domestic authorities in all sectors (including the manager of Empresas Varias, the Ministry of Labour and Social Security and the judges of the Republic) committed a serious error, insofar as they disregarded the relevant legislation; instead they opted for rules unfavourable to the workers, contrary to the Constitution and to international obligations the State had undertaken.

The rights to associate, to form trade unions and to strike, as explained earlier, have been made part of constitutional rules for a double reason: they are expressly enshrined in the Constitution, and the Constitution itself incorporates the relevant international treaties.

Colombia has ratified more than 50 ILO Conventions²⁰, including Conventions Nos. 87 and 98, and undertook to implement them in good faith. In conjunction with the other rules laid down, they are the framework which must be taken into account when these rights are considered.

Therefore any interpretation and application of labour rights in Colombia must take into consideration both constitutional rules and the international treaties ratified in that respect: the right of association and the right to strike must be respected and the enjoyment thereof must not be disturbed by outside interference (on the part of employers or of administrative, government or judicial authorities), the only limitation arising in the case of essential public services.”

New legislation related to freedom of association in Colombia

823. The new legislation includes:

Act No. 411 of 1997. Approval of ILO Convention No. 151 determining conditions of employment in the public service.

Act No. 524 of 1999. Approval of ILO Convention No. 154 concerning the promotion of collective bargaining.

Act No. 584 of 2000. Repealing and amending some provisions of the Substantive Labour Code, issued in consultation with the workers’ and employers’ organizations and the Congress of the Republic.

This Act repeals and amends some provisions of the Substantive Labour Code, some aspects of which had been queried by the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Office (ILO).

²⁰ *International Labour Conventions ratified by Colombia.* Ministry of Labour and Social Security, International Affairs Office, Bogotá, 1996.

Decree No. 2813 of 2000. Regulating article 13 of Act No. 584 of 2000, concerning trade union licences for members of public servants' trade unions. Issued in consultation with the workers' trade unions.

Decision No. 02270 of 2000. Establishing the procedure for the deposit of statutory trade union reforms.

Decision No. 02271 of 2000. Establishing the procedure for registration of the memorandum constituting grade 1 trade unions.

Other actions

824. As mentioned earlier in this report, the Ministry of the Interior has been working on the Programme for the Protection of Human Rights Defenders, Social and Trade Union Leaders.

Article 23 – Protection of the family and marriage

Provisions contained in the 1991 Political Constitution

825. The provisions of the Constitution in this respect are as follows:

“Article 42

The family is the fundamental unit of society. It is formed through natural or legal ties, by the free decision of a man and woman to enter into marriage, or by their responsible desire to form a family.

The State and society shall guarantee comprehensive protection for the family. The law may determine the inalienable and non-seizable nature of family assets.

The family's honour, dignity and privacy are inviolable.

Family relations are based on equality or rights and duties of the couple and on mutual respect among family members.

Any form of violence in the family is considered destructive of its harmony and unity and shall be punished in accordance with the law.

Children born within or outside wedlock, adopted or conceived naturally or with scientific assistance have equal rights and duties.

The law shall establish regulations concerning parental responsibility.

The couple have the right freely and responsibly to decide the number of their children and shall be required to support them and bring them up while they are under age or disabled.

The forms of marriage, the age and capacity to enter into marriage, the rights and duties of the spouses, their separation and dissolution of marriage shall be governed by civil law.

Religious marriages shall have civil effects in the conditions established by law.

The civil effects of any marriage shall cease through divorce in accordance with civil law.

Decrees of annulment of religious marriages issued by the authorities of the faith in question shall also have civil effects, in the conditions established by law.

The law shall determine matters relating to the civil status of persons and the consequent rights and duties.

Article 46

The State, society and the family shall all assist in providing protection and assistance to elderly persons and to help them remain part of the life of the community.

The State must provide them with comprehensive social security services and basic life support in case of destitution.”

826. *Case law.* The Constitutional Court, in its ruling T-523 of 19 September 1992, issued an opinion on the family as a basic institution, in which it is said that:

- “... a) As would be appropriate for a State which recognizes and protects the ethnic and cultural diversity of the Colombian nation (Constitution, art. 7), there can be no single, ideal type of family, but instead a diversity of types which clearly reflect the ties on which they are based, which may be either natural or legal. Account must also be taken of the consequences of the responsible desire to form a family. In these conditions, the legitimate family founded on matrimony is nowadays one possible type.
- b) It is clear, moreover, that the constitutional objective was to institute a space for the *de facto* family on an equal footing with other types, in conformity with the terms of article 13 of the current Constitution.
- c) Both the State and society must grant the family full protection.
- d) The equality of rights and duties in the couple and the mutual respect owed each other by family members nowadays constitute the essential foundations of family relations.
- e) Any form of violence destroys the harmony and unity of the family and shall therefore be punished in conformity with the law.
- f) All the offspring of a family have equal rights and duties.
- g) As the basic unit of society, the family, alongside society and the State, must inevitably perform certain duties, such as assisting and protecting its offspring, in order to ensure their full harmonious development and the full exercise of all their existing fundamental rights, recognized in article 44, paragraph 1, of the current Constitution. These rights include primarily the right to have a family and not to be

separated from it, the right to care and to love, to education and culture, to leisure and to protection against any form of abandonment or violence.

- h) According to the division of labour inherent in the organization of society, the family performs the natural function of preparing future generations and forming the personality of children.

The current Constitution clearly reflects the primacy of the family as the natural environment, within which the care and preparation of children will take place. This function cannot be performed by public or private institutions except in really exceptional cases, when there is a need to protect children who have no family or who have been separated from their families, as expressed in article 42 of the Constitution.

(...)

- j) The unity of the family is an indispensable precondition for giving effect to the preferential constitutional rights of the child.

The rights of family members must be compatible with the general interests both of the institution itself and of Colombian society, which recognizes the family as its fundamental unit ...”

Current situation regarding the condition of women and children in Colombia

827. This section considers the circumstantial factors which affect the fundamental rights of women in Colombia and, inherently, those of their children.

Violence

828. In Colombia, the concept of violence against women is not seen in isolation, but is rather associated with that more broadly of domestic violence, as defined in Act No. 294 of 1996, which enlarges on article 42 of the National Constitution, as amended by Act No. 575 of 2000.

829. Taking as its conceptual reference with regard to violence against women the definition: “any action, deed or conduct causing death, harm or physical, sexual or psychological suffering to a woman, whether in public or in private”, the law concludes that domestic and sexual violence therefore constitutes a violation of fundamental human rights, a serious problem of public health and an obstacle to the achievement of peace in our country.

830. According to *Medicina Legal* (journal of legal and forensic medicine)²¹, in 1999, out of the total number of injuries brought about in the course of domestic violence, 67% was due to violence between spouses, followed by 17% to violence between other family members and 16% to the ill treatment of children. The rate of casualties was 149 per 100,000 inhabitants.

831. In 1999, *Medicina Legal* registered 62,123 cases of domestic violence, equivalent to 173 cases per day, out of which 81% of attacked persons were women and girls.

²¹ *Medicina Legal y Ciencias Forenses, Tools for the interpretation of, action against and prevention of violence in Colombia*, 1999. Forensis: “Life data”, from The situation of women in Colombia, diagnosis in figures.

832. In 41,528 occurrences of marital violence, 91% were cases of women being beaten by their spouse or male companion. As in earlier years, the greatest proportion of victims of sexual offences was female. In 1999, that proportion was 86%.

833. In 1999, as in earlier years, the majority of cases of sexual offences affected minors.

834. Domestic violence produces a psycho-social as well as a physical impact on women.

835. The negative effect of marital ill treatment on the children of a couple is significant. Among beaten women nationwide, 25.9% say that their children have witnessed episodes of violence and believe that this produces a negative effect on the children, either because it leads to psychological disturbances (72.6%), or because it generates an aggressive attitude (36.8%), or because it causes learning problems (13.8%), or leads to problems of passivity (10.3%) or induces them to flee their home (5.6%). Moreover, 10.5% of women beaten by their male companions admitted beating their children themselves.

836. The ill treatment of minors accounted for 16.3% of the cases of domestic violence reported in 1998, equivalent to 10,135 cases. This represents an increase compared with 1997²², when there were 9,279 cases. As for gender differences, out of all ill treatment of children, 53% affected girls and 47% boys.

Employment and economic participation

837. In 1999, the overall rate of participation was 75.4% for men and 46.3% for women, which makes a difference of 29.1% between the sexes²³.

838. With regard to female unemployment, in the year 2000, 24.5% of women were unemployed, compared with 16.9% of men in the seven metropolitan areas²⁴.

839. In 1999, by economic sector, the proportion of job seekers among men was highest in the construction sector (29.4%), in financial establishments (26.3%) and in transport and communications (16.2%). For women, the highest unemployment figures were in financial establishments (34.7%), manufacturing industry (25.3%) and in construction (25.1%).

840. In the service sector, the number of job seekers among women was 8.3% higher than among men. In the female workforce in the service sector, job seekers accounted for 22.7%, compared to 14.4% among the male workforce²⁵.

²² Medicina Legal y Ciencias Forenses, *Tools for the interpretation of, action against and prevention of violence in Colombia*, 1999. Forensis: "Life data", from The situation of women in Colombia, diagnosis in figures.

²³ National Planning Department (DNP) System of socio-demographic indicators for Colombia. *Education and the Labour Force*, Bulletin No. 27, Bogotá, 2000. Corporación Sisma Mujer, Bogotá, 2001.

²⁴ DANE, *National Household Survey*, December 2000. Corporación Sisma Mujer, Bogotá, 2001.

²⁵ *Op. cit.*

Health

841. In the area of health, the rate of maternal mortality was 93.7 for every 100,000 live births in the period 1991 to 1995²⁶.

842. A significant proportion of Colombia women have experienced abortion. One quarter of all women between the ages of 15 and 55 (22.9%) and one third of the women in that age group who have been pregnant at some time (30.3%) say that they have experienced induced abortion at least once during those years²⁷.

Actions by the Presidential Advisory Council on Equal Rights for Women

Violence

843. Within the general framework of the Constitution and the principles, rights and obligations imported into the national system from the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do Pará”), the following mechanisms have been introduced and the following measures adopted in an effort to eliminate all types of situations which give rise to violence against women and children.

Project for the investigation of gender and domestic violence

844. This project is to be carried out in Macizo and Sur Colombiano, with the objective of discovering and identifying the factors affecting gender violence and domestic violence against women, taking into account aspects such as ethnic groups, generations and territory as a basis for possible local measures to be taken by the Presidential Council.

Ratification of the Convention of Belem do Pará

845. Act No. 248 of 1995, issued by the National Congress, ratified the “Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do Pará), entailing the adoption by Colombia of all the rights and obligations established in that Convention.

Domestic Violence Act

846. Act No. 575 of 2000, amending Act No. 294 of 1996, is based on the principles, definitions, rights and obligations established in the above-mentioned Convention of Belem do Pará, establishing and developing the following aspects:

Protection proceedings before the family commissioner or, failing him, before the municipal civil judge or municipal judge of combined jurisdiction. A complaint may also be lodged with the Justice of the Peace or the Equality Conciliator, or in the case of indigenous communities before the relevant indigenous authorities.

Application for protection measures.

²⁶ National Planning Department (DNP), System of socio-demographic indicators for Colombia. *Maternal Mortality*. Bulletin No. 22, 1995. Corporación Sisma Mujer, Bogotá, 2001.

²⁷ *Op. cit.*

Assistance to victims of ill treatment.

Offences against family harmony and unity (physical, mental or sexual).

Family protection policies.

847. Essentially, Act No. 575 gives the necessary powers and the legal tools to family commissioners, in order to enable them to investigate occurrences of domestic violence, to take immediate action and to issue long-term protection measures, the objective being to stimulate the establishment and strengthening of family commissioners all over the country.

848. It is also worth mentioning Act No. 82 of 1993 on the protection of women heads of household and Act No. 860 of 1997, which increases penalties for sexual offences.

Act governing the disposal of family property

849. In order to safeguard the welfare of the family nucleus, and especially the children of the married couple, who in most cases remain under the responsibility of the mother in the event of a break-up, the Act establishes that the couple's lodgings cannot be sold without the woman's authorization.

Centre for Full Care for Victims of Sexual Offences

850. Following a new and functional policy, the Office of the Public Prosecutor established the Centre for Full Care for Victims of Sexual Offences, where victims are attended by a multidisciplinary team of specialists, including a Technical Investigation Unit (CTI) psychologist, a deputy prosecutor, a forensic physician, a family advocate and a social worker.

"Families in Action" Programme as part of the welfare component of the Colombia Plan

851. This programme is part of the welfare component of the Colombia Plan. Its objective is to benefit 380,000 families and one million children through food and education grants. The programme consists in providing mothers with a monthly allowance of USD 18 for food, USD 5 for every child under 12 who is studying in primary school and USD 10 for every child under the age of 18 attending secondary school. In addition, a monthly health allowance of USD 7 is provided for children under the age of 7 registered with the Beneficiary Identification System (SISBEN) for weight, measurement, size and vaccination control.

Creation of a Legal Observatory

852. The purpose of the Legal Observatory is to establish a body responsible for compiling, revising, assessing, adjusting and disseminating legislation concerning women, the family and gender and domestic violence.

Employment and economic participation

Programme of micro-enterprises for urban and rural women heads of household

853. The Presidential Advisory Council on Equal Rights for Women has launched this programme to further the socio-economic empowerment of urban women in strata 1 and 2, who are given loans of between USD 210 and 850, in the case of individual credit, and loans of up to

USD 4,250 for groups, without any form of security and subject to the lowest possible rates of interest.

854. The objective is to ensure greater equality of income earning opportunities by increasing employment and the number of paid jobs. The programme's specific objectives are to assist micro-enterprises in all aspects and businesses run by women heads of household, to channel loan resources in order to strengthen the economic development of micro-enterprises run by women heads of household through credit funds and guarantee funds, creating profitable activities connected to local and/or regional marketing outlets, to provide full training services for human development and to contribute to the establishment of a solid institutional base for the supply of financial services for men and women on an equal footing.

855. Operational responsibility for the lending and training components of the programme lies with the Ministry of Agriculture, in charge of rural women, and the Presidential Advisory Council on Equal Rights for Women, which supervises the urban side.

Monitoring and follow-up under the terms of Act No. 581 of 2000

856. The Quotas Act regulates "the adequate and effective participation of women at decision-making levels in all the branches and organs of public government", in conformity with articles 13, 40 and 43 of the National Constitution, in addition to other provisions.

857. The Presidential Advisory Council on Equal Rights for Women established communication channels with territorial authorities and State institutions and corporations, in order to record and monitor the measures taken to enforce the above Act. The information gathered in this way is being used to build up a databank, which will serve as support for statistical analysis and the circulation of regular bulletins concerning this issue.

Consultation with North South Foundation

858. Terms of reference are being prepared to sign a support agreement with the North South Foundation, with a view to channelling funds received from international NGOs, which are interested in supporting micro-business projects run by women on a self-sustaining basis. In this area, a bank of some 230 projects has already been constituted.

Health

Promotion of sexual and reproductive health and monitoring of women's cancer among the population displaced and demobilized by the armed conflict

859. This project is being run in consultation with the National Institute of Cancer Studies. Jointly with the occupational hazard administrators (ARS), health insurers (EPS) and health service providers (IPS) of municipalities hosting communities displaced by violence in Colombia, activities and strategies are developed for the promotion of sexual and reproductive health, and more specifically the monitoring of cervical and breast cancer.

860. Within four years, this project aims to cover a population of 4,000 displaced women heads of household and 1,200 demobilized women, besides training 400 community leaders and 320 health officials.

Activities of the National Family Welfare System in favour of women, children and the family

861. The emphasis is placed nowadays in Colombia on providing full protection, with special emphasis on rights, as the basis of the government policy for children.

862. The National Family Welfare System (SNBF), which is responsible for providing public welfare services, is run by the Colombian Family Welfare Institute (ICBF). The prime aim of the SNBF is to promote and encourage a culture respectful of the rights of children, as the most effective means of offering children the possibility of enjoying their rights.

863. The policy pursued in order to achieve these objectives is one of shared responsibility between society, the family and the State, administrative decentralization, and better procedures of consultation with and commitment on the part of other SNBF actors.

864. Apart from the conceptual innovation implied by the adoption of the paradigm of full protection, this policy has implied reconsidering and rebuilding management criteria in order to guarantee the enjoyment of children's rights as ethical and legal principles, with the assistance of bodies working for the SNBF at local, municipal, departmental and national level.

865. Together with other SNBF participants, an effort has been made to create awareness among the public by altering the cultural representation and attitudes with regard to the relationships and practices of adults and among the children themselves towards children and their rights, by strengthening the family and other social institutions, which form the background to children's lives, such as the neighbourhood, preschool groups, schools and other institutions, in order to ensure that these promote and guarantee the enjoyment of rights.

866. The objective is to recover childhood as a social and human development project, combining the efforts made by the Colombian State, family and society for the country's development. This broader policy will seek to create new opportunities for children to increase their capacities during childhood and in preparation for adult life, as part of a process of extending the enjoyment of human freedom. Children's rights will therefore provide the guiding principles for the design, formulation and development of the policy for children and the family.

867. The policy also gives consideration to the preparation of draft legislation and rules to support the enjoyment of rights and to promote measures for the improvement of the quality of life on the basis of the consolidation of the family, in order to enable the latter to assume its responsibility for its offspring, affording them care and protection. This will revive the family's function as the basic unit of society, and will be reflected in the community surrounding the family and in society as a whole.

868. Briefly, the work began with the incorporation of the principles of the Convention on the Rights of the Child in the Colombian Constitution and government policy and gradually in increasing detail in the country's legal framework. A fair degree of consensus has been achieved in the country, which is reflected in proposals for reforms and adjustments that are consistent with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Decrees Nos. 1137 and 1138 of 1999 were issued with a view among other provisions to organizing the Administrative Family Welfare System and restructuring the Colombian Family Welfare Institute (ICBF). According to these, the objectives of family welfare are to strengthen family ties, to ensure and support the fulfilment of the duties

and obligations of family members, and to safeguard the rights of and offer protection to minors. The rights of children will take precedence over other rights.

869. Family welfare is a public service paid for by the State, provided through the SNBF (National Family Welfare System) by official bodies and organizations or by legally authorized private individuals at national, departmental and municipal level, who have the obligation to work together harmoniously and rationally in order to represent, implement and coordinate family welfare policy.

870. In its development plan "Change for building peace", the present Government, building on the work accomplished since 1997, has adopted a plan of action using comprehensive services to the family as a tool for exerting a direct influence on equity, the quality of life, human capital and social capital. The plan consists in:

- a) Generating appropriate conditions for the strengthening of social and human capital in Colombian families;
- b) Re-orienting the provision of services towards full protection, in order to ensure both complete coverage and competitiveness;
- c) Placing the emphasis, rather than on remedial action, on factors favourable to the development of children, the family and their environment, paying due attention to the specificity of each, respecting their rhythm of development and their cultural diversity;
- d) Creating mechanisms that coordinate action between different agencies and institutions, so as to encourage the participation of civil society in the policy of care for children and the family;
- e) Strengthening the method of assessing and monitoring the results of the policy.

871. In pursuit of that policy, until 1999 the Government had been increasing investment in the sector, thus raising the proportion of the national budget devoted to social expenditure, equivalent to 49%. The share allocated to children in welfare programmes came to 17%, or COP 1.3 billion.

872. Even though for 2001 the budget had to be adjusted, owing to the international economic situation. Since the programmes through which the ICBF provides care and protection to children and the family constitute a form of investment in themselves, however, the Colombian Government has allowed greater flexibility in the allocation of resources, by placing more emphasis on seeking and consolidating new sources of income and forms of joint financing with territorial bodies and on establishing effective systems of information and monitoring.

873. These measures have allowed a diversification of programmes, with the introduction, for instance, of the Welfare Homes programme, with other facilities, such as the Multiple Corporate Homes, where the operation, administration and financing of projects involves other organizations (such as NGOs and equalization funds) as well as local bodies. In addition, the Family, Women and Children (FAMI) scheme was set up to support families and communities, by providing information about and support for schemes intended for children under the age of two and for pregnant and nursing women.

874. The Colombian Family Welfare Institute (ICBF) for its part has been helping to set up Social Policy Councils. These are designed to improve relations between local authorities and civil society with regard to the formulation, approval and coordination of projects for the implementation of social policy. The Councils in turn have a say in the policies adopted locally in favour of children and the family.

875. One effect has been to improve joint working arrangements between government bodies and NGOs, allowing the representatives of civil society to participate more directly in the design and implementation of policies, plans and programmes for children.

876. The positive results derived from this expansion of economic and social links include an improvement in the quality of child care and protection services for children, the development of new strategies, the improvement of local and municipal contributions and community initiatives, as well as the implementation in practice of the principles of respect for the ethnic, cultural, social and regional diversity that is characteristic of our country, the maintenance and in some cases the extension of the programme coverage, the rationalization of costs and the optimization of available resources.

877. Against this background, and on the basis of the philosophical principle of a social State under the rule of law, the State's policy of cooperating with families in the fulfilment of their responsibilities towards children has led to the empowerment of the family thanks to its recognition as a form of organization with its own identity, separate from other groups and institutions in society, and therefore possessing its own structure, significance, forms and functions, even though the family cannot be considered outside the context of its relationship with culture, the State and society in general.

878. An effort is therefore being made to empower the family as favourable ground for human development, protecting the enjoyment of children's rights and enhancing its socializing function and its natural responsibility for developing affective ties.

879. Thus support for family welfare takes the form of creating awareness among and training families and encouraging their participation. In addition, appropriate measures are taken to raise the public perception of the family, by encouraging:

- a) The family's real participation in the process of understanding and appropriating the cultural concept of childhood, its development and related factors;
- b) Supervision of institutional activities and attitudes in relation to children;
- c) Effective commitment and qualified participation in the institutional activities undertaken to protect children's rights, in conformity with the criteria of sustainability and quality;
- d) Access to the analysis or modification of the legal background to the protection of children's rights;
- e) The offer of services and training for families with a view to ensuring that they change their practices and beliefs and manage to take an active part in the development of the individual and of the society to which they aspire.

880. Operationally speaking, the emphasis with support has been placed on families which are potentially able to guarantee children's rights, but which do not have access to the goods and services required to do so or which are not prepared to make use of such goods and services. In other words, priority is given to families which are in vulnerable circumstances.

Support for families in vulnerable circumstances

881. One characteristic of the family in general in Colombia is its capacity for positive development, based on its dynamic and structural advantages, its links with the rest of society and the advantages arising from that relationship. This capacity for development has attracted indirect support derived from measures taken in other areas, such as social policy or legislation. The ICBF is currently preparing proposals for a reform of the Minors' Code, the aim of which is to protect children from the point of view of their rights.

882. Appropriate measures are therefore being taken in an effort to reduce the impact of poverty on families and on their capacity to protect children's rights. As a way of responding to existing demand in Colombia, the ICBF has been revising and redesigning many projects and their forms of implementation, so that in addition to the pursuit of family training, integration and participation, other activities are undertaken in favour of children (providing support for health care, public education, infant care, food security, the right to food, and measures to deal with emergencies). An effort is made as far as possible to respond to the interests and characteristics of each group of children, according to age, with the general aim of helping them to achieve an enjoyment and love of life.

883. In 2001, the following projects were further developed:

1. *Support for the training and development of families.* This includes the following programmes: Family, Women and Children (FAMI), mother and infant care, family educator, school for parents, construction of peace and family harmony.
2. *Support for families in their socializing function with children under the age of 7.* This includes the following programmes: community welfare homes, nurseries, nursing mothers and preschool children, community kindergartens, socialization of deaf children.
3. *Support for families to strengthen factors protecting children and young people between the ages of 5 and 18.* This includes the following programmes: nutritional assistance for schoolchildren and young people, comprehensive care for children between the ages of 7 and 12, pre-adolescent clubs, support for young people in the 13-18 age group, youth clubs, game libraries.
4. *Support for specific population sectors.* This includes the following programmes: support for the cultural and social strengthening of ethnic groups, support for the training and development of indigenous families, support for indigenous families in their socializing function with children under the age of seven, support for indigenous families to strengthen protective factors for children and young people between the ages of 8 and 18, support for the dispersed rural population.

5. *Assistance in cases of emergency.* This includes the following programmes: care for the victims of natural disasters, assistance for people displaced by armed conflict, administrative facilities for family protection.
6. In addition, the country has been making progress with the development of plans to invest in the family and children, placing the emphasis on the participation of civil society with institutional support. Attention has been given in particular to the following plans and programmes:

National Food and Nutrition Plan (PNAN)

884. The purpose of this plan is to help improve the food and nutritional situation of the Colombian population by combining multisectoral actions in the areas of health, nutrition, food, agriculture, education, communication and the environment. It coordinates and formulates plans, programmes and projects for each area of activity for subsequent implementation at departmental and municipal level. Priority is given to girls, with an emphasis on rural sectors and marginal urban sectors suffering from the worst food shortages, pregnant women, nursing mothers and children under the age of six not covered by the welfare homes scheme. The plan is being developed through strategies such as:

- Encouraging governors and mayors to assume a greater share of the responsibility for implementing the PNAN at departmental and municipal level;
- Setting up and strengthening departmental and local food and nutrition committees with the active participation of all the institutions of the National Family Welfare System (SNBF);
- Forming strategic alliances with private enterprises in order to launch pilot projects;
- Undertaking multidisciplinary activities in the areas of health, nutrition, education, basic sanitation and others;
- Encouraging the communities to take an active part in joint activities with local authorities;
- Providing comprehensive care;
- Evaluating and monitoring projects in order to make the necessary adjustments for producing the desired impact on the community.

The following lines of action are pursued in terms of food security:

- Consumer protection by ensuring the quality and safety of foods;
- Prevention and monitoring of micronutrient deficiencies;
- Prevention and treatment of infectious and parasitic diseases;
- Promotion and protection of and support for breast feeding;
- Promotion of health and healthy eating habits and lifestyles;

- Assessment and monitoring of nutritional aspects;
- Training of human resources in food and nutritional policies.

National Family Violence Prevention and Care Plan (Haz Paz)

885. Under the guidance of the Presidential Advisory Council on Social Policy, this plan is a form of collective strategy aimed at achieving common objectives, through sectoral actions which remain specific, but whose activities are aimed at fulfilling the overall plan, implementing the national policy, and achieving consolidated work plans.

886. The policy pursued under the plan aims to assist individuals, families and communities in their task of transmitting principles and values which support and strengthen social cohesion and providing them with the appropriate tools of coexistence for the peaceful settlement of conflicts. In view of the helplessness of children in relation to the adults responsible for their well being, an effort is made to combat the serious acts of violence to which children are exposed on the part of those who should be looking after them.

887. The plan aims to coordinate the objectives, criteria and strategies of presidential and sectoral programmes working for the improvement of relations in the family, the prevention of violence in the family and remedial care for the consequences. The intention is that the NGOs, communities and all Colombian citizens should adopt the strategy as part of their way of life, their way of seeing things and of relating to each other. The plan is a joint effort by the ministries and bodies responsible for implementing measures at the national, departmental and municipal levels, in conjunction with the communities themselves.

National Drug Prevention Plan

888. Through measures intended to encourage the public to become more familiar with situations related to the consumption of narcotic substances, this plan promotes a change in cultural attitudes and an improvement in the quality of life by helping to create the necessary conditions for developing alternative solutions with the help of the community.

889. With a view to seeking effective means of stopping the increase in drug consumption and to developing strategies for creating sound and productive alternatives for all those who directly or indirectly are affected by this problem, the Government has launched the Rumbos Programme, which is answerable directly to the Office of the President of the Republic, where sectoral efforts are coordinated. Working with the National Drug Investigation Commission (CNID), the Rumbos Programme undertook the task of conducting a survey on drug consumption among young people between the ages of 10 and 24. This survey was duly completed in October 1999, with the assistance of national and regional governmental and non-governmental bodies, as well as the help of professionals and young people engaged in full prevention work with local authorities. The levels of consumption identified in the survey constitute a warning that significant levels of consumption of some of the substances have now been reached, giving rise to the need for society to pay more attention to the problems of young people. The Government for its part has launched a broad prevention campaign through the media, basically targeting the younger members of the population on account of their greater vulnerability.

Full Child Care Programme

890. As part of the full protection policy and its relation with the construction of democracy, the services provided by the ICBF to favour the development of children acquire their full dimension.

891. The ICBF's contribution to full child care takes the form of the following activities:

- Activating the joint responsibility of the State, society and the family to guarantee the enjoyment of children's rights, by giving practical expression to the policy by providing public family welfare services throughout the nation.
- With the same intention of protecting the rights of children and young people, and starting with the concept of the family, an identification of factors that protect the development of children and an analysis of the consequences of the lack of necessary action, the ICBF organizes programmes, projects and services in rural and urban areas, and elaborates, approves, disseminates and implements its technical and administrative guidelines.
- It analyses and approves methodologies, establishes priorities and selects investments, while defining the necessary programming and budgetary structure.
- It directs, advises and accompanies the various support actions for family welfare in accordance with the competence of the bodies involved, ensuring that the care provided is up to standard and that services respond to the real requirements and demands of families and children.
- It ensures and checks that services genuinely facilitate the enjoyment of children's rights.
- It participates in the implementation of the National Food and Nutrition Plan and other national plans (described herewith).
- It conducts activities to strengthen relations in the family group and its affective ties and gives families an awareness of their role as a natural and fundamental space for the socialization of children.
- It encourages activities that strengthen the feeling of belonging within the family, clan or ethnic group, as a way of respecting ethnic and cultural diversity and human dignity.

892. The ICBF took over the Children's Division of the Ministry of Communications, through which, since 1999, it has been investing in the development of the Project for the Protection of Children and Women through the Media. Its objective is to develop communication strategies, providing information and education using video and sound productions and national, regional and local publications; it provides training and advice and conducts social inquiries and campaigns that contribute effectively to the solution of problems and generates a culture of respect for children's rights.

*Coverage*²⁸

1. *Target population*

893. According to the statistics of the Socio-Demographic Indicator System for Colombia (SISD), produced by the National Planning Department (DNP), in 2000 the population of Colombia was estimated at 42,299,301 inhabitants, distributed as follows by age groups: 61.4% in the 0-6 age group; 22.8% in the 7-17 age group and 22.8% in the 18 and over age group.

894. In the light of the ICBF's institutional mission according to population projections for 2000, the indices of basic unsatisfied requirements and the degree of vulnerability of the Colombian population, it was estimated that the priority population in need of the ICBF's services, for the year 2000, amounted to 8,175,520 (19.3% of the total population), distributed as follows: 36.3% of children under the age of 7; 55.4% of children between the ages of 7 and 18 and 8.3% of expectant and nursing mothers.

895. According to the financial resources estimated to be available for the year 2000 and the capacity of the institution, the ICBF planned to provide care for a population of 5,754,813 registered users, broken down as follows: 43.9% in the 7-18 age group; 27.9% in the 0-7 age group; 5.3% of expectant and nursing mothers and 23.0% other.

2. *Implementation of social objectives 2000*

896. Project for assistance to children and the family for the prevention of social risk factors: 134,457 service units were operating, for a total of 4,221,780 places, through which care was provided to 4,700,625 users; project for the protection of children and the family whose rights have been violated: 7,766 service units, 72,178 places and 729,448 users. Altogether, the ICBF achieved coverage of 5,430,073 users cared for in 142,223 units, with the allocation of 4,293,958 places.

897. In 1999, the ICBF conducted a multicultural public policy for the protection of indigenous boys and girls in Colombia and developed the necessary facilities to implement that policy. Its action is based on inquiries aimed at identifying the best ways and schemes for protecting the social, constitutional, fundamental and legal rights of indigenous children and young people in difficult circumstances and suffering from social and cultural discrimination. The basic principles on which its action is based is the duty on the part of the family, society and the State to ensure for all children and young people of indigenous communities, with the highest priority, the right to life, to physical integrity, to health, to a balanced diet, to education, entertainment, culture, dignity, respect, freedom, and family and community harmony, in addition to preserving them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression, without depriving them of belonging to their indigenous culture.

898. The tools used to implement this policy include: a model of social and family history suited to a multicultural approach; a settlement model according to which an indigenous child is handed over to a traditional authority; and an authorization to the ICBF from a traditional authority with the power to represent the best interests of an indigenous child or young person in order to provide the youngster with a national family.

²⁸ Source: Report on the implementation of social objectives – 2000. ICBF. Bogotá.

Article 24 – Rights of children and measures to protect them

Provisions contained in the 1991 Political Constitution

899. The Constitution makes the following provisions with regard to the right to the free development of personality:

“Article 16

All persons are entitled freely to develop their personality subject to no limitations other than those imposed by the rights of others and the legal order.”

900. The Constitution provides as follows with regard to the fundamental rights of children:

“Article 44

Children have the following fundamental rights: the right to life, physical integrity, health and social security, a balanced diet, a name and a nationality, the right to have a family and not to be separated from it, the right to care and love, education and culture, and leisure, and the right freely to express their opinion. They shall be protected against any form of neglect, physical and moral violence, abduction, sale, sexual abuse, exploitation at work, economic exploitation and hazardous work. They shall also be entitled to the other rights enshrined in the Constitution, in the laws and in the international treaties ratified by Colombia.

The family, society and the State have an obligation to assist and protect children so as to ensure their harmonious and comprehensive development and the full exercise of their rights. Any person may require the competent authorities to comply with this obligation and to punish those who violate it.

The rights of children take precedence over the rights of other persons.

Article 45

Young persons are entitled to protection and full development. The State and society shall guarantee their active participation in public and private organizations that are responsible for the protection, education and progress of youth.”

Actions

901. Many of the measures taken for children were referred to in the section on the family.

Children in the armed conflict

902. According to information received by the Inter-American Commission on Human Rights and the National Government, the guerrillas incorporate boys and girls, sometimes even younger than 15, in their ranks, most of whom are recruited by force. The Inter-American Commission on Human Rights reports that although the guerrilla forces deny it publicly, the practice of recruiting children is clearly revealed whenever news is received that children have been arrested or killed in combat.

903. The above information is backed up by statistics, according to which, in August 2000, 152 youngsters under age were involved in the armed conflict as a result of being forcefully incorporated in armed guerrilla groups.

Care programmes for children removed from the armed conflict

904. Act No. 418 of 1997 devotes some of its provisions to the search for peaceful coexistence and efficient justice. In its article 17, it orders the ICBF, as part of its preventive and protective programmes, to give priority to assisting children who have been left without a family, and children who still have a family but where the latter is not able to look after them. According to the law, the Government must appropriate the necessary budgetary resources to implement the programmes. Children who take part in any way in the internal armed conflict will, moreover, enjoy special protection and will be entitled to the benefits provided by these programmes.

905. In addition, Act No. 387 of 1997 adopts measures for the prevention of forced displacement, and for the care, protection, support and socio-economic stabilization of persons displaced internally as a result of the violence in the country. In article 9, the Act stipulates that the Government will launch a National Plan for Comprehensive Care for the Population Displaced by Violence. In article 10, No. 7, it includes among the plan's objectives paying special attention to women and children, and giving preference to widows, women heads of household and orphans. The Plan of Action for the prevention and treatment of forced displacement is set out in Document COMPES 3059 of 1999. The ICBF itself takes part in the National System for the General Welfare of Persons Displaced by Violence. Ten projects are currently registered under the national plan, through which the ICBF fulfils its obligations with respect to the displaced population.

906. In the light of the responsibilities and powers assigned to the ICBF under the above laws, a joint Social Solidarity Network/ICBF circular was issued on 2 May 2000 laying down procedures for providing care to children and pregnant and nursing mothers affected by displacement. On 19 April 2001, in resolution 0666, an internal working group was set up to deal with children, young people and families affected by the armed conflict and to care for children in a situation of forced displacement. The working group is attached to the General Directorate.

907. *Policy.* The new internal working group has divided its activities into three programmes: a programme of care for children cut off, endangered or affected by the armed conflict, a programme for the displaced population and a programme to strengthen centres in conflict areas and to deal with officials affected by violence.

908. The objective of the programme of care for children who are cut off, endangered or affected by the conflict is to help young people rebuild a way of life outside the armed conflict. The programme places special emphasis on integrating young people in family, social, cultural and working life. The model followed by the programme gives priority to ensuring the personal safety of the target population and that of their immediate family. With regard to the family situation, an effort is made to identify, search for and find the young person's family, in order to bring them closer together in the first instance and subsequently to consider the conditions required for a full reintegration of the child in the family. These activities are coordinated by means of agreements with international cooperation agencies (ICRC, IOM, Save the Children, USAID).

909. The programme of care for the displaced population pursues the objective of providing full care by means of supplementary basic support for and psycho-social treatment of children, pregnant and nursing mothers and family groups, by including these in regular ICBF programmes and new alternative care facilities.

910. The programme for the strengthening of centres in conflict areas and the treatment of officials affected by violence aims to improve the standard of institutional management, for the benefit of boys, girls, young people, families and officials in areas affected by armed conflict operations.

911. *Family placement.* This programme consists in full care being provided by a family in the community, which temporarily assumes responsibility for offering an atmosphere of affection, in order to make up for the experiences of boys, girls and young people under the age of 18 who have been deprived of their rights. Support and technical assistance is provided by the ICBF, and the full restoration of the youngsters' rights is guaranteed by administrative and judicial means. Family placement is implemented through the following projects: support homes, temporary homes, substitute homes and conditional grants.

- a) Support homes: full care provided by a family in the community, which temporarily assumes responsibility for offering an environment of affection, making up for the experiences of children under the age of 18 who have been deprived of human rights, with the support and technical assistance of the ICBF, and guaranteeing the full administrative and judicial restitution of the youngsters' rights.
- b) Temporary homes: full care service provided temporarily to children and young people between the ages of 7 and 18, who have been affected by the internal armed conflict. This service is available to the whole population in the country, and is supervised by children's judges, courts of combined jurisdiction and/or ICBF family defenders.
- c) Substitute homes: this is a form of placement in which a family selected and trained according to ICBF technical criteria voluntarily takes in a boy, a girl, or a young person under the age of 18 full-time, under a procedure of family placement. The children concerned have been abandoned and are offered an affectionate atmosphere and full care, thanks to which their rights are restored and guaranteed. This type of arrangement for such children is temporary, until such time as either the child is adopted or, according to the law, the child leaves.
- d) Conditional grants: this consists in a form of financial assistance and psycho-social support for the family of children and young people threatened by armed groups, when they need to be transferred to the home of a relative in another town away from their parents' home.

912. *Placement in institutions.* This scheme aims to accomplish the task of restoring and protecting the violated rights of young girls who have been abandoned or face extreme danger, up to the age of 18. The scheme is implemented by specialized centres, which provide temporary protection and manage available services with other institutions of the National Family Welfare System, as appropriate, with a view eventually to returning the children to the support of the

family and the community. The scheme is implemented through the following projects: protection centres for children affected by violence, and specialized care centres.

913. *Protection centres for children affected by violence.* This service is provided in an institution to young girls who have been removed from the internal armed conflict, either through capture or of their own free will, who find themselves in danger as a result of threats against their lives, and whose connection with armed groups has been only short-lived.

914. *Specialized care centre.* This centre provides specialized care for 20 boys, girls and young people of both sexes who have been captured in combat or who have left of their own free will and are remitted by juvenile courts, courts of mixed jurisdiction and ICBF family defenders.

915. *Placement in a social and community environment.* This includes schemes offered in primary systems that establish links with the families, peer groups and institutional and community networks, so that they take responsibility for and provide protection to boys and girls faced with danger or affected by the armed conflict, the aim being to ensure the children's personal development and their access to the educational, cultural, recreational and health facilities to which they are entitled. This form of placement is implemented through the following projects: juvenile homes, contracted management on a semi-boarding basis, contracted management on an external basis, or contracted management with support action.

916. *Juvenile homes.* Care in this case is provided by an NGO either registered with or linked to the SNBF. The scheme provides protection for girls and young women under the age of 18 affected by the armed conflict, whom it has not been possible to resettle in families. The system recreates conditions which allow a group of young girls to live together in a family-type atmosphere, with personalized care and access to community services.

917. *Contracted management on a semi-boarding basis.* Under this scheme, the ICBF enters into contracts with SNBF institutions, which have taken part in a selection process to offer care services, with a view to promoting the active participation of families and the community in the task of restoring the rights of young girls. The service is provided for eight hours a day, during which the institution under contract must provide 55% of the nutritional requirements of the girls, in three rations a day (a lunch and two snacks). It must also provide basic amenities and educational, cultural and training facilities during the eight hours the girls and young women are present. The scheme is implemented only if the community where the service is provided has no suitable educational programmes or if the girls and young persons experience serious difficulties in working in school and need specialized treatment to help them readapt.

918. *Contracted management on an external basis.* Under this scheme, the ICBF enters into contracts with SNBF institutions, which have taken part in a selection process to offer care services, with a view to promoting the active participation of families and the community in the task of restoring the rights of young girls. The service is provided for four hours a day, during which the institution under contract must provide the necessary facilities to run the educational, cultural and leisure activities required by the young girls. It must also provide basic amenities for the use of the youngsters and at least a snack covering 10% of daily nutritional requirements in terms of calories and nutrients. The scheme caters for girls and young women at risk, whose ties of affection and solidarity with their families or social background have not been completely severed and who retain links with the normal educational system. One very important component

of these programmes is the use of inter-agency management mechanisms and the formation of social networks concerned with the welfare of children and young people.

919. *Contracted management with support action.* Under this scheme, the ICBF enters into contracts with SNBF institutions, which have taken part in a selection process to offer care services, with a view to promoting the active participation of families and the community in the task of restoring the rights of young girls. The scheme provides external care, which consists in support, psychological, social and family guidance in order to ensure and restore appropriate conditions for the full enjoyment of the children's rights.

Article 25 – Political rights and the right to take part in the conduct of public affairs

Provisions contained in the 1991 Political Constitution

920. The Constitution provides as follows:

“Article 40

Every citizen has the right to participate in the establishment, exercise and control of political power. In order to exercise this right, citizens may:

1. Vote and be elected.
2. Take part in elections, plebiscites, referendums, popular consultations and other forms of democratic participation.
3. Form political parties, movements or groups without any restriction whatever; freely participate in them and disseminate their ideas and programmes.
4. Revoke the mandates of elected officials in cases, and in the form, established by the Constitution and the law.
5. Act in public bodies.
6. Exercise the public right of action in defence of the Constitution and the law.
7. Hold public office, with the exception of Colombian citizens, native-born or naturalized, who hold dual citizenship.

The law shall establish regulations concerning this exception and determine the cases in which it applies. The authorities shall guarantee the adequate and effective participation of women at the decision-making levels of the public administration.

Article 23

Every person has the right to present respectful petitions to the authorities for reasons of general or private interest and to obtain a prompt response. The legislature may regulate the presentation of petitions to private organizations in order to guarantee fundamental rights.

Article 74

Every person has the right to access public documents except where provided otherwise by law.

Professional secrets are inviolable.”

921. An analysis is given below of the elections held since 1997.

1997-1998 Electoral period

922. The elections held in 1997 and 1998 reflected a clear improvement in Colombian democracy.

923. The 1997 elections represented a challenge for the Government. In deciding to hold them, it hoped to overcome the problems which had arisen during the 1999 voting, which was badly affected by the violent attacks of outlawed armed groups.

924. Despite the fact that calls were made for a state of internal disturbance to be declared and for the elections to be postponed, the Government took steps to allow the voting to go ahead and to encourage people to take part.

925. The measures adopted by the Government included holding meetings with the parties, movements and candidates, coordinating the work of State bodies at national level, setting up election supervision committees at departmental level, as well as sectoral electoral tribunals responsible for safeguarding voting rights and combating any efforts to impede the free exercise of those rights, establishing communication networks, and launching campaigns to motivate voters by creating a collective awareness of the importance for the whole of society of taking part in the elections.

926. In view of the considerable number of applications for citizenship cards (in a single month more cards were registered than in the whole of 1994), it was estimated that there was a considerable public turnout at the time of voting. During the elections for governors, mayors and deputies, however, the rate of abstention moved back over 50% of the registered voters.

927. *The appeal for a vote for peace, life and freedom*, which originated in the national children for peace mandate and whose purpose was to call on all Colombians to protest against violence and to vote in favour of a peaceful settlement of the armed conflict and of international humanitarian law, attracted the support of 8 million voters. In major cities, more people voted than for candidates for public office.

928. One significant outcome of these elections was that the traditional parties gave back some of their ground to the new movements and political parties, as well as to independent candidates and indigenous communities, reflecting a change of attitude on the part of the citizenry, which expressed a preference for new alternatives instead of persisting with its mood of apathy.

929. In the second election held during this period, the *congressional elections*, held on 8 March 1998, there was a considerable increase in the numbers of voters, new political movements and independent candidates.

930. Thanks to maintaining constant contact with the secretaries of departmental governments, to the supervision ensured by committees responsible for coordinating and monitoring electoral procedures, to sectoral guarantee tribunals, to the publication of electoral rules and to the constant vigilance of the law enforcement authorities, the Ministry of the Interior was able to preserve electoral transparency during the second elections. The mass media also played an important role in publicizing and promoting the profiles of the various candidates.

931. The abstention level was reduced to practically 20% and thanks to the deployment of military forces in areas affected by violence, voting took place under calm conditions in some 95.4% of the national territory. Owing to the considerable proliferation of political movements, almost 2.5 million votes were practically left invalid because the movements failed to reach the threshold for representation in the legislature and, despite the fact that a few parties and political movements managed to gain a footing in the Congress, there were no changes of representation there. In the Senate, out of the former 102 senators, 71 stood for re-election and 50 of those were successful. In the Lower House, out of 161 representatives, 117 stood for re-election and 79 of those were successful.

932. Thanks to the measures taken by the Ministry of the Interior and other bodies involved in the holding of elections, the presidential elections of 1998, both in the first and in the second round, confirmed the success of the pre-electoral activities undertaken with a view to guaranteeing the right to vote.

933. The increased participation in the voting reflected the greater political maturity achieved by Colombian society, which has been gaining awareness of the importance of taking part in defining and consolidating a democratic State. This new attitude was reflected in the acceptance of a third political option, confirming a desire for change on the part of society.

934. The election of 21 June (the second presidential round) may be considered as the most democratic in the whole of the country's political history. Altogether 12,175,293 citizens cast their votes, reducing the level of abstention observed in the first round from 48% to 41.44%. The presidential candidates obtained the greatest number of votes in the democratic history of the country.

935. The departmental committees for the coordination and monitoring of electoral procedures, set up under Decree No. 2267 of 1997, played a very important role during the whole electoral process. Thanks to the support of governors and governmental and State bodies, the elections were transparent and democratic, setting a model internationally in terms of participation and coordination.

936. An important role was also played by the governors who, in pursuit of the policy of decentralization and autonomy, played the role of counsellors in the elections, using the tools and strategies that had been pre-established in the Plan for Electoral Guarantees. Thanks to these precautions, out of 64,304 established voting centres, only 0.2% were affected by the armed strike called by the guerrilla forces; 99.8% of the voters freely exercised their right to vote and elections took place normally in 99.16% of all municipalities.

Elections of 29 October 2000

937. Once voters had recognized the importance of taking part in elections, despite the armed conflict, on 29 October 2000 the Colombian citizens cast their votes to elect governors, mayors, councillors and communal action councils.

938. Elections were suspended only in two municipalities in the whole country. The vote count came to 19,282,334, compared with 17,360,577 in 1997. There was an enormous proliferation of voting lists, which was reflected in the considerable increase in the number of independent candidates or candidates backed by independent movements.

939. The efforts made to organize the elections found a successful outcome in the voting of 29 October 2000. The participation of voters was a success and, thanks to the opportunity for electoral debate and the maintenance of public order, these elections reflected the democratic progress experienced by our country in terms of elections.

940. The shortcomings detected in the recent elections and which have affected electoral contests in our country, such as fraudulent electoral promises, “wasp operations” (pseudo-independent candidates) or the proliferation of electoral lists, are part of common electoral practice and have been met with proposals for political reform and new electoral rules. Unfortunately nothing has been done under the present Administration.

Congressional elections, March 2002

941. On 10 March 2002, nationwide elections were held for the Senate and Chamber of Representatives of the National Congress, in which it was observed that the electoral behaviour of Colombians did not differ greatly from the 1998 elections.

942. The internal armed conflict which has been afflicting life in Colombia might give the impression that it could hamper democratic elections. In all the country’s departments, however, the voting took place without undue disturbances in the public order.

943. In elections for the Senate of the Republic, 10,130,399 votes were cast, equivalent to a participation rate of 42.2% and an abstention rate of 58.06%, a slight increase compared with 1998, when the rate was 56.31%. The Senate is made up of 102 senators, who are elected by national constituencies; two are elected in special constituencies of indigenous communities, in which the voting is restricted to the members of those communities, regardless of the number of votes.

944. The Chamber of Representatives is made up of 166 congressmen, who are elected by territorial constituency. These represent their respective departments, in numbers proportional to the population.

945. In addition, in conformity with article 176 of the Political Constitution, a further five seats were established in those elections for special constituencies, allowing access to the Congress for two representatives of Colombia’s black communities, three more seats being reserved for Colombians living abroad, religious minorities and political minorities.

946. Altogether 10,157,457 votes were cast in the congressional elections. In Cundinamarca, 538,211 votes were cast, equivalent to a participation rate of 44.19%. In one of the departments

that was most affected by the conflict, Putumayo, a total of 47,801 votes were cast, giving a participation rate of 35.42%, while in Meta, where three of the five municipalities making up the demilitarized zone are situated, 162,329 voters, or 40.33% of the electorate, took part.

Presidential elections, May 2002

947. The elections for the 2002-2006 presidency attracted 11,249,734 voters, who opted to express their preference for the democratic way. This represented 46.47% of the electorate, and almost 1 million more votes than in the elections of 1998.

948. As was the case with the congressional elections, the presidential elections took place in an atmosphere of tranquillity from a public order point of view. It may be remembered, however, that a woman candidate for president and her running mate were abducted by the FARC just before the elections and are still being held by that subversive group.

949. Dr. Álvaro Uribe Vélez, the dissident candidate of the official Liberal Party, won the election with 5,862,655 votes, equivalent to 53% of the total ballot. This meant that no second round needed to be held, as provided in the Constitution for cases where no candidate obtains an absolute majority in the first round. Dr. Uribe was followed in the voting by Dr. Horacio Serpa Uribe, the official Liberal Party candidate, who obtained 3,514,779 votes.

950. Another noteworthy feature of the elections was the significant vote obtained by the Social and Political Front, whose candidate, Mr. Luis Eduardo Garzón, came third in the voting. This political group incorporates a number of leftwing movements and independent sectors.

951. It was also observed that many blank votes were cast, altogether 196,116, compared to 122,439 blank votes in 1998.

Limitation on full political participation

952. Despite the strengthening of Colombia's democratic institutions, there are some factors which restrict the full exercise of the right of Colombian citizens of political participation.

953. In the elections of 2002, the process was tarnished by the kidnapping of several congressmen, who at the time were members of the parliament elected for the period 1998-2002, and of the presidential candidate, Ingrid Betancourt, together with her running mate, Clara Rojas.

954. Despite that event, some of the candidates' relatives and followers reacted and, taking advantage of a law issued by the Congress, themselves stood for elections in a form of political reaction which might be seen as an act of civil resistance against violence in society.

955. There are at present a number of political leaders in the hands of the FARC guerrillas, who use them to exert pressure to force an exchange for members of their organization who have been taken prisoner.

Kidnapped political leaders in the hands of the FARC:

- Ingrid Betancourt, former presidential candidate, and Clara Rojas, former running mate;

- Guillermo Gaviria, Governor of Antioquia;
- Gilberto Echeverry, former Minister of Defence, Peace Advisor for Antioquia;
- Alan Jara, former Governor of Meta;
- Fernando Araujo, former Minister of Development/

Congressmen:

- Jorge Gechem,
- Luis Eladio Pérez,
- Oscar Tulio Lizcano,
- Consuelo González de Losada
- Orlando Beltrán, and
- 12 deputies of the Department of Valle del Cauca.

Article 26 – Right to equality before the law and guarantees against discrimination

Provisions contained in the 1991 Political Constitution

956. In article 13, the Constitution provides as follows:

“All persons are born free and equal before the law; they 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.

The State shall promote the conditions necessary to ensure that equality is real and effective and shall adopt measures in support of groups that are discriminated against or marginalized.

The State shall provide special protection to those persons who, on account of their economic, physical or mental condition, are in obviously vulnerable circumstances and shall punish any abuse or ill-treatment to which they may be subjected.”

Legislative provisions

957. According to article 33 of Act No. 70 of 27 August 1993:

“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.

For this purpose, the competent authorities shall apply appropriate penalties in conformity with the provisions of the National Police Code that regulate the mass media and the educational system, and in compliance with whatever other rules are applicable in the event.”

958. Further provisions, which were referred to earlier, have already been issued in this respect, with the passing of Act No. 599 of 24 July 2000, establishing the Penal Code.

Article 27 – Rights of ethnic, religious and linguistic minorities

Provisions contained in the 1991 Political Constitution

959. The articles of the Constitution dealing with the rights of minorities are as follows:

Article 1. Characteristics of the Colombian State.

Article 7. Ethnic and cultural diversity of the Colombian nation.

Article 10. *Language*. Bilingual education allowed in communities with their own linguistic traditions.

Article 13. Right to equality before the law without any discrimination on grounds of race, national or family origin, language, religion or political opinion. In conformity with articles 18, 19 and 20.

Article 63. Right to inalienability, imprescriptibility and guarantee against seizure applying to the communal lands of ethnic groups.

Article 68. Right of members of ethnic groups to education which respects and develops their cultural identity.

Article 70. *Right to culture*. Cultural expressions recognized on an equal footing as a basis of the national identity.

Article 72. Special rights with regard to the archaeological wealth of the territories of ethnic groups.

Article 96. The right of indigenous peoples sharing territories in border areas to Colombian nationality.

Articles 171 and 176. The right to political participation, with two indigenous senators and two representatives of the Black Communities in the Chamber, elected by national constituencies.

Articles 246 and 330. The right for indigenous people to have their own indigenous authorities and to settle problems and disputes arising in their territories.

Articles 286, 287, 328, 329 and 330. The right to establish indigenous territories as autonomous territorial entities, governing themselves, having their own authorities, administering their resources and collecting taxes.

Article 330. The right to ensure that the exploitation of natural resources in indigenous territories does not impair the social, economic and cultural identity of their communities.

Article 357. The right of indigenous reservations to be considered as municipalities for the purpose of sharing in the current revenue of the nation.

Article 55. Transitional. The right to recognition of the collective ownership of uncultivated lands occupied by Black Communities.

Advances, obstacles and challenges facing the Colombian State in relation to the Afro-Colombian communities

960. *Advances.* Legal recognition of their status as a different ethnic group; preparation of diagnostic studies concerning their situation; establishment of a broad legal framework – still in the process of being regulated; recognition of their territorial rights, their contribution to the conservation of biodiversity and their right to benefit therefrom, including the ability to take decisions regarding the traditional knowledge associated with the biological resources they own; explicit recognition by the State of the situation regarding discrimination, inequality and the lack of equal opportunities affecting the Afro-Colombian population; the implementation of differentiated policies; the adoption of affirmative action or positive discrimination measures for their benefit.

961. The resurgence of the Afro-Colombian social movement; the implementation of areas of consultation and dialogue between the State and the Afro-Colombian population; the establishment of government bodies specifically dealing with problems affecting that population and the recognition of the *Afro question* in various aspects of institutional dynamics; the inclusion of the Afro-Colombian dimension in the country's foreign policy; the growing level of self-recognition by their population and the emergence of a collective awareness and national solidarity regarding the grave social situation affecting Afro-Colombians, amongst other aspects.

962. *Obstacles.* The poor appreciation by the institutions and society as a whole, including the Afro-Colombian communities themselves, of the new political, legal and institutional framework which has been established to assist Afro-Colombians, with the result that the incipient measures of positive differentiation which are being introduced are being questioned implicitly and sometimes explicitly.

963. The very wide social, economic, political and cultural gap which exists between the Afro-Colombian population and the rest of the country, originating in the historical disadvantage at which their forbearers were placed following the legal abolition of slavery and the emergence of the Colombian nation; the persistence of racial discrimination, racism and racial prejudice in the country.

964. The self-denial which affects many members of those communities, arising from a sense of "lost identity"; the lack of equal opportunities, and the weak, limited coverage of positive differentiation policies adopted for the benefit of the communities; the serious social impact brought about by the armed conflict on members of the communities, which tends to affect them more acutely, especially on account of internal displacement, by which it is recognized their social group is more affected; and their very limited participation in decision-making bodies of the State, amongst others.

965. *Challenges.* The effective application of legislation and policies introduced for their benefit, which should make it possible to ensure a situation of equality and equal opportunities for those communities; the elimination of cultural patterns that have a negative impact on racism, racial discrimination and racial prejudice in Colombia; the consolidation of the Afro-Colombian social movement; the urgent need for a more pronounced collective awareness of the circumstances in which those communities find themselves and how the problems which affect them extend beyond the group, so that they should become part of the national agenda; and the implementation of international cooperation programmes that contribute to the strengthening of State governance, to mention but a few.

Advances, obstacles and challenges facing the Colombian State in relation to indigenous peoples

966. *Advances.* Among the more significant advances experienced by the indigenous communities, the following are worth mentioning:

967. On the basis of the 1991 Constitution, and as a result of the proactive measures taken by the indigenous peoples and the Government, a number of profound changes have been brought about in the State. One of these, which is most important and unprecedented, is the policy of guaranteeing the rights of indigenous peoples. This has given rise to many rulings by the Constitutional Court, the Supreme Court of Justice, the Council of State and the Supreme Council of the Judiciary, conveying imaginative interpretations and possibilities with regard to the implementation of indigenous rights, all of which need to be brought to the attention of the public.

968. Colombia has made great strides towards clarifying and recognizing the fundamental collective rights of indigenous peoples: the right to territory, to identity and to cultural difference, to multiple participation, to political, governmental, legal, territorial (indigenous territorial entities), administrative and fiscal independence and the right to their own development. These rights have been demanded by the indigenous peoples and have brought about a significant constitutional and legal change, which is still continuing.

969. In terms of territory, the indigenous populations occupy approximately one-quarter of the national territory, an area covering some 30 million hectares, mostly subject to the legal status of reservations, understood in the sense of private and collective property, which is inalienable and not subject to time limitation or seizure.

970. Another significant advance has been the introduction of rules ensuring the participation of indigenous communities in the current revenues of the country by means of transfers to the reservations, as a transitional system, until such time as the latter are constituted as indigenous territories.

971. Recognition has also been given, under the terms of the Constitution, to new areas of democratic political participation for indigenous peoples, with the establishment in the legislature of a special national constituency for indigenous peoples, with two seats in the Senate and a special circumscription which, starting with the congressional elections in March, reserves a seat for them in the Chamber of Representatives.

972. Areas have also been opened up for administrative participation, allowing representatives of national indigenous peoples and organizations to sit on national and local planning

committees, on councils in charge of independent regional environmental corporations and on other sectoral bodies.

973. They have also benefited from an increase in public social investment and, to a lesser extent, international cooperation resources channelled in some regions through NGOs.

974. Recognition has also been given to special indigenous jurisdiction and the independence of the communities within their territories.

975. The ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries was incorporated in Colombian legislation under the terms of Act No. 21 of 1991.

976. *Obstacles.* There are many obstacles restricting the possibilities of independent development and the full enjoyment of the fundamental rights of indigenous peoples in Colombia, including the following.

977. The situation of political, social and territorial violence currently prevailing in the country, which finds expression in armed conflict, has dramatically affected indigenous peoples and their territories. A number of factors emerge from Colombian history in this respect as the underlying causes of such violence: the traditional property system, for instance, which gives rise to specific interests and policies to the detriment of national policies and forms of social, economic and prolific harmony; the culture of homogeneity and the denial of diversity and ethnic, cultural, regional and demographic multiplicity, which has led to a considerable structural rigidity in State entities and great difficulty in assimilating changes in favour of cultural multiplicity and diversification; the considerable economic, social, cultural and territorial discrepancies which generate violence, and the struggles for power and geopolitical control, amongst other factors.

978. Nowadays, unfortunately, the situation has taken a turn for the worse with the escalation of the armed conflict, which affects these communities dramatically. A growing number of indigenous leaders have fallen victim to shootings, internal displacements or kidnappings, for which the guerrilla and self-defence forces have been responsible. One of the latest victims has been the indigenous leader Kimi Pernía Domikó, belonging to the Emberá Katio community, whose abduction, which has been met with a wave of national and international solidarity, has been attributed to the self-defence groups. The Cauca indigenous communities were also affected by the kidnapping for several months of three German cooperation experts by the FARC.

979. Another obstacle which, in the opinion of some experts, affects the proper development of indigenous peoples is drug trafficking. Several indigenous communities in the country, either voluntarily or under duress, have been giving in to the demands or threats of the drug traffickers, with serious consequences in terms of the breakdown of all their traditional systems of authority, and the relinquishment of their normal productive activities; an increase in criminality; health problems arising from the modification of traditional eating habits; the presence of armed groups, insurgents and counter-insurgents; and the contamination of the soil and waterways²⁹.

²⁹ Roque Roldán, *Pueblos Indígenas y Leyes en Colombia – aproximación crítica al estudio de su pasado y su presente* (Indigenous Peoples and Laws in Colombia – a critical review of their past and present). Ortega Coama, Bogotá D.C., January 2000.

980. The new changes have also brought with them some negative aspects, such as a trend which has appeared in Government sectors, NGOs and among some indigenous leaders towards a notion of the monetization of relations between indigenous peoples and development agencies. This is believed to be a way of avoiding the problem of adopting an intercultural perspective and then quite simply disposing of the old and much criticized paternalistic approach, based on the prejudiced view that all Indians are poor.

981. *Challenges.* Several indigenous communities and peoples have still not succeeded in obtaining full title to their territories, and large sectors of those communities are demanding the allocation of enough suitable land as one of the priorities for the Government to deal with. These claimants include in particular indigenous peoples and communities, which are more vulnerable and more fragile in terms of insuring their survival and guaranteeing their future, such as the Ette Ekke'naya or Chimilas, the Kofanes, Pastos and others: The claims may be summarized as follows:

- a) Full observance of their human rights, entailing in particular the removal of the indigenous population from the armed conflict;
- b) The initiation of immediate care programmes for displaced indigenous communities;
- c) The legalization of the establishment of indigenous territorial entities within the framework of the legal territorial system;
- d) The creation of bodies responsible for examining “re-Indianization” processes and the formation of urban and multi-ethnic councils involving indigenous organizations and authorities;
- e) A strengthening of the dialogue between the National Government and traditional indigenous organizations and authorities;
- f) More productive projects so as to ensure subsistence and internal social cohesion for the indigenous communities;
- g) More investment in highways, infrastructure works and public services in the reservation areas, according to the requirements set by individual communities;
- h) Improved health and education programmes, taking into account the cosmic philosophy of indigenous communities;
- i) The launch of information and education campaigns directed at the majority community regarding the existence of indigenous peoples;
- j) The introduction of systems for determining the number of indigenous peoples within the Colombian territory by means of censuses and technical projections, such as would reflect the growth of these populations, as planned for the national population and housing census to be conducted in 2003.

Measures taken by the Division for Indigenous People and Ethnic Minorities of the Office of the People's Advocate

982. The Division for Indigenous People and Ethnic Minorities, which is attached to the Office of the People's Advocate, in addition to ensuring the promotion, defence and protection of the human rights and special rights recognized as pertaining to indigenous peoples and ethnic minorities, must fulfil the following tasks:

- a) Coordinate actions with all the individual indigenous peoples and Afro-Colombian communities and safeguard the conditions and forms of their human rights, which have been recognized in the Constitution, in the law and in international instruments, in social affairs, in administrative and judicial affairs and in the areas of health and the protection of rights;
- b) Require the competent authorities to undertake and ensure the protection of and take precautionary measures to safeguard the rights of indigenous peoples and ethnic minorities;
- c) Encourage consultation between government bodies responsible for protecting and safeguarding rights on the one hand and the indigenous authorities and peoples and Afro-Colombian communities on the other;
- d) Lodge complaints with the competent authorities for any occurrences of violations or threats of violations of the rights of indigenous peoples and Afro-Colombian communities.

983. The Office of the People's Advocate has conducted humanitarian missions in support of indigenous peoples and Afro-Colombian communities, for the purpose of investigating violations of human rights and international humanitarian law and complying with their mandate, and monitoring development in accordance with the authorities. It has taken part in the National Council for Consultation with Indigenous Peoples, in conformity with Decree No. 1397 of 1996. According to the reports of the Office of the People's Advocate and its Ethnic Minorities Division, the policies laid down by the Colombian Government to assist this sector of the population have run into difficulties in practice, especially owing to the internal armed conflict and to the launch of mining and energy projects within indigenous reservations.

List of Annexes

1. Political Constitution of Colombia.
2. Act No. 270 of 1996 – Statutes of the administration of justice.
3. Act No. 288 of 1996 – Establishing instruments for the compensation of losses suffered by victims of human rights violations, in conformity with the provisions of international human rights bodies.
4. Act No. 387 of 1997 – Adopting measures for the prevention of forced displacement; for the care, protection, resettlement and socio-economic stabilization of persons displaced internally by violence in the Republic of Colombia.
5. Act No. 409 of October 1997 – Approving the Inter-American Convention to Prevent and Punish Torture.
6. Act No. 418 of 1997 – Establishing instruments for the development of peaceful coexistence and the efficiency of justice, and other provisions.
7. Act No. 497 of 1999 – Establishing justices of the peace and regulating their organization and operation.
8. Act No. 522 of 1999 – New Military Penal Code.
9. Act No. 548 of 1999 – Public order - exclusion of minors from the armed conflict.
10. Act No. 589 of 2000 - Characterizing the crimes of genocide, forced disappearance, forced displacement and torture.
11. Act No. 599 of 2000 – New Penal Code (in force as of 24 July 2001).
12. Act No. 600 of 2000 – New Code of Penal Procedure (in force as from 24 July 2001).
13. Decree No. 978 of 2000 – Setting up the Special Programme for the full protection of the leaders, members and survivors of the Patriotic Union and the Colombian Communist Party.
14. Decree No. 1592 of 2000 – Programme for the protection of journalists and social communicators.
15. Decree No. 1636 of 2000 – Setting up the Presidential Programme for the promotion, respect and guarantee of human rights and the application of international humanitarian law, within the Administrative Department of the Office of the President of the Republic.
16. Decree No. 1790 of 2000 – Amending the Decree regulating the career rules of officers and non-commissioned officers in the armed forces.
17. Decree No. 1797 of 2000 – Regulating the disciplinary rules applying to the armed forces.
18. Act No. 707 of 2001 – Approving the Inter-American Convention on the Forced Disappearance of Persons.
19. Act No. 734 of 2002 – Single Code of Discipline.
20. Act No. 742 of 2002 – Approving the Rome Statute of the International Criminal Court.