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THIRD REPORT ON THE HUMAN RIGHTS SITUATION IN COLOMBIA

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THIRD REPORT ON THE HUMAN RIGHTS SITUATION IN COLOMBIA*

INTRODUCTION

A. BACKGROUND

1. For almost twenty years, the Inter-American Commission on Human Rights (the "Commission," the "IACHR" or the "Inter-American Commission") has monitored the human rights situation in Colombia in conformity with the relevant provisions of the Charter of the Organization of American States ("OAS"), the American Convention on Human Rights (the "Convention" or the "American Convention") and the Commission's Statutes and Regulations. The Commission has placed special emphasis on the situation in Colombia, given the endemic violence and civil strife that have wracked the country and the many complaints of human rights violations received by the Commission attributing direct or indirect responsibility to the Colombian State.

2. The Commission carried out its first on-site visit to Colombia in April of 1980. That visit had the stated purpose of allowing the Commission to examine the general situation of human rights and to witness the oral proceedings in the courts martial conducted under the Colombian Constitution and laws. The Commission was also asked to observe, during that visit, the investigations being conducted into alleged human rights-related abuses of authority reported in a document released by Amnesty International on April 1, 1980.

3. During the April 1980 visit, the Inter-American Commission served an instrumental role in resolving the difficult situation which arose when the Commando Group of the M-19 (April 19th Movement – Movimiento 19 de Abril) occupied the Embassy of the Dominican Republic on February 27, 1980. More than 50 people were taken hostage during the take-over, including diplomats from a number of countries, government officials and Colombian citizens. The Commission acted in this crisis at the request of the Colombian Government, of the governments of countries whose diplomats had been taken hostage, of the Holy See and of the leadership of the M-19 movement.

4. As a term of the negotiation process which led to the release of the hostages, it was agreed that the Commission would provide international oversight to monitor trials of the M-19 and the FARC (Colombian Revolutionary Armed Forces - Fuerzas Armadas Revolucionarias de Colombia) armed dissident groups. As a result, several different teams of attorneys from the Commission's Executive Secretariat traveled to Colombia, each team replacing the one that preceded it, to be present at, observe and report on the proceedings. These visits by IACHR staff continued for just over a year after the on-site visit, until May 1981.

5. A special report on the on-site visit, the observations resulting from that

visit, the trial proceedings and the general human rights situation in Colombia was prepared and then approved by the Commission on June 29, 1981 during its 53^o session. The report was eventually published as document OEA/Ser.L/II.53, doc. 22 (June 30, 1981), titled "Report on the Situation of Human Rights in the Republic of Colombia."

6. On April 13, 1989, during its 75^o session, the Commission received an invitation from the Government of President Virgilio Barco to visit Colombian territory to observe the general human rights situation in that country. However, the Commission and the Government were not able to agree on the dates for the visit.

7. Finally, the Commission proposed that a special preliminary mission of the Commission travel to Colombia in December of 1990. The Colombian State accepted this proposal. A Special Preparatory Commission visited Colombia from December 3 through 7, 1990, carrying out a substantive agenda. At the end of the visit, the Chairman of the Inter-American Commission and of the Special Preparatory Commission, Dr. Leo Valladares, delivered to Colombia's Foreign Minister a message for then President César Gaviria Trujillo, thanking the Colombian Government for its cooperation and recommending that domestic legal measures be adopted to bring Colombian law into conformity with the provisions of the American Convention.

8. From the outset, the visit of the IACHR's Special Preparatory Commission was regarded as an exploratory visit. Upon its return, the Special Commission recommended to the plenary of the Commission that the latter continue to monitor the human rights situation in Colombia.

9. A full on-site visit of the Commission was then carried out in Colombia from May 4 through 8, 1992. The Commission carried out numerous interviews and hearings with State authorities, nongovernmental organizations, representatives of victims with cases before the Commission and other members of Colombian civil society. The Commission then divided into several subgroups and traveled to Medellín and Barrancabermeja to carry out further interviews.

10. Subsequently, a report was prepared based on the information gathered during the Commission's on-site visits in 1990 and 1992. The Commission decided to publish this report during its 84^o session held in October of 1993. The report was published as the "Second Report on the Situation of Human Rights in Colombia," as document OEA/Ser.L/V/II.84, Doc. 39 rev., October 14, 1993.

B. THE ON-SITE VISIT CARRIED OUT IN DECEMBER OF 1997

11. During its 94^o special session held in December of 1996, the Commission decided to solicit the Colombian Government's agreement to allow the Commission to carry out an on-site visit for the purpose of observing the general human rights situation in that country. A special delegation of the Commission, which traveled to Colombia in February of 1997 to undertake specific tasks relating to several cases in friendly settlement proceedings, presented a note dated February 14, 1997 to the Minister of Foreign Affairs requesting such an agreement from the Government. The special delegation also discussed the possibility of an on-site visit in an interview with then President Ernesto Samper Pizano.

12. President Samper announced to the special delegation of the Commission that the Colombian State would be pleased to agree to receive the on-site visit of the Commission. The Minister of Foreign Affairs, María Emma Mejía Vélez, reiterated the interest of the State in allowing the on-site visit of the Commission in a note dated February 19,

1997.

13. The Commission originally proposed that the visit be carried out between July 7 and 15, 1997. However, in a note dated May 2, 1997, the Colombian Ministry of Foreign Affairs indicated to the Commission that the Government considered it preferable to schedule the visit for a later date. The Colombian Government and the Commission subsequently agreed that the visit would be carried out during the first week of December of 1997.

14. The Commission thus conducted its on-site visit to Colombia from December 1 through 8, 1997. The IACHR delegation was composed of John Donaldson, President; Carlos Ayala Corao, First Vice-President; Robert K. Goldman, Second Vice-President; and members Claudio Grossman, Oscar L. Fappiano and Jean Joseph Exumé. Alvaro Tirado Mejía, also a member of the Commission, did not participate in the visit, in accordance with Article 56 of the Commission's Regulations, since he is of Colombian nationality. Hélio Bicudo, member-elect, accompanied the Commission as a special adviser. The Commission received technical support from Jorge E. Taiana, Executive Secretary; David Padilla, Assistant Executive Secretary; staff lawyers Osvaldo Kreimer, Denise Gilman and Mario López. The Commission received administrative support from Gabriela Hageman, Gloria Hansen and Martha Keller.

15. During its visit, the Commission met with the President of Colombia, Dr. Ernesto Samper Pizano, and with other high-level political, administrative, legislative and judicial authorities. The Commission also met with numerous non-governmental human rights organizations and with church officials, political leaders, businessmen, representatives of the news media, trade unionists and other representatives of civil society. In addition, the Commission held meetings with representatives of international organizations.

16. From December 1-3, the Commission remained in Bogotá to carry out its work agenda. While in the capital of Colombia, the Commission divided into working groups and carried out interviews with the following authorities: President Ernesto Samper Pizano; Dr. María Emma Mejía Vélez, Minister of Foreign Affairs; Amb. Carlos Holmes Trujillo, Minister of the Interior; Dr. Almabeatriz Rengifo, Minister of Justice; Dr. Alfonso Gómez Méndez, Prosecutor General (Fiscal General); Dr. Jaime Córdoba Treviño, Assistant Prosecutor General; Dr. Jaime Bernal Cuellar, Procurator General (Procurador General); Dr. Sonia Eljach Polo, Presidential Human Rights Adviser; Dr. Gustavo Salazar, Adviser to the Director of the Office of the Presidential High Commissioner for Peace; Dr. José Fernando Castro, Human Rights Ombudsman (Defensor del Pueblo). The Commission also carried out a meeting with the following officials at the Ministry of Defense: Dr. Gilberto Echeverri Mejía, Minister of Defense; General Manuel Bonnett, Commander of the Armed Forces; Major General Rafael Hernández López, Inspector General of the Armed Forces; the Commanders of the three branches of the armed forces and other officials of the armed forces. The Commission also met with General Rosso José Serrano, Director of the National Police and with Dr. Mario Acevedo Trujillo, Deputy Director of the Administrative Department of Security ("DAS" – Departamento Administrativo de Seguridad). The Commission gathered information about the Colombian judiciary in meetings with magistrates from the Colombian Constitutional Court and the High Council of the Judiciary (Consejo Superior de la Judicatura).

17. In Bogotá, the Commission attended a meeting of the 1290 Commission, a governmental commission established to propose means of implementing recommendations made by international human rights bodies, and met with members of the Congress of the Republic of Colombia.

18. In addition, the Commission met with numerous nongovernmental organizations in the capital, including: Comisión Intercongregacional de Justicia y Paz, Comité Permanente para la Defensa de los Derechos Humanos, Comisión Colombiana de

Juristas, MINGA (Asociación para la Promoción Social Alternativa), Corporación Colectivo de Abogados "José Alvear Restrepo", CSPP (Comité de Solidaridad con los Presos Políticos), ILSA (Instituto Latinoamericano de Servicios Legales Alternativos), ASFADDES (Asociación de Familiares de Detenidos-Desaparecidos), Asociación de Personeros, Humanidad Vigente, Fundación Cepeda, REINICIAR, Unión Patriótica, CINEP (Centro de Investigación y de Educación Popular), GAD (Grupo de Apoyo a Desplazados), CODHES (Consultora para los Derechos Humanos y el Desplazamiento), Alianza Social Afrocolombiana, Movimiento Nacional de Comunidades Negras, Movimiento Cimarrón, Proceso Comunidades Negras, ONIC (Organización Nacional de Indígenas de Colombia), CRIC (Concejo Regional Indígena del Cauca), Alianza Indígena, Casa de la Mujer, Red Nacional de Organizaciones de Mujeres, Anmucin, CREDHOS (Comité Regional de Derechos Humanos del Magdalena Medio), Comité Nacional VIDA and Colectivo por la Objeción de Conciencia. The major labor unions as well as representatives of the media in Colombia also made presentations to the Commission.

19. The Commission also held meetings with the National Conciliation Commission (Comisión de Conciliación Nacional) and with representatives of international public and private organizations, such as the United Nations High Commissioner for Refugees and the International Committee of the Red Cross.

20. A delegation of the Commission also visited the Bogotá Model Prison (Cárcel Modelo) and carried out interviews there with Dr. Francisco Bernal Castillo, Director of INPEC (National Institute for Prisons and Penitentiaries - Instituto Nacional Penitenciario y Carcelario), and with the working group formed by the inmates.

21. The Commission divided into several groups and traveled from December 4-6 to other areas of Colombia, including to Puerto Asis, Department of Putumayo^[1], to Medellín^[2] and Urabá^[3], in the Department of Antioquia; to Villavicencio, Department of Meta^[4], and; to the territory of the U'wa indigenous community.^[5] At the end of the visit, the team met again in Bogotá to evaluate the information it had gathered.

22. The Commission then held a press conference and issued a press release on December 8, 1997 in Bogotá. (The Commission's press release is annexed to this Chapter as Annex 1.) In the press release, the Commission identified the following as some of the most important problems facing Colombia in the area of human rights:

- The violence committed by security forces, dissident armed groups, paramilitary organizations, and the so-called "CONVIVIR" (special protection and private security services);
- Impunity and its serious consequences for the rule of law;
- The deplorable conditions in prisons;
- The situation of internally displaced persons;
- The situation of ethnic minorities, women and children; and
- The situation of human rights workers and journalists.

The issues named by the Commission in its press release and listed above are analyzed in the relevant Chapters of this Report.

23. The Commission enjoyed complete freedom, during the on-site visit, to meet with persons of its choice and to travel to any place in the territory which it considered useful. The Government of Colombia provided to the Commission its full assistance and cooperation in all areas, permitting the Commission to fully discharge its mandate for the on-site visit.

C. OTHER WORK CARRIED OUT BY THE COMMISSION RELATING TO COLOMBIA

24. The present report arises largely from the on-site visit conducted by the Commission in December of 1997. However, the information used by the Commission in preparing the report is not limited to that received during the on-site visit. Academic, governmental and non-governmental sources both within and outside Colombia provide the Commission with updated information on a continuous basis. In addition, the Commission has carried out its own consistent and intensive activity in relation to Colombia, particularly in recent years. This work allows the Commission to remain continually informed regarding human rights developments in Colombia. In preparing this report, the Commission used information obtained through all sources and all of its different work with Colombia. It is therefore important to highlight some of the activities that the Commission regularly carries out in relation to Colombia.

25. In addition to its previous country reports on Colombia, the Commission has prepared special reports on the human rights situation in Colombia that are included in a chapter of its Annual Report to the General Assembly of the OAS. Two such reports appeared in the Commission's 1994 and 1996 Annual Reports. In these succinct reports, the Commission highlights key developments in the country's human rights practices; raises its principal concerns in relation thereto; and formulates recommendations to the State.^[6]

26. During each of its regular sessions, the Commission holds a significant number of hearings on complaints against Colombia being processed by the Commission and on the general human rights situation in Colombia. Representatives of the State and non-governmental organizations make presentations in both kinds of hearings.

27. The Commission also considers the actions to be taken on individual complaints filed against Colombia under the American Convention's individual petition procedure. For example, in the 1997 Annual Report, the Commission published one report on admissibility and four decisions on the merits in cases where individuals alleged that the Colombian State is responsible for violations of their human rights.

28. Also in the individual petition context, the Commission has assisted in friendly settlement negotiations in a significant number of cases. For example, the Commission placed itself at the disposition of the petitioners and the State for the purpose of negotiating a friendly settlement in case 11.007, relating to the massacres which took place in Trujillo, Valle del Cauca in 1990. As a result of this friendly settlement proceeding, a special commission was formed, which included governmental and nongovernmental representatives. This commission investigated the allegations made by the petitioners in the Trujillo case in great detail and prepared a final report. The final report concluded that there existed sufficient evidence to conclude that the Colombian State was responsible for the violent events in Trujillo. Then President Ernesto Samper set an important and valuable precedent by publicly acknowledging State responsibility in the case. The victims named in the final report also received pecuniary compensation. The friendly settlement proceedings continue in this case on other points, such as the application of criminal justice to the individuals responsible for the crimes committed in Trujillo.

29. The parties have also made important advances in other cases by entering into friendly settlement negotiations under the auspices of the Commission. For example, as a result of ongoing friendly settlement negotiations initiated in September of 1995, the State acknowledged its international responsibility in the Villatina case (11.141). This case concerns the massacre by the Police of 8 youths and children in a poor neighborhood in Medellín. The disciplinary and criminal proceedings have also advanced significantly in that case, due in part to the effect of the friendly settlement proceedings. The Colombian State also recognized its international responsibility for human rights violations in the cases known as Caloto and Los Uvos. The Commission considers the State's decision to recognize responsibility in these cases to be extremely important.

30. The parties to the cases of Roison Mora Rubiano (11.525) and Oscar Iván Andrade Salcedo, Faride Herrera Jaime, et al (11.531) signed an agreement on May 27, 1998 to settle those cases. The Commission found that the agreement was based on respect for human rights and has prepared the corresponding friendly settlement reports. The Commission is very pleased with the favorable result of the friendly settlement proceedings initiated in those cases. The Commission encourages the State and the petitioners in the different cases before the Commission to consider the possibility of reaching such settlements in other cases.

31. As part of the friendly settlement process, special delegations of the Commission have traveled to Colombia on various occasions to speak with representatives of the State and the petitioners in relation with these proceedings. In addition, the Commission frequently holds meetings during its sessions to allow for discussion of these cases by the parties, with the presence of the Commission. Thus, for example, the Commission has held several meetings with the petitioners in the case of the Patriotic Union political party (11.227) and the representatives of the State with the objective of discussing a possible friendly settlement negotiation in that case.

32. Finally, the Commission remains in constant contact with State representatives, non-governmental organizations and other petitioners through its Secretariat. These channels of communication, which are extremely open and fluid, allow the Commission to gather information regularly considering the situation in Colombia.

D. SCOPE OF THE REPORT AND ITS ADOPTION

33. The present report addresses the human rights situation in Colombia subsequent to the period covered in the Commission's "Second Report on the Situation of Human Rights in Colombia." Nonetheless, the Commission has sometimes found it necessary to refer to historic events and to trends over time in order to analyze fully the current human rights situation in Colombia. The report first provides a context for the analysis of the human rights situation in Colombia, including references to the history of violence in the country and to the diverse factors which contribute to the situation. The Commission then takes a brief look at the legal mechanisms for guaranteeing human rights and the administration of justice. The report then proceeds to address the problems which the Commission considers to be most relevant and about which it has obtained the most pertinent and reliable information.

34. In keeping with its mandate and practice, the Commission has drawn on a very wide spectrum of sources in drafting this report. In analyzing the domestic legal system, the Commission has made reference to official legal codes, legal texts published by official entities, jurisprudence of the Colombian tribunals and other law-related publications. Use was made of reports prepared by State institutions, such as the Office of the Human Rights Ombudsman, the Office of the Presidential Adviser on Human Rights, the Office of the Prosecutor General, and others. The Commission also utilized data and information supplied by non-governmental human rights organizations in Colombia, such as: Comisión Colombiana de Juristas, Corporación Colectivo de Abogados "José Alvear Restrepo", CINEP and Justicia y Paz. The Commission has also taken note of information appearing in the press, along with studies, investigations and reports prepared by international human rights organizations. The Commission, of course, has paid particular attention to the valuable data gathered during its on-site visit in December of 1997.

35. A draft version of the present Report was adopted during the 100^o Sessions of the IACHR, held in October of 1998. On November 10, 1998, pursuant to Article 62 of the Commission's Regulations, the draft version of this Report was sent to the Colombian State to provide it with the opportunity to make any observations it deemed pertinent. The State sent its observations to the IACHR on January 25, 1999. After studying

the State's observations and making appropriate modifications to the text, the Commission at its 102° period of sessions approved the final version of the "Third Report on the Human Rights Situation in Colombia" on February 26, 1999 and decided to make the Report public on March 12, 1999.

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* Commissioner Álvaro Tirado Mejía, national of Colombia, did not participate in the discussion and approval of this Report pursuant to Article 19(2)(a) of the Regulations of the Commission.

^[1] In Puerto Asis, the Commission met with the Committee of Human Rights, which is composed of governmental and nongovernmental entities from the area.

^[2] In Medellín, the Commission met with State authorities including: Alvaro Uribe Vélez, Governor of the Department of Antioquia; Iván Velásquez Gómez, Office of the Regional Prosecutor for Medellín; and María Girlesa Villegas, Office of the Ombudsman for the People. The Commission also had the opportunity to speak with a group of individuals who participate in the CONVIVIR. The Commission also met with nongovernmental organizations, including: Permanent Committee for Human Rights "Héctor Abad Gómez"; CODHESEL (Human Rights Collective Seeds of Liberty - Colectivo de Derechos Humanos Semillas de Libertad), Corporación Taliber, Asociación de Trabajadores Sexuales and Ciudad Don Bosco. These nongovernmental organizations presented information about the human rights situation in Medellín and in other areas of Antioquia, including San Roque y Cristales, La Esperanza, Ituango, Segovia and Remedios. The Commission also received testimony from individuals who alleged to have been victims of or have witnessed human rights violations in Antioquia.

While in Medellín, the Commission also visited the Itaguí maximum security prison and held an interview with the Secretary of the Interior of Bolívar.

^[3] Specifically, the Commission visited Apartadó, San José de Apartadó and Turbo. The Commission met with the Commander of the XVII Brigade, General Rito Alejo del Río; with the mayor of Apartadó, Gloria Cuartas Montoya; and with the Bishop of Apartadó, Tulio Duque. In San José de Apartadó, the Commission was able to observe the situation of the self-named Community of Peace and spoke with the Internal Council for the community. In Turbo, the Commission visited several shelters for displaced persons.

^[4] In Villavicencio, the Commission met with the following authorities: Alfonso Ortiz Bautista, Governor of the Department of Meta; Rocío López, Office of the Ombudsman of the People; Colonel Fredy Padilla de León, Seventh Army Brigade; and the local government liaisons ("personeros") for the municipalities of Lejanías and El Castillo. The Commission also had the opportunity to meet with members of the local CONVIVIR associations. The Commission carried out additional interviews with nongovernmental organizations working in the area, including ASCODAS and the Civic Committee for Human Rights. Several individuals who had been forcibly displaced from their homes also provided testimony to the Commission.

^[5] Specifically, the Commission met with members of the U'wa community in Cubará, Department of Boyacá.

^[6] The Commission does not, in principle, prepare a special report for publication in the annual reports for those year(s) when it is preparing a country report based on an on-site visit.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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CHAPTER I

CONTEXT FOR THE ANALYSIS OF THE HUMAN RIGHTS SITUATION IN COLOMBIA

A. INTRODUCTION

1. It is generally understood that the human rights situation in Colombia is currently one of the most difficult and serious in the Americas. The gravity of the situation derives from the massive and continuous violation of the most fundamental of human rights, particularly the right to life and the right to humane treatment. The nature and causes of this human rights situation are many. In addition to the violence associated with the armed conflict, especially violence attributable to extremists on both the right and the left, there are other sources of violence that bring death or other violations of fundamental rights. Drug trafficking, abuses of authority, socio-economic violence rooted in social injustice and land disputes are but some of the sources of violence which have led to the deterioration of the human rights situation in Colombia.

2. The Inter-American Commission on Human Rights (the "Commission," the "IACHR" or the "Inter-American Commission") reiterates that it fully understands that there are many actors contributing to the situation of violence in Colombia and that the State is not internationally responsible for all of the harm caused to its citizens by non-State agents. The Commission also fully acknowledges that the State has the right and duty to guarantee its security and that of its citizens. The State is justified in taking actions against armed dissident groups, drug traffickers and others who commit crimes or threaten to destabilize or overthrow the constitutional order.

3. However, the power of the State is not unlimited, nor does it authorize or justify any means to attain its ends. In Colombia, agents of the State have sometimes stepped beyond the boundaries placed upon the State and have committed human rights violations. In other cases, the State has become responsible for violations by acquiescence or by failing to react properly to harms committed. The damage caused in those cases where the State incurs in responsibility for human rights violations is particularly great, because those who are explicitly charged with the protection of the citizenry have instead abused their power to the detriment of the population.

4. The Commission's central role is to deal with those situations and cases in which the State is responsible for having committed violations of the fundamental rights of individuals. As a rule, a State is responsible for the wrongful acts or omissions of its agents, even if those agents acted outside the sphere of their authority or in violation of local law. Such situations clearly fall within the Commission's mandate under the American Convention on Human Rights (the "Convention" or the "American Convention") and other instruments ratified by the State of Colombia and other member States of the Organization of American States ("OAS"). In contrast, the illegal actions of private individuals and groups that harm

others, but are not imputable to the State, do not engage the State's international responsibility and, thus, do not fall within the Commission's jurisdiction. However, the Commission notes that the State will incur responsibility for the illegal acts of private actors when it has permitted such acts to take place without taking adequate measures to prevent them or subsequently to punish the perpetrators. The State also incurs in responsibility when these acts by private parties are committed with the support, tolerance or acquiescence of State agents.

5. Because of its unique attributes, rights and obligations under domestic and international law, the State is necessarily the focus of the Commission's scrutiny, rather than the other actors who perpetrate violence in Colombia. It is the State alone that is charged with upholding the law, maintaining order, dispensing justice and performing international legal obligations. For these reasons, the Commission cannot and does not treat the Colombian State on the same level as the other violent actors in that country. While acknowledging the right and duty of the State to combat violence and crime, the Commission must at the same time insist that the State's actions comply with its international human rights obligations and will judge those actions accordingly.

6. In order to properly carry out its work, nonetheless, the Commission must consider and describe the multiple factors which contribute to the violence and the difficult human rights situation in Colombia. To this purpose, the Commission proceeds to provide a brief historical analysis of the violence in Colombia.

B. HISTORICAL ANALYSIS OF THE VIOLENCE

7. As the Commission noted in the press release which it issued upon the conclusion of its on-site visit, "Colombia is in the grip of a tragic spiral of violence which affects all sectors of society, undermines the very foundations of the State and is disturbing to the international community as a whole."^[1] The causes of violence have been studied and investigated extensively by Government commissions, academicians and others. The phenomenon is such that individuals who study in this field have been given a special title. In Colombia, they are referred to as "violentólogos."

1. Brief Historical Analysis of the Factors which Lead to the Violence

8. Many of the studies on Colombia distinguish three stages in the country's political violence: 1) political civil wars, involving essentially the conflicts and rivalries among the country's governing classes during much of the nineteenth century; 2) "La Violencia" which took place in the mid-twentieth century; and finally, 3) the current violence which revolves around the armed insurrection. The period of "La Violencia" is seen as the most direct antecedent to the current violent situation.

9. The change in government in 1946, which transferred power from the liberal political party to the conservative, was followed by a severe confrontation between the two political groups. This violent confrontation between the two parties became particularly acute in the 1950s, the period which came to be known as "La Violencia."

10. Armed revolutionary groups also formed in the 1950s, at least in part as a response to government-sponsored persecution of liberal party members in rural areas. Liberal peasant farmers were sometimes persecuted as a means of expanding capitalist agriculture, allowing the formation and consolidation of the latifundio land-tenure system. Victims of this violence were not only killed but were also driven out of their homes through the use of terror.

11. After the fall of the *de facto* government of General Rojas Pinilla on May 10,

1957, a period of reconciliation began with the consolidation of the National Front system of government, which lasted approximately 16 years. This phase in Colombian political life was unique. The reins of power were shared almost equally between liberals and conservatives, who alternated in assuming power and parceled out administrative positions between them, in an effort to maintain stability which would allow economic and social development.

12. During this stage of national life, the armed resistance groups allied with the liberal party disbanded and laid down their arms and amnesties were granted. The Armed Forces then reassumed control over the use of force and began to combat new guerrilla groups which were forming in rural areas.

13. The mobilization of revolutionary groups in the 1960s and the resulting renewal of violence coincided with the closed political system implemented through the National Front, which granted political power and opportunity only to the two traditional parties. The revolutionary movements which developed had moral, political and economic ideological underpinnings. The Cuban revolution also influenced the new movements. Some of the revolutionary guerrilla movements which formed in the 1960s continue to act today (i.e. the FARC (Colombian Revolutionary Armed Forces – Fuerzas Armadas Revolucionarias de Colombia)) and the ELN (National Liberation Army – Ejército de Liberación Nacional)). Other groups emerged at this time, including: the M-19 (April 19th Movement – Movimiento 19 de Abril), the EPL (People's Liberation Army – Ejército Popular de Liberación), the ADO (Workers' Self-Defense Groups – Autodefensa Obrera), the Ricardo Franco group and Quintín Lame (an indigenous guerrilla group).

14. At the same time, the failure of the peace agreements and the amnesties which followed the formation of the National Front system to reach all of the inhabitants in the countryside permitted a new type of violence to develop. This new violence has been referred to as "bandolerismo." By the time this type of violence reached crisis proportions in 1964, "there were more than 100 active bands of armed peasant farmers operating in more or less organized fashion, ignoring the peace agreements reached between the official leaders of the traditional parties. These bands prolonged the bipartisan struggle."¹²¹

15. Drug trafficking also began to play an important role in Colombian national life during this period. The drug trade began with a marijuana boom which produced violence, particularly on the Atlantic Coast. The production and trafficking of cocaine followed, and drugtrafficking was consolidated. This consolidation brought to Colombia the violence which is inherent to the trade. It also resulted in the violent confrontation between the State and those involved in narcotrafficking, particularly the infamous "Medellín Cartel," including Pablo Escobar. This confrontation included political assassinations and other acts of violence and terrorism committed by the narcotrafficking groups against the State as a means of controlling State policy and action on issues relating to the drug trade.

16. As armed dissident groups began to achieve greater influence in the 1960s and 1970s, the State developed a doctrine of "National Security." The phenomenon of the paramilitaries also began to take hold at this time.

17. Decree 3398, adopted as part of a state of emergency declared in 1965, was converted into permanent legislation by Law 48 in 1968. That law authorized the creation of civil patrols which received weapons restricted for the exclusive use of the armed forces from the Ministry of Defense.

18. In the late 1970s and in the 1980s the self-defense or paramilitary groups, connected to economic and political sectors in the different areas of Colombia, grew stronger. These groups, which were patronized or accepted by sectors of the State's security forces, sought to defend the interests of certain individuals or groups through violence. They were largely established as a reaction against the violence taking place in rural areas

throughout the country, often in the form of kidnappings for ransom. They sought to combat the armed dissident groups which had formed, because those groups were responsible for most of these kidnappings and other violence. In addition, the armed dissident groups had begun to impose war taxes, known as “vacunas” (“vaccinations”) in Colombia, which threatened the economic situation of many medium and large landowners and agribusinesses in the countryside.

19. The paramilitaries thus necessarily had a counter-insurgency motivation. As a result, they formed ties with the Colombian military. This connection between paramilitaries and the military will be explored in greater depth in subsequent sections of this Report.

20. The paramilitary groups also formed strong ties with drug trafficking organizations in this period. As the drug trade expanded and became more profitable, many of the players became landowners and heads of other economic enterprises. They sought to defend the drug business and their other economic interests against the violent acts of extortion and expropriation carried out by armed dissident groups against such interests. They began to finance and support the paramilitary groups. Thus, for example, a new group formed in the Magdalena Medio in 1981 and called itself Death to Kidnappers (“MAS” – Muerte a Secuestradores). The group was founded by drug traffickers in retaliation for the kidnapping by the M-19 of the sister of several members of the Medellín Cartel.

21. A variety of different forces and interests thus converged to lend the paramilitary groups particular strength. The groups began to carry out “cleansing” processes in various regions of the country, to eliminate armed dissident groups and their sympathizers, clearing the way for large landowners and others to do business. Eventually, the paramilitary phenomenon became so violent and uncontrollable that the Colombian Government and military were forced to act to reassert control.

22. In the late 1980s and particularly during the administration of President Barco, the Colombian State began to impose legal restrictions on the activities of the paramilitary groups and eventually outlawed them altogether. The legal rejection of the paramilitary groups was confirmed by a Supreme Court decision which held unconstitutional the legal norms which established the paramilitary groups. Similarly, the Council of State (Consejo de Estado) held that individuals who held weapons of war should return those arms to the Colombian Army.

23. Notwithstanding the legal prohibitions, paramilitary groups continue to exist in Colombia, albeit without the legal support which they enjoyed before 1989. In general, these groups have moved away from their connection with the drug trade, although paramilitary attacks against judicial officials investigating drug crimes demonstrate that a connection still exists in at least some cases. It is estimated that, in 1997, the paramilitaries were responsible for approximately 60% of violent deaths of a political nature.

24. Also beginning in the 1980s, successive Colombian governments labored on peace negotiations with the various armed dissident groups. In the early 1990s peace negotiations with the M-19, the EPL and Quintín Lame concluded and several thousand members of those groups were demobilized. However, the demobilization of those groups, particularly, the EPL, was not complete. In addition, the FARC and the ELN did not demobilize and continue to operate.

25. Over the last twenty years, organized crime has also had a huge impact on Colombian national life, affecting all aspects of society, including the electoral process and the justice system. The armed dissident movements have developed a confusing combination of alliances and simultaneous clashes with other actors in organized crime. The armed dissident groups have also developed ties with the drug trade, where they frequently

levy taxes against drug producers and transporters in exchange for protection of the trade. As a result of their involvement in the "business" of extortion, kidnapping, homicide and the drug trade, the armed dissident groups have lost much of their ideological credibility and influence in recent years.

2. Major Sources of Political Violence^[3]

a. Armed Dissident Groups

26. The armed dissident groups which are still active, the FARC and the ELN, as well as some dissidents from the EPL, form the Simón Bolívar Guerrilla Coordinating Group. The remaining armed dissident group which previously played a significant role in Colombian national life but which no longer participates in the armed conflict is the M-19. A brief description of the background of the three armed dissident groups which continue to operate follows:

i. The FARC

27. The FARC is the oldest armed dissident group in Colombia and has traditionally been one of the most well-organized of such groups in all of Latin America. This guerrilla organization has roots in the armed dissident movement of the 1950s and even in the earlier peasant struggles of the 1930s and 40s, when the first agricultural unions and leagues were established.^[4]

28. The origins of the group date back to 1947, when the central committee of the Colombian communist party decided to organize a self-defense system in opposition to the conservative regime of Ospina Pérez which began in 1946. This popular self-defense group later became an armed dissident movement. The FARC also had close ties with the Colombian peasantry.

29. The FARC became not only the largest guerrilla movement in Colombian territory but also the best equipped, both materially and financially, for an armed struggle. They number approximately 12,000 and control or maintain a strong presence in 40-50% of the 1,071 municipalities in Colombia.^[5]

30. The FARC have always obtained their resources illegally, through kidnapping, extortion and vacunas. Later, the FARC began to receive funds through associations with drug cartels, which provided the movement with arms and money. In exchange for this patronage, the guerrilla movement ceases hostilities against the drug cartels, protects facilities for the production and commerce of drugs and facilitates the transport of drugs. Nonetheless, the alliance that drug traffickers and paramilitary groups formed, at least at one time, led to instability and explosiveness in this relationship. Yet, the relationship between the FARC and the drug trade continues. It is also generally believed that some subgroups of the FARC actually produce and sell drugs.

31. The FARC has demonstrated its strength during the last several years, particularly in the southern Departments of Colombia. On August 30, 1996, the FARC attacked a military base at Las Delicias, Department of Putumayo, near the border of the Department of Caquetá. The guerrillas killed 29 soldiers and held 60. The soldiers remained under the control of the armed dissident group for 289 days, until June 15, 1997.

32. On December 21, 1997 the FARC captured another 18 soldiers in an attack on a military installation at Patascoy, on the border between the Departments of Nariño and Putumayo. In early March, 1998, fierce fighting began between the Army and the FARC in the jungles of the Caguán in the Department of Caquetá. The losses to the Army were some

of the worst ever suffered.

33. The FARC also began to fight closer to the capital recently. In February of 1997, heavy fighting broke out in a mountainous area 30 miles east of Bogotá, near the town of San Juanito. Approximately twenty soldiers were killed in that fighting.

34. In addition to engaging in combat with the Army, the FARC also carry out acts which demonstrate the degree of degradation of the conflict. For example, after an armed confrontation in the Department of Cundinamarca on February 18, 1998, members of the FARC placed a grenade in the corpse of a soldier who had been killed. When the body was returned to the military base for burial, the grenade exploded killing two soldiers and injuring five others.

35. The FARC have announced an interest in discussing possibilities for a peace negotiation. On July 10, 1998, after he was elected to the presidency but before his inauguration, Andrés Pastrana met personally with several members of the national leadership of the FARC, Manuel Marulanda Vélez (known as Tirofijo) and Jorge Briceño (known as Mono Jojoy), to discuss the possibility of initiating peace negotiations. The talks have moved forward since that time, although they were recently stalled when the FARC announced that they would not continue until they were convinced that the Government of President Pastrana was taking effective steps to combat the paramilitaries.

ii. The ELN

36. FARC dissidents formed the ELN. This group won the support of labor sectors in the Department of Santander. University elements joined its ranks as did a number of Catholic priests, following the example set by Father Camilo Torres who joined the movement and died in a clash with the Army in 1966. The ELN's leader of many years was a Spanish priest, Father Manuel Pérez, who died in February of 1998.

37. In recent years, the ELN has placed much emphasis on its attack on the legitimacy of the democratic process and has kidnapped numerous public officials and candidates for elections. The ELN acted against political figures with particular strength in the months preceding the municipal elections held in October of 1997. However, even after the elections, the ELN continued to kidnap mayors and local council members in great numbers. The ELN has also fought for the nationalization of the gas and oil industry. As part of this campaign, the ELN has carried out more than 600 dynamite attacks since 1986 against the infrastructure used by the industry. The ELN now has approximately 3,000-4,000 members.¹⁶¹

38. The ELN has announced its interest in the search for a negotiated political resolution of the armed conflict. President Pastrana met with the jailed representatives of the ELN, Felipe Torres and Francisco Galan, after his election, to discuss the peace negotiations. The group has demanded that a broad National Convention be held to discuss proposals for peace negotiations with civil society. The ELN recently held several preparatory meetings for that convention with State acceptance.

39. The ELN has suggested that, while the National Convention is being prepared, negotiations should lead to the humanization of the conflict, including a stricter application of the norms of international humanitarian law. The ELN asserts that it currently respects international humanitarian law norms. However, the practices of the ELN in relation to kidnappings for extortion, etc., make it clear that it does not in fact respect those norms as they are interpreted under international law. In June 1998, the ELN signed an agreement in which it pledged compliance with certain minimum rules of international humanitarian law. This agreement was signed with representatives of the National Peace Committee for

Colombia in Mainz, Germany. The signing of the agreement followed a dialogue between ELN leaders and representatives of the Colombian State and Colombian civil society. The peace talks with the ELN have advanced in the last few months.

iii. The EPL

40. The EPL surfaced in 1965. The group originally refused to participate in the peace efforts initiated by President Belisario Betancur. Eventually, one of its leaders, William Calvo, changed his position and signed a peace agreement in 1980. Much of the group's membership took advantage of a political amnesty offered to them. However, many of those who reinserted into civilian life eventually returned to guerrilla warfare when William Calvo was assassinated on a Bogotá street on November 20, 1985.

41. The EPL then became a party to the peace agreements concluded during the Government of President Virgilio Barco. Subsequently, many of its members have rejoined civilian life and have formed a political party known as Hope, Peace and Liberty (Esperanza, Paz y Libertad).

42. A very high number of reinserted EPL members have been assassinated. These assassinations are primarily carried out by the dissident faction of the EPL, which did not sign the peace accords, and by the FARC. At least in part as a result of the violence against them, some of the previous members of the armed dissident movement have now allied themselves with the Colombian State security forces and even with paramilitary groups.

b. Paramilitary Groups

43. The history of the formation of the current paramilitary groups is sketched above. As was noted above, some paramilitary groups have strong ties to elements of the State's public security forces although they often operate with significant autonomy. In addition, there exists significant evidence establishing connections between paramilitary groups and illegal drug trafficking.

44. In the past several years, illegal paramilitary groups have grown considerably in numbers, in strength and in control. There now exist groups at the local, regional and national levels. For example, paramilitary groups in the Department of Norte de Santander, particularly in the Ocaña area, distribute fliers announcing the activities of the Peasant Self-Defense for Northeast Colombia (Autodefensas Campesinas - Nororiente Colombiano). Similarly, there exists a paramilitary group which works in the violent Magdalena Medio region of Colombia, under the guidance of the well-known Ramón Isaza.

45. The best-known regional paramilitary organization is known as the Peasant Self-Defense for Córdoba and Urabá ("ACCU" – Autodefensas Campesinas de Córdoba y Urabá). This group, which has been sponsored by two brothers, Fidel and Carlos Castaño, originally operated in the region of Urabá in northwest Colombia. More recently, the organization has extended its influence to new areas including the Departments of Sucre and Bolívar, as well as to northern Antioquia. The Castaño brothers' father was kidnapped and killed by the FARC, and the brothers originally worked with MAS in the early 1980s.

46. The ACCU apparently has strong ties to the relatively new national organization referred to as the United Colombian Self-Defense Organization ("AUC" – Autodefensas Unidas de Colombia) or the Self-Defense Organization for Colombia (Autodefensas de Colombia). The decision to create a national organization for paramilitary groups was reached in a conference of paramilitary groups which resulted in the preparation of a document reflecting that decision. That document, from the "First Summit for

Colombian Self-Defense Groups” stated that the paramilitary groups would join together with the primary objective of “combating subversion”. The document sets forth a blueprint for the structure of the national organization. According to that plan, the organization would include units for military and logistic actions, for intelligence and promotion. Since that time, the paramilitary organization has held additional conferences and has published other position papers.

47. Numerous violent activities and massacres have been attributed to this national organization. According to the documents published by the organization itself, the group is now capable of moving its forces from one area of the country to another in order to carry out attacks and to take control over new areas of the country.

3. Other Factors contributing to the Violent Situation

a. The Drug Trade

48. Despite its anti-drug campaigns, including record fumigations of drug crops in 1997,^[7] Colombian territory produces one of the largest illicit drug crops in the world. According to Colombian National Police statistics, 50,000 hectares of Colombian land support coca crops. Other estimates are even higher.^[8]

49. The drug trade is inherently violent, because it involves activities outside of the boundaries of the law which include the handling of large amounts of money. Because the norms and mechanisms of the law do not apply to these activities, the disputes which inevitably arise are also resolved illegally, usually with violence.

50. In addition, those involved in the drug trade must constantly seek to protect themselves and their business from the scrutiny of the law. They use their capacity to commit acts of violence as the primary means of obtaining this end. At the same time, using the threat of violence, they engage in acts of bribery and extortion of public officials, introducing extreme levels of corruption into the State entities which must deal with the trade. Thus, the State is affected, either through violence against its agents or through their corruption.

51. In this way, drug trafficking agents and the business itself bring levels of violence and corruption which are intolerable and which threaten the very social, political and economic fabric of the country. In addition, the money which the State must place into the fight against drugs might otherwise be used to strengthen State programs addressing the needs of the poor. The diversion of these funds contributes to the situation of social and economic inequality which, in turn, often leads to additional violence.^[9]

b. Common Crime

52. The Commission reported in its 1996 Annual Report that 26,710 persons suffered violent deaths in Colombia in 1996. Of those, approximately 3,600 persons were killed for political or ideological reasons.^[10] These statistics are comparable to those given for other recent years. The Commission thus notes that the vast majority of violent acts committed in Colombia do not have direct political causes or implications. The State does not bear responsibility for the majority of these acts, which therefore do not constitute human rights violations.^[11] However, the extent and the nature of the acts committed as common crimes are no less horrendous.

53. Accepted statistics show that the murder rate in Colombia has reached approximately 89.5 murders per 100,000 inhabitants annually.^[12] This murder rate is the highest in Latin America and is almost nine times higher than the murder rate in the United

States. In its observations, the Colombian State provided a slightly different, although equally alarming, number. The State noted that National Police sources placed the homicide rate at 67 per 100,000 inhabitants.

54. Colombia also has the highest rate of kidnappings in the world. In fact, almost half of the kidnappings which occur in the world take place in Colombia.^[13] In 1996, the National Police Office of Criminal Investigations reported 1,436 kidnappings. Statistics provided by one non-governmental organization showed that 1,693 kidnappings occurred in 1997.^[14] The actual kidnapping rate is undoubtedly much higher, because these statistics must rely on reports or complaints regarding kidnappings. In many cases, individuals affected by kidnappings do not report this crime with the hope that the release of the victim will be easier if they do not contact State authorities.

55. Approximately 40% of kidnappings are committed by armed dissident groups.^[15] Many of the kidnappings carried out by the armed dissident groups have the purpose of extorting a ransom payment. The Commission will discuss, in the Chapter on violence and violations of international human rights and international humanitarian law, the application of international law to these acts. However, it may be noted here that international humanitarian law in no way supports the commission of such crimes, which may not be considered to constitute a legitimate part of the armed conflict. It is therefore not inappropriate to refer to these types of kidnappings, for ransom, as part of this section on common crime even when they are committed by armed dissident groups.

56. The high violent crime rate also has economic implications, since significant private and public resources are diverted away from other more beneficial uses to protection. The private sector has also spent an increasing amount of money on kidnapping ransom payments. Government statistics suggest that the private sectors lost more than 800 million dollars as a result of kidnappings, extortion and theft between 1990 and 1994.

57. The Commission wishes to emphasize the relation which exists between the violence relating to common crime and human rights violations. It has been suggested that improvements in the human rights situation would not have much of an impact on the overall situation of violence in Colombia, given that the majority of the violence relates to common crime and not to human rights violations involving State responsibility. The Commission does not share this view.

58. When State agents and the State itself are responsible for violent acts in violation of human rights, committed under the guise of official authority, common crimes where State responsibility is not present are also more likely to be prevalent. When its agents and collaborators commit illegitimate violent acts, the State permits and even participates in the creation of a culture of violence. Laws and norms serve in a society to mold human behavior towards compliance with those norms, through a system of disincentives and punishment for those who disobey. The State, through its agents, is charged with enforcing those laws and norms. When State agents fail to respect the law which they are expected to enforce, society as a whole is encouraged to disregard the rule of law.

59. In addition, when State agents become involved in violations of the law and human rights, their attention is drawn away from the enforcement of the law. Common criminals benefit from this diversion of resources which allows them to carry out violent acts with impunity. Also, the structure of impunity which must be created to avoid reprisals against State actors who commit human rights violations benefits all of those who act criminally in the society. When the investigative and judicial powers of the State are weakened in order to provide protection for those committing human rights violations, the State faces serious difficulties in bringing common criminals to justice. The Commission thus considers that if violations committed with State responsibility are curbed, an improvement in

the overall situation of crime and violence in Colombia may reasonably be expected to follow.

c. The Socio-Economic Situation

60. Of all the Latin American countries, with the exception of Brazil, Colombia experienced the greatest economic growth over the last 35 years. In the 1980s, Colombia had the highest growth in all of South America. Even during this high growth, however, severe social and economic inequalities have existed, including the concentration of wealth in the hands of a small percentage of the population.

61. According to figures from 1991 cited by the World Bank, the lowest 10% of the population holds 1.3% of income in the country.^[16] Another study, analyzing figures from 1992, noted similarly that the richest 10% of the population in Colombia earns 41.7 times what the poorest 10% of the population earns.^[17]

62. This report will address in greater depth the economic and social rights situation in Colombia in the Chapter which specifically addresses that subject. However, the Commission notes that the inequities, which have persisted despite economic development and growth, have been a constant source of conflict in Colombia. Nonetheless, it should also be noted that countries with similar or greater wealth disparities have not suffered from the same type of conflicts.

63. It should also be noted that state spending on social programs which would serve to ameliorate the problems created by poverty and economic inequalities is often shifted away from such programs as a result of the cost of fighting the different forces which challenge the State. Approximately 4% of the Gross Domestic Product was spent on the internal conflict during 1996.^[18] It is estimated that the armed forces and the National Police receive approximately 21.4% of the State's income from taxes.^[19]

64. Similarly, private spending by both rich and poor is diverted from more productive uses by the current level of violence in Colombia. For example, one woman from a poor neighborhood in Medellín stated, when interviewed by the Commission, that she could not lift her family out of poverty, because she was forced to spend a significant portion of her earnings on funerals and burials of family members who were killed. The economic difficulties faced by many Colombians thus may be seen as both a cause and an effect of the internal armed conflict and of the other violence which reigns in Colombia.

C. POSITIVE ASPECTS OF THE HUMAN RIGHTS SITUATION IN COLOMBIA

65. The human rights situation in Colombia presents certain positive aspects which the Commission must consider in its analysis. As the Commission has noted in its previous reports and in the press release issued upon the conclusion of its on-site visit, there exist in Colombia numerous institutions and State offices devoted to the protection and promotion of human rights, the majority of which are engaged in a serious and continuous effort to improve the human rights situation in Colombia. As the Commission has previously noted, institutions of this nature should be given the necessary support, both from the Government and from civil society, so that they may carry out their work even more effectively and efficiently.

66. The Commission draws attention, for example, to the work of the Human Rights Unit in the Office of the Prosecutor General of the Republic (Fiscalía General de la Nación). This body has succeeded in making some progress in combating impunity in cases of human rights violations and in overcoming the obstacles which have arisen in this

context.

67. The Commission also attaches importance to the program for the protection of human rights workers and other threatened persons. The Office of the Presidential Adviser on Human Rights (Consejería Presidencial para los Derechos Humanos), the human rights office in the Ministry of Foreign Affairs (Ministerio de Relaciones Exteriores), the 1290 Commission (Comisión 1290) and the Office of the Human Rights Ombudsman (Defensoría del Pueblo) also deserve recognition as institutions engaged in serious and committed work in favor of human rights.

68. In addition, the Commission notes the degree of organization which exists in civil society in Colombia. There exist non-governmental organizations dedicated to work in almost every imaginable area of possible interest to the Colombian population. Many such organizations work actively and continuously to better the human rights situation in Colombia through education, legal peaceful protest, the formulation of complaints before domestic and international legal systems as well as other means. These organizations and the rest of civil society speak openly and without restriction regarding the issues which face Colombians.

69. Many of these organizations have increasingly manifested their interest in obtaining peace in Colombia and have recognized the importance of the defense of human rights as a necessary condition for achieving that peace and for overcoming the violence which plagues Colombia. Their contribution necessarily improves the possibilities for improvements in the human rights situation and for peace in their country.

70. Since his inauguration as President, Andrés Pastrana has taken numerous courageous steps to push forward the peace process in Colombia. The Commission commends the President for this important effort which is of crucial importance for the future of Colombia. This body expresses its hope that the conversations begun with such seriousness and dedication continue forward and that lasting peace is achieved in Colombia. The Commission notes, however, that the human rights problems identified in this Report have not abated in recent months. They should be treated as a priority concern for the new Government of Colombia.

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^[1] Press Communique No. 20/97, Annual Report of the Inter-American Commission on Human Rights 1997, OEA/Ser.L/V/II.98, Doc. 7 rev., April 13, 1998, at 1117.

^[2] See Gonzalo Sánchez, Dony Meertens, *Bandoleros, gamonales y campesinos: El caso de la Violencia en Colombia*, 1985, at 42.

^[3] In its observations regarding this Report, the Colombian State offered a slightly different classification of the different categories of violence. The State suggested the following classification of the existing types of violence: 1) Violence originating in common crime; 2) Violence in daily life; 3) Violence of a political nature; 4) Violence caused by drug trafficking.

^[4] See Estanislao Zuleta, *Colombia: Violencia, Democracia y Derechos Humanos*, 1991.

^[5] See José Noé Ríos and Daniel García-Peña, *Building Tomorrow's Peace: A Strategy for National Reconociliation*, Report by the Peace Exploration Committee, September 9, 1997; Washington Post, "New Peace Council Faces Daunting Task," April 5, 1998; Alfredo Rangel, Conference in Melgar, Tolima during the Seminar/Workshop "El estado del conflicto político armado y su solución negociada," November 27, 1996.

^[6] See Washington Post, "New Peace Council Faces Daunting Task," April 5, 1998.

^[7] According to Colombian National Police and United States statistics, Colombia fumigated more than 48,000 hectares of illicit crops in 1997. "Colombia, primera en hoja de coca," El Tiempo, January 21, 1998.

^[8] Id.

^[9] Según información suministrada por el Estado, el país invierte cerca de mil millones de dolares anuales sólo para enfrentar el narcotráfico.

^[10] Annual Report of the Inter-American Commission on Human Rights 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, at 651.

^[11] It should be noted, of course, that the State may be responsible for non-political violent acts. Whenever State agents carry out illegitimate acts to the harm of fundamental rights, under the guise of their official authority, they incur in State responsibility regardless of the "political" or "human rights" nature of those acts. State responsibility also may attach to non-political crimes committed by private individuals where the State fails to seek to prevent or fails to react to those crimes. On the other hand, the State is of course not responsible for all political violence. As was mentioned above and will be discussed further throughout this report, many actors contribute to the violent situation in Colombia, and the State does not bear responsibility for all of the violence.

^[12] See Latin American Weekly Report, March 4, 1997, citing World Bank Report.

^[13] See "A. Latina, paraíso del secuestro," El Tiempo, October 27, 1995.

^[14] See "El año del secuestro," El Tiempo, January 25, 1998, citing statistics prepared by Free Country Foundation (Fundación País Libre).

^[15] See Statistics of the National Police Office of Criminal Investigations.

^[16] See World Bank World Development Report 1997, "The State in a Changing World," at 223.

^[17] See Latin American Weekly Report, 4 March 1997, citing Luis Felipe Jiménez and Nora Ruedi, "Rasgos estilizados de la distribución del ingreso y de sus determinantes en algunos países de la región."

^[18] See "El costo de la guerra," El Tiempo, March 11, 1998.

^[19] See Comisión Colombiana de Juristas, Colombia, derechos humanos y derecho humanitario 1996, at 55.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER II

HUMAN RIGHTS PROTECTION IN THE COLOMBIAN LEGAL AND POLITICAL SYSTEM

A. THE POLITICAL CONSTITUTION OF COLOMBIA

1. Pursuant to its Political Constitution, Colombia is a unitary, decentralized republic, democratic, participatory and pluralist in nature, founded on the respect for human dignity. Colombian sovereignty belongs to the people, and public power emanates from the people. The people exercise their sovereignty directly or through their representatives.

2. The current Colombian Constitution was adopted in 1991. The previous constitution dated to 1886 and had suffered many amendments, including major amendments in 1910, 1936, 1945, 1957 and 1968. The adoption of the 1991 Constitution was seen as an extremely important step towards the modernization of the State, the diversification and amplification of the democratic process and the possibility of peace.

3. On August 24, 1990, the Government of President César Gaviria Trujillo convened a National Constituent Assembly, pursuant to Decree No. 1926. On December 5, 1990, the people of Colombia elected the 70 representatives who would serve in that Assembly. It was an historic election in that the voters and candidates included former members of armed dissident groups, recently reassimilated into mainstream society. For example, the leaders of the M-19 participated in these elections. The representation elected to the General Assembly was the following: Liberal Party - 25; Democratic Alliance M-19 - 18; Movement for National Salvation (Movimiento de Salvación Nacional) - 11; Social Conservative Party (Partido Social Conservador) - 5; independent Conservative Party ballots - 4; Patriotic Union (Unión Patriótica)- 2; Indigenous Movement (Movimiento Indígena)- 2; Evangelical Movement (Movimiento Evangélico) - 2; Hope, Peace and Liberty (Esperanza, Paz y Libertad) - 2; Revolutionary Workers' Party (Partido Revolucionario de los Trabajadores) - 1; Indigenous Movement Quintín Lame (Movimiento Indígena Quintín Lame) - 1. The last two elected representatives did not have the right to vote.

4. After six months in session, on July 5, 1991, the National Constituent Assembly enacted the new Constitution, which consists of 380 articles and 60 transitory provisions. At the time of the writing of the "Second Report on the Situation of Human Rights in Colombia," the new Colombian Constitution was of extremely recent implementation and application. At this time, seven years after the adoption of the Constitution, the Inter-American Commission on Human Rights (the "Commission", the "IACHR" or the "Inter-American Commission") is able to better analyze the application of the standards and mechanisms it provides for the

protection of human rights.

B. THE STRUCTURE OF THE COLOMBIAN STATE

5. Like the 1886 Constitution it replaced, the 1991 Constitution establishes three branches of government: legislative, executive and judicial. It also establishes independent autonomous organs with specific functions to carry out the additional functions of the Colombian State. As the Commission noted in its "Second Report on the Situation of Human Rights in Colombia," the executive branch of government has historically been granted preeminent powers in the constitutional structure. However, the present constitution seeks to balance the relationship between the branches. To this end, the Constitution gives greater powers to the legislature to provide for political control over government and reinforces the independence of the judiciary and the role of judicial review of legislative and administrative acts. (See Organizational Chart of the Colombian State attached to this Chapter as Annex 1).

1. The Legislative Branch

6. The Legislative Branch consists of the Senate and the Chamber of Representatives, which together form the Colombian Congress which sits in the capital of the Republic. The basic function of the Congress is to amend the constitution, make laws and exercise political control over the government. Its members are all elected directly by the people for four-year terms of office. The Senate has 100 members elected at the national level, and the members of the Chamber of Representatives are elected by districts. Two additional seats in the Senate are set aside for representatives of the indigenous communities. Legislation may also provide for the election of members to the Chamber of Representatives, other than by district, to ensure the participation of ethnic groups and political minorities. Both the Senate and the Chamber of Representatives have committees on human rights.

7. The Congress has several important special powers. For example, Congress may grant amnesties or pardons for political crimes. Congress also has the power to approve or reject treaties which the Government makes with other states or with international bodies. Congress is required to give priority treatment to draft legislation for the approval of human rights treaties submitted by the Government for its consideration. The Congress may also grant the President of the Republic specific, extraordinary powers to issue norms that have the force of law, for a period of up to six months, when necessity or the public interest so requires.

2. The Executive Branch

8. The Executive Branch is headed by the President of the Republic, who serves as head of state, head of government and supreme administrative authority. The Executive Branch is also composed of the cabinet members and the directors of administrative departments. Pursuant to Article 188 of the Constitution, the President must not only observe and enforce the Constitution and the laws of Colombia but must also guarantee the rights and freedoms of all Colombians. The President has a term of office of four years and may not stand for re-election. The Cabinet includes the Ministers of Foreign Affairs, the Interior and Justice, all of whom fulfill important roles in the area of human rights protection. The Ministry of Foreign Affairs maintains constant relations with the Inter-American Commission, since it is the Government's foreign policy executor and leader for human rights and other issues.

9. Within the Office of the President of the Republic, there exists an Office of the Presidential

Adviser for the Defense, Protection and Promotion of Human Rights (Consejería Presidencial para la Defensa, Protección y Promoción de los Derechos Humanos). This office acts upon complaints regarding human rights violations processed in the domestic systems. The Office performs this work in cooperation with the relevant authorities, particularly the Office of the Prosecutor General of the Nation (Fiscalía General de la Nación), the Office of the Procurator General of the Nation (Procuraduría General de la Nación) and the pertinent tribunals. The Office also works to address requests made of the Colombian Government by intergovernmental and nongovernmental international bodies, in connection with the human rights situation in the country and the obligations undertaken by the Colombian State by virtue of the treaties and conventions which it has ratified. This Office thus carries out work relating to cases and situations processed by the Inter-American Commission on Human Rights. The Office carries out this part of its work in cooperation with the Colombian Ministry of Foreign Affairs.

3. The Judicial Branch

10. The Constitution provides that the administration of justice in Colombia is the responsibility of the Constitutional Court, the Supreme Court of Justice, the Council of State (Consejo de Estado), the Superior Council of the Judiciary (Consejo Superior de la Judicatura), the Office of the Prosecutor General of the Nation, the various tribunals and judges and the military justice system. The Constitution establishes that the administration of justice is a public function. The decisions made by the judiciary are independent and its proceedings are public. (See the Chart of Jurisdictions in Colombia attached to this Chapter as Annex 2).

a. The Supreme Court

11. The Supreme Court is the highest of the courts in the ordinary jurisdiction. Twenty-three magistrates are elected to serve on the Court by the Court itself from lists of candidates submitted by the Superior Council of the Judiciary. The magistrates serve an eight-year term. The members of the Court sit in plenary and in separate chambers for civil, criminal and labor appeals.

12. The Supreme Court is appellate in nature but also has the responsibility of investigating and trying certain high-level officials in first instance for any punishable offense of which they stand accused. These officials include the President of the Republic, the cabinet ministers, the Prosecutor General, the Procurator General, the Ombudsman for Human Rights (Defensor del Pueblo), other high-ranking officials and members of Congress. The Supreme Court also acts as a tribunal of cassation, including in cases tried in the military justice system.

b. The Council of State

13. The Council of State is the highest tribunal in the contentious-administrative jurisdiction. It also serves as the Government's advisory body on matters of administrative law. Twenty-six magistrates are elected to the Council of State by that same body from lists of candidates submitted by the Superior Council of the Judiciary. The magistrates serve an eight-year term. The members of the Council of State serve in plenary chamber and in the contentious-administrative chamber and in the advisory and civil service chambers.

14. The contentious-administrative chamber takes cognizance of actions seeking nullification, on the grounds of unconstitutionality, of decrees issued by the national government which do

not fall within the jurisdiction of the Constitutional Court. It also hears cases alleging the illegality of national administrative acts issued by any branch of government or by private entities performing public functions. The third section of the contentious-administrative chamber handles matters of direct reparations for government acts and omissions which cause harm to individuals. These proceedings include those in which individuals seek to hold the State liable for human rights violations committed by its agents.

c. The Constitutional Court

15. The Constitutional Court represents the constitutional jurisdiction provided for as part of the Colombian judicial system. The Senate elects the magistrates of the Constitutional Court for an eight-year term. The magistrates should have backgrounds in different areas of the law.

16. The Constitutional Court has a number of functions, including the following: 1) decides cases brought by citizens alleging the unconstitutionality of acts that amend the Constitution on the grounds of procedural error; 2) decides whether the convocation of a referendum or constituent assembly to amend the Constitution complies with the Constitution where procedural error is alleged; 3) decides cases filed by citizens alleging the unconstitutionality of laws or decrees with force of law, on procedural or substantive grounds; 4) decides the constitutionality of the decrees issued by the Government pursuant to a declaration of state of emergency; 5) decides the constitutionality of draft laws and statutes that the Government has challenged as unconstitutional, on procedural or substantive grounds; 6) reviews lower court decisions on actions by individuals for the protection of constitutional rights ("tutela" actions); 7) decides the constitutionality of international treaties.

17. The Commission has observed that the Constitutional Court, which only began to function in 1992, has attained a high level of respectability and prestige through its independent and objective treatment of issues of great importance for the exercise of human rights and the rule of law in Colombia. The Court has issued well-reasoned decisions on issues ranging from the constitutionality of amnesties for political crimes, legislation relating to the rights of women in the work force, declared states of emergency, etc... The Court's role as the final arbiter in tutela actions, which serve to define fundamental rights, has also been extremely positive. The Court has issued decisions ordering protection for the rights of indigenous groups, members of the Patriotic Union political party and others. The Commission will discuss some of these decisions at greater length in the relevant sections of this Report. The Commission is very pleased to report that the Commission and the Constitutional Court of Colombia have developed a special agreement for cooperation between the two bodies. This agreement will be signed in the headquarters of the Commission on November 17, 1998.

d. The Office of the Prosecutor General of the Nation

18. The Office of the Prosecutor General of the Nation consists of the Prosecutor General, the delegate prosecutors (fiscales delegados) and other functionaries. The Supreme Court of Justice elects the Prosecutor General of the Nation, from a list of candidates submitted by the President, for a four-year term. The Office of the Prosecutor General forms part of the judiciary and enjoys administrative and budgetary autonomy.

19. The Office of the Prosecutor General has the responsibility of acting, either independently or in response to a complaint, to investigate crimes and to bring charges against suspects before the competent courts and tribunals in both the ordinary and regional justice systems.

The Office of the Prosecutor General does not have this competence in the case of crimes which fall under the jurisdiction of the military justice system. The creation of the Office of the Prosecutor General and the resulting establishment of two separate entities for the investigation and the trial of criminal cases is an innovation in the 1991 Constitution.

20. In order to carry out its functions as an investigative and prosecutorial body, the Office of the Prosecutor General may adopt measures to ensure that criminal suspects will appear before the courts, including the issuance of preventive detention orders. The Office of the Prosecutor General also directs and coordinates the work of investigative entities which depend upon the National Police and other similar agencies. The Office may also adopt measures to protect victims, witnesses and other persons involved in criminal proceedings.

21. Within the Office of the Prosecutor General, there exist several areas which work closely with human rights cases. The Human Rights Unit (Unidad de Derechos Humanos) works to prosecute cases of special importance involving alleged human rights violations before the regional justice system tribunals. This Unit works with many of the cases which have been presented before the Inter-American Commission as individual complaints. The Office of International Affairs (Oficina de Asuntos Internacionales) works to coordinate with and provide information to international bodies, including the Commission, in regards to cases which are of interest to those bodies and which are being prosecuted by the Office of the Prosecutor General.

22. The Commission considers that the creation of the Office of the Prosecutor General of the Nation constituted an important advance in the administration of justice in Colombia. The Office has developed a reputation as a generally credible public office. It has also professionalized and made more efficient the investigation and prosecution of criminal cases, although there continue to exist serious problems in the criminal justice system in Colombia which will be discussed in greater depth later in this Report. As the Commission has previously noted, the Human Rights Unit of the Office of the Prosecutor General of the Nation deserves special recognition for having achieved advances in important human rights cases in the face of strong attacks from various sectors that have sought to impede the work of that office. The Human Rights Unit has ordered numerous detentions of alleged violators of human rights and has obtained some important convictions.

e. The Superior Council of the Judiciary

23. The Superior Council of the Judiciary is also an institution created by the Constitution of 1991. The Superior Council is divided into the Administrative Chamber (Sala Administrativa) and the Jurisdictional Disciplinary Chamber (Sala Jurisdiccional Disciplinaria). The Administrative Chamber consists of six magistrates, two of whom are elected by the Supreme Court, one by the Constitutional Court and three by the Council of State. The Jurisdictional Disciplinary Chamber is composed of seven magistrates elected by Congress.

24. The Superior Council of the Judiciary carries out numerous administrative and organizational duties relating to the Colombian courts and the practice of law in Colombia. For example, the Superior Council prepares lists of candidates for appointments to the judiciary, punishes misconduct by members of the judiciary and practicing attorneys, monitors the performance of law firms and offices and prepares the proposed budget for the judiciary.

25. The Superior Council of the Judiciary has one additional responsibility which has a significant impact on many cases involving serious human rights violations. The Superior Council has jurisdiction to settle the conflicts of competence which arise between the different jurisdictions. This role becomes relevant in human rights cases when the Superior Council must often decide whether a case should come under the jurisdiction of the ordinary justice system or that of the military justice system.

f. Military Criminal Courts

26. Article 221 of the Constitution of Colombia reads as follows:

Military courts martial or tribunals shall take cognizance, in accordance with the provisions of the Military Penal Code, of crimes committed by members of the Public Forces in active service and in connection with that service. (*)

This provision applies to members of the National Police as well as to members of the Military Forces (Army, Navy and Air Force), which together constitute the Public Forces.

27. The military criminal justice system in Colombia has been organized in accordance with the provisions of the Military Criminal Code (Código Penal Militar) issued on December 12, 1988, pursuant to Decree 2250. The commander of the respective division, brigade, battalion or other entity initiates the proceedings in the military criminal justice system and serves as the court of first instance in conjunction with the courts martial (consejos verbales de guerra) which he names. The courts martial are headed by the President of the Court-Martial, who plays a special role in the proceedings. The decisions of the courts martial may be appealed on certain grounds to the Superior Military Tribunal (Tribunal Superior Militar). The Superior Military Tribunal is the appellate tribunal in the military justice system. The President of the Superior Military Tribunal is the Commander of the Military Forces.

4. Organisms of Control (Órganos de Control)

28. In the section setting forth the structure of the State and establishing the three main branches of government, the Colombian Constitution also establishes the "organisms of control" which do not fall under the three main branches. The organs of control are the Public Ministry (Ministerio Público) and the Comptroller General of the Republic (Contraloría General de la República). The Comptroller General supervises the administration of public funds. The Public Ministry is assigned functions relevant for the analysis of the human rights situation in Colombia.

29. The Public Ministry is headed by the Procurator General of the Nation. The Procurator General is elected for a four-year term by the Senate from a list of candidates presented by the President, the Supreme Court and the Council of State. The Procurator General and his delegates are assigned a wide array of responsibilities, including the protection of human rights and the defense of the Constitution and laws of Colombia. The work carried out under the Public Ministry and the Procurator General is divided among the Office of the Procurator General of the Nation and the Office of the Human Rights Ombudsman.

a. Office of the Procurator General of the Nation

30. The Office of the Procurator General is responsible for carrying out disciplinary

investigations and sanctions against State agents, including both civilians and members of the State's security forces. The Office thus has the right, for example, to investigate human rights violations and eventually to order the removal from service of members of the Military Forces, the National Police or any other State agent for responsibility in those violations. The Office of the Procurator General of the Nation is divided into the offices of the delegate procurators (procuradurías delegadas) to carry out this work. For example, there exist delegate procurators for human rights (responsible for disappearances, torture and massacres), for the Military Forces, for the National Police and for the Judicial Police.

31. The Office of the Procurator General also may intervene in judicial and administrative proceedings, including those carried out in the military justice system, when necessary to preserve respect for human rights. In practice, this faculty allows the Procurator's staff to request that additional persons be accused in criminal cases, that investigations be opened or closed, that charges be brought, etc... in both the ordinary criminal justice system and in the military criminal justice system. The Commission notes, however, that the Office of the Procurator General's intervention in criminal proceedings in the military justice system has been extremely limited.

32. The Office of the Procurator General plays an important and generally positive role in human rights cases. The sanction of State agents involved in human rights abuses constitutes an important piece of the reparation which must be provided in such cases. The Office of the Procurator General has applied disciplinary sanctions in many cases where the criminal proceedings have not resulted in the conviction and criminal sanction of the individuals responsible for human rights violations. Although the State is required in most of these cases to carry out effective criminal investigations and proceedings, resulting in the criminal sanction of those responsible, the State does at least discharge some of its duty to respond through the disciplinary sanction. Those who commit human rights violations, using their authority as public officials, should not continue to hold the same position of authority. Disciplinary proceedings in the Colombian legal system can serve to ensure that they are not allowed to do so.

33. It should be noted, nonetheless, that disciplinary proceedings in Colombia have not always functioned in this positive manner. In many cases, the proceedings have been ineffective and inefficient. The State has failed to sanction many human rights violators by allowing the disciplinary action to be barred by the statute of limitations or by acting ineffectively in gathering and preparing the necessary evidence. In other cases, the sanctions assessed have not reflected the seriousness of the violation committed.

34. The Commission notes that the Office of the Procurator General has the power to carry out disciplinary investigations and sanctions against those judicial authorities who act improperly in carrying out criminal proceedings, in both the ordinary criminal justice system and the military criminal justice system. This faculty could serve as an important tool for combating impunity in the administration of criminal justice. However, to the knowledge of the Commission, the Office has seldom carried out such investigations to a positive conclusion.

35. The Commission considers that the work of the Office of the Procurator General of the Nation should continue to improve to ensure that the Office fulfills its mission. The work of the Office should and can serve as an important tool for the protection and promotion of human rights in Colombia.

b. Office of the Human Rights Ombudsman

36. The Office of the Human Rights Ombudsman carries out its duties under the direction of the Procurator General of the Nation. The Ombudsman is elected by the Chamber of Representatives, from a list of candidates presented by the President, to serve a four-year term.

37. The Ombudsman works to achieve the promotion and protection of human rights. As such, he is responsible for carrying out education, training and publicity regarding human rights issues. In addition, the Ombudsman has the competence to invoke the right of habeas corpus and the ability to initiate tutela proceedings.

38. The Office of the Human Rights Ombudsman has played an important role in human rights protection in some cases. For example, in 1992 the Constitutional Court ordered the Office of the Ombudsman to prepare a report regarding the situation of the Patriotic Union political party. The report prepared was very clear and comprehensive and has served as an important tool for understanding the tragic and complex situation of the Patriotic Union. Similarly, the ombudsman appointed by the Office to the region of Urabá for several years, María Girlesa Villegas, played an important role in bringing human rights abuses in that area to the attention of the appropriate authorities and international bodies. The Office of the Ombudsman has also carried out important work relating to the indigenous populations. For example, the Office filed a tutela action on behalf of the U'wa indigenous community defending their right to be consulted adequately before oil exploration was carried out on their territory.

39. The Office of the Human Rights Ombudsman should receive the necessary support from the Colombian Government and other entities of the Colombian State in order to allow the Office to fulfill its promise as an organ dedicated to the promotion and protection of human rights.

C. CONSTITUTIONAL PROTECTION FOR HUMAN RIGHTS

40. Colombia has a long history of providing legal and constitutional protections for human rights. The forefather of human rights in Colombia, Antonio Nariño, translated the 1789 French Declaration of the Rights of Man from French to Spanish. As a result of his work, Colombia was perhaps the first nation in the Spanish-speaking New World where the subject of legal protection for human rights was discussed. The Colombian constitutions that predated the 1886 and 1991 constitutions recognized the existence of human rights in the Colombian legal structure.

41. The Constitution of 1991 demonstrates a renewed and deepened emphasis on the recognition and protection of human rights. The very nature of the State and its responsibilities, as set forth in Title I of the Constitution, reflect this emphasis. As noted above, the constitutional description of the nature of the Colombian State, found in Article 1 of the Constitution, includes a direct reference to the principle of respect for human dignity. Article 2 of the Constitution then proceeds to set forth the essential functions of the Colombian State, including that of ensuring the effectiveness of the principles, rights and duties set forth in the Constitution. That same article provides that the Colombian authorities are responsible for protecting the life, honor, property, beliefs, and other rights and liberties of those living in Colombia. Article 5 of the Constitution establishes that the State recognizes

the primacy of the inalienable rights of individuals, without discrimination of any kind.

42. Title II of the Colombian Constitution contains an impressive catalogue of human rights. Chapter 1 of Title II is titled "Regarding Fundamental Rights." This Chapter sets forth, among others, the right to life and the prohibition against forced disappearances, torture and cruel, inhuman or degrading treatment and slavery. It also establishes the right to equal treatment and protection, the right to juridical personality, the right to personal and familial privacy, the right to free development of personality, the right to freedom of circulation, the right to honor, the right to political participation and the rights to freedom of conscience, religion, expression, reunion and association. The Constitution guarantees, in turn, the right of rectification. The death penalty is prohibited by this Chapter. This Chapter also sets forth the principle that peace is a right and duty.

43. Chapter I of Title II further establishes that the State must create conditions which allow the right to equality to become real and effective and must adopt special measures in favor of groups which suffer discrimination or marginalization. Further, the State must provide special protection for those who are especially weak, due to economic, physical or mental reasons. The Constitution further guarantees the right to work, teach, learn and research.

44. This same Chapter establishes that individuals have the right to be informed about the information relating to them which has been gathered in data banks or other records of public and private entities. The Constitution recognizes the right to correct that information.

45. Chapter I of Title II also set forth explicit rights relating to detention and due process. The authorities may not carry out any arrest or detention except as set forth by law and by written order of the competent authority, although perpetrators of crimes found committing a crime ("en flagrancia") may be detained and brought before a judge by any individual. Any individual placed in detention must be brought before a judge within 36 hours after his arrest. The right to due process applies in all judicial and administrative actions. Everyone is presumed innocent until proven guilty. Criminal defendants enjoy the right to a defense, a public trial and a publicly appointed lawyer or one of their own choosing, during the investigation and trial stages of criminal proceedings. Evidence obtained in violation of due process is considered null and void. The writ of habeas corpus, which must be decided within 36 hours, is also established.

46. Chapter II of Title I sets forth the social, economic and cultural rights recognized by the Constitution. This Chapter establishes that the family is the fundamental unit of society. It further establishes that violence within the family is considered destructive to that unit and will be sanctioned by the law. This Chapter also sets forth a catalogue of fundamental rights guaranteed to children, including the right to be protected from violence, exploitation and dangerous work.

47. Chapter II of Title I also sets forth the right to education, to Social Security, to health care, to adequate housing and to recreation. It also establishes the right to collective bargaining and the right to strike. The right to property is guaranteed, but the State is also obliged to promote collective ownership of property.

48. Chapter III of Title II sets forth collective and environmental rights. This Chapter provides for the right to a healthy environment. It also establishes the duty of the State to protect environmental diversity and integrity and to protect public space so that it may be

reserved for common use. Finally, this Chapter prohibits the fabrication, import, possession or use of chemical, biological and nuclear arms.

D. CONSTITUTIONAL MECHANISMS FOR HUMAN RIGHTS PROTECTION

49. The primary mechanism for protection against human rights violations established in the Colombian Constitution is the "tutela" action. Article 86 of the 1991 Constitution provides for this cause of action. This action allows an individual to access the courts in an expedited manner to seek protection against current or imminent violations of "fundamental rights" protected by the Constitution. The Constitutional Court has the competence to review first instance decisions in tutela actions. In addition, the Constitutional Court has broadened the applicability of the tutela action through jurisprudence which expands the category of rights which may be treated in a proceeding of this nature. The Court has adopted a line of reasoning which allows the tutela action to be used also to protect rights which are related or connected to those fundamental rights specifically included as being subject to this protection pursuant to Article 86 of the Constitution.

50. The Commission has observed that the tutela action has become an important tool for the prevention of human rights violations and for the protection of the effective exercise of the rights set forth in the Constitution and in international instruments relating to human rights. The remedy has generally been applied broadly and rapidly. The decisions of the Constitutional Court in tutela actions have benefited sectors of society which traditionally have not had access to rapid and effective judicial protection, such as children, workers, indigenous communities and women.

51. In September of 1997, the Colombian Congress discussed legislation proposed by the Council of State, the Supreme Court and the Superior Council of the Judiciary which would have limited the tutela action. Congress did not adopt the legislation. However, the Commission considers it necessary to express concern regarding such proposals to reform the tutela action.

52. The Constitution also provides for the writ of habeas corpus as a mechanism for protection against illegal deprivation of liberty. Article 30 of the Constitution requires that a writ of habeas corpus must be decided within 36 hours.

53. In addition, the various judicial and control entities established in the Constitution, as described above, apply their procedures in human rights cases after a violation has occurred. These mechanisms, when they work properly and effectively, may provide for the investigation, processing and sanction of human rights violators as well as compensation for the harm caused.

E. STATES OF EXCEPTION IN THE COLOMBIAN LEGAL SYSTEM

54. Articles 212 and 213 of the Colombian Constitution allow the President, with the consent of his ministers, to declare a state of exception principally in two situations; the first is in the event of foreign war, while the second is in the event of a serious disruption of the domestic public order that poses an imminent threat to the stability of the democratic institutions, the security of the State or peace among the citizenry. (1) The President may only declare a state of emergency in the second case when the emergency cannot be corrected through the use of the normal police powers of the State. The Constitutional Court engages in a review of

the constitutionality of all declarations of states of emergency.

55. When the President declares a state of emergency, he enjoys special faculties to take measures to correct the situation which led to the declaration of a state of emergency and may issue special decrees with the force of law for this purpose. However, the Constitution limits the special faculties given to the President on these occasions to those "strictly necessary to correct the causes of the situation and to prevent the extension of its effects." The Constitution further provides that human rights and fundamental liberties may not be suspended during a state of emergency. The norms of international humanitarian law must also be respected at all times. In addition, the measures which are adopted pursuant to the state of emergency must be proportional to the seriousness of the situation.

56. The requirements for the declaration of a state of emergency and the restrictions on the measures which may be taken pursuant to such a declaration set forth in the Colombian Constitution appear to be generally compatible with the requirements established in Article 27 of the American Convention on Human Rights. The American Convention allows for the declaration of a state of emergency "[i]n time of war, public danger, or other emergency that threatens the independence or security of [the] State." The Inter-American Commission has repeatedly made clear that the conditions permitting the declaration of emergency are specifically stipulated and strictly interpreted. ([2](#))

57. First, the circumstances invoked to justify the declaration of the state of emergency must be exceptional, very serious and must constitute an imminent threat to the organized life of the State. ([3](#)) Second, the measures taken upon declaring a state of emergency are valid only so long as they are limited "to the extent and for the period of time strictly required by the exigencies of the situation." ([4](#)) In addition, these measures may not be inconsistent with the State's other obligations under international law and may not involve discrimination on the ground of race, color, sex, language, religion, or social origin. ([5](#)) Third, certain fundamental rights listed in Article 27(2) may not be suspended in any circumstances ([6](#)).

58. The Commission notes that the 1991 Colombian Constitution provides additional limitations on the figure of the state of emergency in Colombia which constitute significant improvements over the parameters established in previous constitutions. The Constitution now establishes time limits for states of emergency. States of emergency declared as a result of war can last indefinitely. However, a state of emergency declared because of a grave internal disturbance may initially last only ninety days. It may then be extended twice. A second extension requires advance approval by the Senate. Legislative decrees enacted during a state of emergency may remain in effect for an additional 90 days after the state of emergency has ended. Thus, in the event of a grave internal disturbance, the President may declare a state of emergency which can continue for up to 270 days and may adopt special measures which may remain in place for as long as 360 days.

59. The Constitution also now provides for judicial review of state of emergency declarations by the Constitutional Court. The establishment of this check constitutes an important move forward. The Government must immediately refer to the Constitutional Court the legislative decrees it issues in exercise of the special powers granted pursuant to a declaration of a state of emergency. The Constitutional Court then makes the definitive ruling as to the constitutionality of the measures adopted.

60. The Commission has always considered that measures imposing a state of emergency should be exceptional and strictly supervised. The Commission thus always carefully analyzes

this mechanism. In Colombia, careful supervision of the use of the state of emergency is particularly necessary. As the Commission noted in its 1996 Annual Report, Colombia had, at the time of that writing, been governed under states of emergency for 36 of its past 44 years. ([7](#))

61. Despite the legal improvements mentioned above, the Commission continues to observe worrisome trends regarding the use of the state of emergency in Colombia. First, the time period established in the Constitution for states of emergency based on grave internal disturbance may be excessive in many cases. The state of emergency may only last as long as the exceptional circumstances leading to the emergency continue. The Commission finds it difficult to envision many situations where an extraordinary circumstance requiring a declaration of a state of emergency would continue for 270 days or nine months.

62. The Constitution does provide that the state of emergency must be terminated as soon as the situation of public disturbance has been resolved. The state of emergency may thus theoretically be terminated before the nine-month maximum period has expired. However, the existence of the lengthy maximum period in the Constitution encourages use of that full period of time. The Commission notes that such has been the experience under the 1991 Colombian Constitution. For example, President Ernesto Samper declared a state of emergency in October of 1995 which continued for the maximum period of time. On that occasion, the Government also took advantage of the Constitutional provision allowing the special measures adopted under the state of emergency to continue in effect for an additional 90 days. Colombia was thus governed under state of emergency measures for a full year.

63. This provision allowing for the special measures adopted to continue in effect for an additional 90 days after the termination of the state of emergency also concerns the Commission. As mentioned above, international law and the American Convention clearly establish that any special measures must be limited to the period of time strictly required by the exigencies of the situation. The Commission finds no justification for a Constitutional provision which allows special measures to continue after the state of emergency justifying those measures has terminated.

64. The Commission also expresses its continuing concern regarding the reasons presented to justify states of emergency and the types of measures adopted pursuant to those states of emergency. In its "Second Report on the Situation of Human Rights in Colombia," the Commission expressed its concern regarding the states of emergency announced in 1992, pursuant to Decrees 1155/92 and 1793/92. In this report, the Commission will refer to the more recent state of emergency declared in November of 1995 by ex-President Ernesto Samper, pursuant to Decree 1900 of 1995.

65. As justification for this declaration of emergency, the President cited "violent events in different areas of the country" and the murder of conservative politician Alvaro Gómez Hurtado. ([8](#)) The Commission believes that the situation cited as providing grounds for the declaration of a state of emergency does not constitute an exceptional situation which could not have been addressed by normal means. The Commission notes, in this regard, that the American Convention permits restrictions and limitations on the rights protected therein which should be invoked before resorting to a state of emergency.

66. Additional violent events of the kind generally occurring in Colombia cannot justify a state of emergency, as they are not exceptional and do not constitute an imminent threat to the organized life of the nation. In the declaration of state of emergency, the President asserted

that the violent events prove the existence of "various violent apparatuses" which have a capacity to destabilize the State. Yet, the President did not even make clear in the decree which of the various possible sources of violence (armed dissident groups, drug trafficking, etc...) were considered to have responsibility for the exceptional situation, requiring special measures to combat that source.

67. Nor may the assassination of political leader Alvaro Gómez Hurtado justify the state of emergency. It is an unfortunate fact that political leaders are often killed in Colombia. The situation was thus not exceptional and there is no indication that the normal police powers of the State could not function to clarify the death and bring those responsible to justice. In fact, the murder of Mr. Gómez was not clarified in judicial proceedings during the entire period of the state of emergency. More recently, the authorities have named suspects in the case, although no state of emergency exists.

68. The Constitutional Court confirmed the legality of the state of emergency in a decision issued in January of 1996. Some commentators have suggested that the Court did not adequately analyze whether a sufficient connection existed between the cited causes of the state of emergency and the special measures adopted to correct the situation. It has also been suggested that the Court approved this state of emergency as a result of political pressure placed upon the Court after it declared unconstitutional a previous state of emergency declared by President Samper in August of 1995.

69. The Commission wishes to emphasize the importance of judicial review of declarations of states of emergency. Such review provides a crucial guarantee against the declaration of states of emergency other than on the grounds and pursuant to the limitations set forth in the Colombian Constitution and international law. All entities of the Colombian State, including the Constitutional Court, should jealously guard this mechanism.

70. The Commission is thus concerned by additional information indicating that proposed constitutional reform measures presented in August of 1996 would have eliminated Constitutional Court judicial review of states of emergency. (9) The Commission views as a negative development the proposal of these types of reforms. The adoption of such measures would clearly have a negative effect by eliminating judicial review. The mere proposal of these measures also may have a negative effect by serving as a means of political pressure on the Constitutional Court, thus limiting the Court's independence in reaching decisions regarding states of emergency.

71. The Commission also expresses concern regarding the nature of the special measures adopted by President Samper during the state of emergency declared in November of 1995. The vague rationale for the state of emergency based on "violent events in different areas of the country" makes impossible any analysis as to whether the measures adopted were those strictly necessary to correct the situation. This is particularly true since it is not even clear which sources of violence the measures were intended to combat.

72. Nonetheless, the Commission does note that many of the measures adopted provided the military with broad power over civilian authorities and the general population. Specifically, in April 1996 President Samper issued Decree 717, creating "special public order zones" ("zonas especiales de orden público"). In those areas of the country designated as public order zones, the military authorities acquired operational control over the territory and over all authorities, including local government officials and the judicial police.

73. The mechanism provided in Decree 717 for the designation of public order zones added to the transfer of power to military authorities. The decree provided that the local military commanders would, where they considered necessary, propose the designation of public order zones in the areas under their control. The governor of the relevant department would then define the public order zones based on this proposal. ([10](#))

74. The special measures adopted in the public order zones included granting the military and the police authorization to carry out searches without judicial order. The military and the police also were authorized to detain, without a judicial order, any person considered to have a connection to criminal activities. The detained individual could then be held by the security forces for a period of 36 hours before being taken before a judicial authority. ([11](#))

75. The Commission must note, in relation to these measures, that it has previously expressed concern regarding provisions which allow the military to carry out investigations and arrests, even in emergency situations. ([12](#)) These functions should properly belong to regular or special judicial police forces acting under the supervision of the judiciary. The mobilization of the armed forces to combat crime implies placing troops trained for combat against an armed enemy in situations which require specialized training in law enforcement and interaction with civilians. In addition, this situation creates serious confusion regarding the balance of powers and the independence of the judiciary. The authority usually granted to the judicial bodies to order or deny searches, to order and carry out arrests or to release individuals in detention is transferred to authorities which form part of the executive branch. These difficulties lead to an additional concern regarding the provision which allowed these detentions by military authorities to continue without any judicial review for a period of 36 hours.

76. The militarization of the public order zones may have contributed to the violent events which occurred during the marches and activities organized by the inhabitants of Guaviare, Putumayo and Caquetá between July and September of 1996. These protest activities were directed against alleged abuses committed by State security forces in the course of implementing drug eradication strategies.

77. Confrontations occurred between the protestors and the security forces during the course of the protests. According to information received by the Commission from non-governmental organizations and eyewitnesses, the confrontations resulted in the arbitrary detention of more than 400 persons, physical violence against representatives of the press, the killing of 13 persons and the injury of 111 more. ([13](#)) According to the information given to the Commission, the deaths and injuries resulted from the use of excessive force by members of the Colombian security forces. The Commission has received information indicating that Colombian security forces, on many occasions, used tear gas and discharged their guns to impede the advance of the protest marches without regard to the rules on proportionality in the use of force which govern such situations.

78. The Commission considers that, despite the remaining troubling questions regarding the use of states of emergency, it is nonetheless finally becoming clear in Colombia that this mechanism may only be used in exceptional circumstances and in a limited manner. The Government has recently desisted from declaring states of emergency in circumstances which, in the past, might well have provoked such a declaration. For example, the situation leading up to the municipal elections of October, 1996 presented extremely difficult circumstances, including the boycott of the elections by various armed dissident and paramilitary groups and the kidnapping of several Organization of American States ("OAS")

election observers. Yet, the Government did not declare a state of emergency for the electoral period.

F. COLOMBIA AND INTERNATIONAL HUMAN RIGHTS LAW

1. Colombia's International Obligations

79. The Colombian State has shown an ever-increasing willingness to work cooperatively with the international community toward the improvement of the human rights situation in Colombia. To this end, in 1996, the Government of Colombia accepted the establishment in Bogotá of an office of the United Nations High Commissioner for Human Rights. The office began its work in the first part of 1997. Its mandate includes supervision of the human rights situation in Colombia and the provision of assistance to the Government, civil society and non-governmental organizations in the field of human rights protection. The office also has the competence to refer individual complaints which it receives to the pertinent international bodies, including the Inter-American Commission. The office is headed by Almudena Mazarrasa, a Spanish national, and began its work with a staff of only five human rights experts. Recently, there has been discussion regarding the possible expansion of the office. The Colombian Government has also signed agreements with the International Committee of the Red Cross and with the Office of the United Nations High Commissioner for Refugees to carry out work in Colombia. Within the Colombian Government, the 1290 Commission created by presidential decree brings together high-level Government officials to work on the implementation of general recommendations from international human rights bodies.

80. The Colombian State has signed and ratified most of the international covenants, protocols and conventions related to human rights. In addition to ratifying the American Convention on Human Rights on July 31, 1973, Colombia accepted the competence of the Inter-American Court of Human Rights on June 21, 1985. In the inter-American system, Colombia also ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women on November 15, 1996 and the Protocol of San Salvador for the protection of economic, social and cultural rights. The legislature also recently approved legislation allowing for ratification of the Inter-American Convention to Prevent and Punish Torture. (14) In the universal human rights system of the United Nations, Colombia is a party to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights as well as other important instruments relating to human rights. In addition, Colombia is a state party to the four 1949 Geneva Conventions providing for the application of international humanitarian law and their Additional Protocols of 1977, as well as the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. (See Chart of the Status of Ratifications of the Major International Instruments Relating to Human Rights attached to this Chapter as Annex 3).

81. The Commission considers that the tasks being undertaken by Colombian authorities for the protection of human rights would be strengthened if the Colombian State were to ratify additional international instruments, such as the Inter-American Convention on the Forced Disappearance of Persons. The Colombian Government signed this treaty in 1994, but the Colombian Congress has not yet ratified the agreement. The Commission does note that the Colombian Constitution prohibits the forced disappearance of persons and the Colombian Government, in 1997, again presented legislation which would establish the crime of forced disappearance of persons. As of the date of the final approval of this Report by the Commission, the draft law had been approved by the Chamber of Representatives and was scheduled to be taken up by the Senate in the coming months.

82. Pursuant to article 93 of the Constitution of Colombia, international treaties and conventions relating to human rights prevail over contrary norms in the domestic legal system. In addition, the rights and duties set forth in the Constitution must be interpreted in conformity with the international human rights treaties ratified by Colombia.

83. Colombia has certain substantive and jurisdictional obligations which emanate from the treaties which it has ratified. First, Colombia must comply with the norms for the protection of human rights in the various treaties which it has ratified. Second, Colombia has accepted the jurisdiction of the international bodies established to serve as a last resort in cases where human rights violations have occurred and have not been corrected and/or repaired on the domestic level by the Colombian State.

84. The international bodies with jurisdiction over human rights cases, such as the Inter-American Commission on Human Rights, seek to ensure compliance with international norms. Where a violation of those norms occurs, the Inter-American Commission, the Inter-American Court of Human Rights or other international bodies may eventually issue a decision finding the State responsible for the violation and ordering the restoration of the violated right where possible, the punishment of those responsible for the violation and monetary and other compensation for the harm caused.

85. The Colombian State is obliged to comply, in good faith, with the recommendations of the Commission set forth in its reports on individual cases. This obligation derives directly from Colombia's commitment to provide for the protection of human rights, assumed through ratification of the American Convention on Human Rights and the Charter of the OAS. By nature of this commitment, Colombia is automatically required to observe the norms set forth in the American Convention as well as in the American Declaration of the Rights and Duties of Man. The Commission is the body in the OAS system which has primary responsibility regarding human rights issues and has been given a role as a supervisory organ in relation to the States' human rights commitments. ([15](#)) The Commission thus is charged with determining whether the State has failed to fulfill its freely-assumed obligations and, if so, with making recommendations for the resolution of the human rights situation. The State must comply with those recommendations in order to comply with the obligations it has assumed upon ratification of the American Convention and the OAS Charter.

86. Colombia is also bound to comply with the decisions issued by the Inter-American Court of Human Rights, which is a fully jurisdictional body which issues binding judicial decisions. ([16](#)) The binding nature of the State's obligations is not construed as a violation of sovereignty or as a breach of the internal political and institutional structure since the State has freely accepted to be bound under international law.

2. Colombia's Compliance with the Recommendations of the Inter-American Commission on Human Rights

87. As regards the Colombian State's international obligations before the Commission, it must be noted that the Colombian Government has cooperated very fully in all aspects of the proceedings before the Commission. The Government demonstrates, through its representatives, great interest in its interactions with the Commission. The Commission appreciates and is grateful for the spirit of cooperation and collaboration displayed by the Colombian Government.

88. The Commission is pleased to note that the Colombian State has advanced significantly in the area of compliance with the Commission's recommendations since the publication of the "Second Report on the Situation of Human Rights in Colombia." The Commission stated, in its second report on Colombia, that the Colombian State had not heeded the Commission's recommendations regarding the payment of compensatory damages. The Commission noted, at that time, that even where the Commission concluded its examination of a case pursuant to the provisions of the American Convention on Human Rights and declared that the Colombian State was responsible for human rights violations, the State did not comply with the recommendation that compensation be paid to the victims of the human rights violations or their relatives.

89. At that time, the Colombian State sustained that victims of human rights violations, who had received a favorable decision from the Commission, would nonetheless be required again to submit their case to the domestic courts to seek compensation through the regular contentious-administrative proceeding. This position found its support in a decision of the Council of State addressing this question. That decision held that the Commission's recommendations are obligatory but that compensatory damages might only be paid pursuant to a domestic proceeding initiated for that purpose. ([17](#))

90. Since the publication of the "Second Report on the Situation of Human Rights in Colombia," the Colombian State has eliminated the domestic legal barriers to compensation in compliance with Commission recommendations. In fact, the State has provided a special mechanism to facilitate State compliance with the Commission's recommendations regarding compensation.

91. The State took these important steps through the adoption of Law 288 on July 5, 1996. Law 288 provides that, "the National Government shall pay, after concluding the processing provided for by this law, the indemnization of damages caused as a result of human rights violations found in express decisions by certain international human rights bodies which will be named in this law." ([*](#))

92. The law then proceeds to name the Inter-American Commission on Human Rights and the United Nations Human Rights Committee charged with supervising the International Covenant on Civil and Political Rights as the two international bodies whose findings will trigger compensation by the Colombian State. The law establishes a Committee of Ministers, composed of the Minister of the Interior, the Minister for Foreign Affairs, the Minister of Justice and the Minister of Defense. This Committee of Ministers must review the decision of the international body and issue a favorable opinion in order for the compensation to occur. The committee is required to issue a favorable opinion "in every case where the requirements of fact and law are met." ([*](#))

93. The law also provides for an innovative procedure to be implemented where the Committee of Ministers does not issue a favorable opinion. In those cases, the State may not simply refuse to pay the compensation recommended without further action. Rather, the law specifically provides that the Government will be required to appeal the decision of the pertinent international body. When ex-President Ernesto Samper signed Law 288, he made clear that this provision requires the Colombian Government to take a case before the Inter-American Court of Human Rights in certain cases if the Government decides that it does not accept the recommendations of the Inter-American Commission. The law also provides that, if the Government fails to file the appropriate appeals in the international system within the

pertinent deadlines, it must comply with the recommendation to provide compensation.

94. The adoption of Law 288 has had a dramatic positive effect in terms of securing Colombian compliance with the recommendations of the Commission regarding monetary compensation. The Committee of Ministers issued favorable opinions in nine cases decided by the Inter-American Commission before the passage of Law 288, paving the way for compensation in those cases pursuant to the recommendations of the Commission to that effect.

95. The law has not yet been applied in a sufficient number of cases to allow a full analysis of its functioning, but its application in the first case decided after passage of Law 288, the Arturo Ribón Avila case (11.142), is instructive. In response to the Commission's initial decision in the case, prepared pursuant to Article 50 of the Convention, the Committee of Ministers issued a favorable opinion for compensation only as to certain of the victims named in the case. The Committee of Ministers refused to issue a favorable opinion as to the other victims. The Government thus requested that the Commission reconsider its decision that the State was responsible for violations of human rights as to the other victims. The Commission considered the Government's arguments in favor of reconsideration in the preparation of its second report, prepared pursuant to Article 51 of the Convention. The Commission made modifications to its original report but reaffirmed its conclusions regarding the human rights violations against all of the named victims. Upon receiving this second and final decision of the Commission, the Committee of Ministers issued a favorable opinion as to the remaining victims. All of the victims named in the case thus benefited from compensation.

96. The Government might have taken the Arturo Ribón Avila case to the Inter-American Court of Human Rights upon receiving the initial decision of the Commission adopted in conformity with Article 50 of the Convention. Pursuant to Article 51 of the Convention, the Government would have been required to submit the case to the Court within three months after the transmittal of the Article 50 report. However, the Government decided instead to request that the Inter-American Commission reconsider its decision. The Commission's second decision then became binding for purposes of the application of Law 288, because there exists no mechanism for further appeal or reconsideration of the Commission's second Article 51 decision. In addition, the possibility of an appeal to the Court was foreclosed because of the expiration of the three-month period. The State was thus required to provide compensation, pursuant to Law 288. The State complied with this obligation.

97. The Commission considers, nonetheless, that the decision of the Colombian State to send a future case to the Inter-American Court of Human Rights could constitute an important precedent. No State has yet brought a contentious case before the Court. The decision of the Colombian State to invoke the mechanism for appeal to the Court envisioned in Law 288 might allow the inter-American human rights system to move forward in a new and positive direction. Where States disagree with the Commission's decision, they might be encouraged to debate the case before the Court rather than simply ignoring the Commission's recommendations as has occurred in some cases in the past.

98. The Commission is, in general, extremely pleased with the adoption and application of Law 288. However, the Commission must point out some important difficulties which continue to exist in Colombia relating to compliance with Commission recommendations and the full reparation of human rights violations.

99. First, petitioners before the Commission have pointed to delays in the disbursement of

compensation pursuant to Law 288. After the decision is made by the Colombian State to provide compensation through this mechanism, the case must still be sent to the contentious-administrative jurisdiction for final processing and a determination of the amount to be paid. This proceeding sometimes suffers from delay, according to information submitted by the representatives of some of the victims benefiting from Law 288. These delays may result from administrative or bureaucratic difficulties or from a failure by the Government to designate sufficient funds for this type of compensation in a timely manner.

100. Second, Law 288 establishes mechanisms for the implementation of monetary recommendations only. It does not provide for reparations to the affected community, for reparation of a symbolic nature (such as the establishment of a library in the name of the victims) or for compliance with the State's obligation to investigate, prosecute and sanction those responsible for committing human rights violations.

101. As the Commission has noted on numerous occasions, monetary compensation alone generally does not constitute adequate reparation for a human rights violation. For this reason, the recommendations issued by the Commission in individual cases generally include the following recommendations: 1) that the State undertake a serious, impartial and effective investigation of the facts denounced so that the events leading to the human rights violation may be clarified and so that the circumstances of and the responsibility for the violations found may be fully detailed in an officially sanctioned account; 2) that the State submit to the relevant judicial processes all of the individuals responsible for the violations which occurred so that they may be sanctioned; 3) that the State adopt measures to make full reparation for the violations found, including adequate and fair monetary compensation to the victims or their family members.

102. The Colombian State has not yet adopted mechanisms for compliance with all of these recommendations. The Commission would urge the Colombian State to seek means of broadening the current legal mechanisms for compliance with Commission decisions to address recommendations other than those relating to monetary compensation. At the same time, the Commission notes that the State may not suggest that the absence of such mechanisms excuses compliance with the Commission's recommendations. The Convention itself requires the State to modify domestic law or adopt new laws where necessary to allow full compliance with the obligations accepted through ratification of the Convention (18). In addition, the State may not validly argue that its domestic laws or legal regime prevent compliance with its obligations under international law. (19)

G. RECOMMENDATIONS

Based on the foregoing, the Commission makes the following recommendations to the Colombian State:

1. The Colombian State should provide adequate resources and support to the state entities charged with promoting and protecting human rights and investigating human rights abuses, particularly the Office of the Prosecutor General of the Nation, the Office of the Procurator General of the Nation and the Office of the Human Rights Ombudsman.

2. The Office of the Procurator General of the Nation should conduct serious, impartial and effective disciplinary investigations into the conduct of State agents alleged to have committed human rights violations.

3. The Office of the Procurator General of the Nation should play an active role in pushing for effective and impartial criminal proceedings in cases relating to alleged human rights violations.

4. The Office of the Procurator General of the Nation should take a more active role in reviewing the conduct of those members of the State's public security forces who conduct criminal proceedings in human rights cases in the military justice system.

5. The Colombian State should abstain from adopting legislative or other measures which will limit the effectiveness or scope of the tutela action or which will limit access to that judicial remedy.

6. The President of Colombia should use his authority to declare a state of emergency only in truly exceptional and serious circumstances which constitute an imminent threat to the organized life of the State. Any state of emergency should comply with the formalities and standards set forth in article 27 of the American Convention and the jurisprudence of the Court and Commission with respect to that norm.

7. The Constitutional Court should continue to play an active role in reviewing the legality of declared states of emergency, and the Court's authority in this respect should not be limited.

8. The Colombian State should consider the possibility of ratifying additional international human rights instruments, such as the Inter-American Convention on the Forced Disappearance of Persons.

9. The Colombian State should consider broadening the current legal mechanisms for compliance with Commission decisions in individual case reports to address recommendations other than those relating to monetary compensation.

10. The Colombian State should comply fully with the recommendations of the Commission formulated in individual case reports.

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([*](#)) The text of Article 221 in Spanish reads as follows:

De los delitos cometidos por los miembros de la Fuerza Pública en servicio activo y en relación con el mismo servicio, conocerán las cortes marciales o tribunales militares, con arreglo a las prescripciones del Código Penal Militar.

([1](#)) The state of exception provided for in the Colombian Constitution essentially corresponds to the state of emergency permitted, in certain circumstances, under Article 27 of the American Convention on Human Rights. The terms "state of exception" and "state of emergency" will therefore be used interchangeably.

([2](#)) [See, e.g.](#), IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, 24 April 1997, at 14 [hereinafter Ecuador Report].

([3](#)) [See id.](#); American Convention on Human Rights, art. 27(1).

([4](#)) American Convention on Human Rights, art. 27(1).

([5](#)) [See id.](#)

([6](#)) [See](#) American Convention on Human Rights, art. 27(2).

([7](#)) Annual Report of the Inter-American Commission on Human Rights 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, at 660 [hereinafter 1996 Annual Report].

([8](#)) [See](#) Decree 1900 of 1995.

([9](#)) The package of reforms presented by the Government and members of the Congress included other proposals relating to states of emergency. These proposals sought, for example, to eliminate the time limits on the duration of states of

emergency and to remove from the legislature the limited faculties which it possesses when the President declares a state of emergency. These proposals for reform were eventually withdrawn or defeated. The Commission noted in its 1996 Annual Report that the reforms "raised serious questions about their compatibility with Colombia's obligations under the American Convention and other human rights instruments." 1996 Annual Report, at 658.

(10) The Constitutional Court issued a decision on July 4, 1996 invalidating this particular provision regarding the designation of public order zones. The Court modified the designation process so that the governors could either designate public order zones or not on their own initiative, without deferring to the proposal of a military commander.

(11) The proposed constitutional reforms mentioned above included a proposal to make permanent the provisions allowing for detentions without arrest warrants and granting military authorities judicial police functions. This proposal did not meet with success in the Congress.

(12) See, e.g., IACHR, Second Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.84, Doc. 39 rev., October 14, 1993, at 61-62; Ecuador Report, at 16.

(13) See Comisión Colombiana de Juristas, Colombia, Derechos Humanos y Derecho Humanitario: 1996, at 52.

(14) At the time of this writing, the Colombian Congress had adopted legislation approving the ratification of the treaty. This legislation had been passed to the Constitutional Court for its review. The instrument of ratification will be deposited at the Organization of American States upon the issuance of a favorable decision by the Constitutional Court.

(15) See OAS Charter, arts. 52, 111; American Convention on Human Rights, art. 44 et seq.; I/A Court H.R., Loayza Tamayo Case, Judgment of September 17, 1997, par. 80.

(16) See American Convention on Human Rights, arts. 63, 65, 68.

(17) See Decision of the Council of State in Case No. 461.

In Spanish, the law reads:

El Gobierno Nacional deberá pagar, previa realización del trámite de que trata la presente Ley, las indemnizaciones de perjuicios causados por violaciones de los derechos humanos que se hayan declarado, o llegaren a declararse, en decisiones expresas de los órganos internacionales de derechos humanos que más adelante se señalan.

In Spanish, the text reads: "en todos los casos en que se reúnan los presupuestos de hecho y de derecho."

(18) See American Convention on Human Rights, art.2.

(19) See Vienna Convention on the law of Treaties, art. 27.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER III

ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

A. THE LEGAL FRAMEWORK

1. The Republic of Colombia is a state party to the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations in 1966, and ratified by the Colombian state on October 29, 1969. In addition, it is party to countless conventions entered into under the aegis of the International Labor Organization ("ILO") on particular aspects of some of the rights analyzed in this Chapter.

2. The 1991 Colombian Constitution includes economic, social, and cultural rights under Title II, Chapter 2. According to a definition by the Constitutional Court of Colombia, these rights "imply the provision of services by the state and therefore an economic outlay that generally depends on a political decision." ([1](#)) In addition, the Constitution states, at Article 53, that, "the international labor conventions, duly ratified, are domestic law." Other human rights treaties, including those on economic, social, and cultural rights, are a guide for interpretation and prevail in the domestic legal order, pursuant to Article 93 of the Constitution.

3. In December 1997, Colombia acceded to the Additional Protocol to the American Convention on Human Rights (the "Convention" or the "American Convention") on economic, social, and cultural rights, known as the Protocol of San Salvador. Law 319 of September 20, 1996, approved that Protocol after both the Senate and the House of Representatives considered it. Later, the Constitutional Court of Colombia, in an important and extensive analysis, declared the Protocol to be constitutional, as it was found to be perfectly compatible with the letter and spirit of the Constitution of Colombia. ([2](#)) The Commission highly values Colombia's accession to this instrument, which brings the inter-American system very close to the day when this treaty, detailing the economic, social and cultural rights of the Latin American people, will enter into full force. With ratification by just one more country, the Protocol of San Salvador will enter into force.

4. The fact that this Protocol has yet to enter into force, however, does not mean that the inter-American system lacks provisions which directly protect economic, social, and cultural rights, and give rise to obligations for the Colombian State. Article 26 of the American Convention requires that the states parties to the Convention adopt "measures, both internally and through international cooperation ... with a view to achieving progressively, by legislation or other appropriate means, the full realization" of these rights. As the Inter-American Commission on Human Rights (the "Commission," the "IACHR" or the "Inter-American Commission") has stated previously: While Article 26 does not enumerate specific measures of implementation, leaving the State to determine the most appropriate administrative, social, legislative, or other steps to pursue, it expresses a legal obligation on

the part of the State to engage in such a process of determination and to adopt progressive measures in this sphere. The principle of progressive development establishes that such measures are to be undertaken in a manner which constantly and consistently advances toward the full realization of these rights."(3) Furthermore, the Charter of the Organization of American States ("OAS"), as amended by the Protocol of Buenos Aires, enshrines several economic, social, and cultural rights at Articles 33, 44, and 48, among others. Finally, the American Declaration on the Rights and Duties of Man, at Articles XI, XII, XIII, XIV, XV, XVI, and XXII, sets forth many of these rights. The Inter-American Court of Human Rights has held that the American Declaration has full legal effect, and the member states of the OAS are bound by it.(4)

5. Having briefly described the legal framework and the legal basis of the obligation of the Colombian State to respect and guarantee economic, social, and cultural rights, the Commission will now analyze the actual effectiveness of these rights. The Commission understands that neither the existence of the legal provisions cited nor of government projects brought to the Commission's attention during its visit are sufficient to consider that the rights are actually respected or guaranteed. It is essential that the economic, social, and cultural rights recognized in international and constitutional provisions have real effect in the daily lives of each of the inhabitants of Colombia, thereby guaranteeing minimal conditions for leading a dignified life.

6. The progressive nature of the duty to ensure the observance of some of these rights, as is recognized in the language of the provisions cited, does not mean that Colombia can delay in adopting all measures needed to make them effective. To the contrary, Colombia has the obligation to immediately begin the process leading to the complete realization of the rights contained in those provisions. In no way can the progressive nature of the rights mean that Colombia can indefinitely postpone the efforts aimed at their complete attainment.(5)

7. The Commission understands that this obligation to progressively develop economic, social, and cultural rights in Colombia is not necessarily being fully met by the State. Thus, for example, the percentage of the population with access to health care fell from 88% to 87% between 1980 and 1993. The obligation to develop these rights progressively requires at a minimum that their observance and access to them not be diminished over time.

B. THE EFFECTIVENESS OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

8. The prevailing socioeconomic situation in Colombia has traditionally placed it among those countries with the best economic indicators in Latin America. Most of the indicators have been above average for the region.

9. Without claiming to engage in an exhaustive analysis, the Commission provides the following examples. While illiteracy in Latin America and the Caribbean as a whole is 12% for men and 15% for women over 15 years of age, in Colombia the rate is 9% for both. While the percentage of the population with access to health services and drinking water is 57% and 73% respectively, for Latin America and the Caribbean as a whole, in Colombia they are notably higher, at 63% and 76%, respectively.(6)

10. The Commission understands that the indicators outlined as examples, together with others, have made it possible to achieve greater observance of economic, social, and cultural rights than in other countries of the region. The Commission takes note of this situation, and urges the Colombian government to maintain it. Nonetheless, the Commission must note as well that the economic situation in Colombia is deteriorating, causing the country to begin to lag behind the rest of the region in some respects. For example, unemployment has climbed to hitherto unknown levels, from 7.6% (443,574 unemployed) in the third quarter of 1994, to 12.7% (798,748 unemployed) in March 1997.(7) Debt-service payments for 1996 came to

6.1% of the gross domestic product for the region as a whole, and to 6.6% in Colombia. ([8](#)) Foreign debt has reached U.S. \$31.6 billion dollars. ([9](#)) In addition, Colombia has suffered, in recent years, from serious trade deficits, amounting to 4.1 billion dollars in 1995, 4.7 billion in 1996 and 4.8 billion in 1997. ([10](#)) The Commission is especially concerned by the fact that the infant mortality rate in Colombia is more than double the figure for the rest of the region. ([11](#)) The Government should take forceful measures to guarantee that infant mortality is brought down to a number in accordance with the economic situation described above.

11. The principles of non-discrimination and equal protection before the law, set forth in Articles 1 and 24 of the American Convention, also apply to economic, social, and cultural rights. Nonetheless, in Colombia there are profound differences in the effective observance of economic, social, and cultural rights which divide the rural population from the urban population. In addition, there is a profoundly inequitable distribution of income between the richest and poorest sectors in Colombia, with a very large percentage of Colombians living below the poverty line.

12. In Colombia, poverty is on the rise, in differing degrees for rural and urban areas. Whereas in 1991, 29% of the rural population was below the poverty line, one year later that percentage rose to 31.2%. During the same period, the urban population below the poverty line increased from 7.8% to 8%, respectively. ([12](#))

13. Whereas the poorest 10% of the population accounts for only 1% of consumption, the wealthiest 10% is responsible for 46.9% of all consumer spending. ([13](#)) The Commission recommends that the Colombian state adopt as many measures as needed to reduce inequities in Colombia and for the Government to ensure that the poorest sectors of the population are able to live in conditions such that their basic needs are met.

14. These wealth inequities and increasing poverty levels also affect access to education. One of the principle reasons why children leave school is the cost of education. Although education itself is free, many families cannot afford the costs associated with schooling, such as buying clothing and materials and paying for transportation. For example, in 1991, the cost of education was named as the primary reason that young girls between 6 and 11 abandoned schooling. Poor persons are thus likely to have lower educational levels. In 1992, the population considered to be poor had an average of 4.32 years of schooling, while average number of years of schooling for the population not considered to be poor rose to 7.45. Because the level of schooling has a direct effect on wages earned, education is an important aspect of a cycle of poverty. Children from poor families receive fewer years of education than their wealthier counterparts and, as a result, obtain lower wages at adulthood. Their families thus tend to remain poor, making it likely that their children, in turn, will benefit from fewer years of education.

15. The Commission has also received information indicating that the quality of education is not adequate in Colombia. More than half (52.5%) of teachers have only a secondary education, while some teachers (0.5%) have only a primary education. Another factor affecting the quality of education is the inadequate pay received by teachers. According to the Colombian Federation of Educators, the average monthly salary of teachers is \$292,000 pesos (approximately \$185 dollars) and 55% of teachers earn only \$250,000 pesos (approximately \$158 dollars). ([14](#))

16. The IACHR has received information regarding the National Development Plan for the 1994-1998 period, called "El Salto Social" ("the Social Leap Forward") implemented by the Government, as well as the goals set in that plan. Nonetheless, it has found that many of its ambitious anticipated results have not been attained. Thus, while El Salto Social proposed to create 1.5 million new jobs, as of early 1997 the net creation of new jobs came to 180,000, just 12% of the goal. ([15](#)) For these reasons, the Commission adopts the recommendation of the Committee on Economic, Social and Cultural Rights of the United Nations, "to make

concerted efforts to improve the effectiveness of Colombia's economic and social development programs."([16](#))

C. VIOLENCE, FORCED DISPLACEMENT, AND THE OBSERVANCE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

17. The phenomenon of widespread violence, analyzed carefully by the Commission in other Chapters of this Report, together with the situation of the thousands of Colombians who have been displaced from their homes, has negative repercussions on the effective observance of economic, social, and cultural rights.

18. As the Committee on Economic, Social, and Cultural Rights of the United Nations has indicated, "a situation of violence persists on a large scale in Colombia ... [that] has a seriously destabilizing effect on the country and hampers the Government's efforts to guarantee the full enjoyment of economic, social, and cultural rights."([17](#))

19. The negative impact of the violence demonstrates the interdependence of civil and political rights, on the one hand, and economic, social, and cultural rights on the other. As the Commission has indicated in another context, this is the result of "the organic relationship between the violation of the rights to physical safety on the one hand, and neglect of economic and social rights ... on the other. That relationship, as has been shown, is in large measure one of cause and effect."([18](#))

20. Colombia's internal armed conflict requires the Government to use funds for defense and weapons that should be earmarked to address the population's unmet basic needs. The Commission feels compelled to note how social indicators have declined in recent years, just as defense spending has been on the rise. Defense spending as a percentage of gross domestic product rose from 1.6% in 1985 to 2.6% in 1995. In the same years, the percentage of Government spending dedicated to defense spending rose from 10.3% to 16.3%.([19](#))

21. The Commission has taken note of the information that it has received regarding the plans of the Government of President Andrés Pastrana to address the connection between the violence, the deterioration of the economic situation and their negative impact on human rights. President Pastrana has prepared a Development Plan 1998-2002 for presentation to the Congress. The central objective of this plan is to work toward the construction of peace by creating a society with characteristics which are favorable for peace. The pillars of the plan are the following: 1) achieve a viable and participative State; 2) reconstruct the social fabric; 3) move forward hand in hand in the development of peace; 4) bring life and vitality back to the motor of economic growth - employment.([20](#))

22.

In addition, as the Commission has previously explained, the violence has caused forced displacement. Persons who are forcibly displaced, as described in depth in the respective Chapter, suffer from many unmet needs which directly affect their economic, social, and cultural rights.

D. RECOMMENDATIONS

Based on the foregoing, the Commission makes the following recommendations to the

Colombian State:

1. The State should, through economic development and other programs address the problem of the inequitable distribution of wealth in Colombia, with the object of effectively combating the poverty that characterizes the situation of many sectors of the population. The State should also undertake concerted efforts to improve the efficiency of existing economic and social development programs.
2. The State should take all measures necessary to ensure that the observance of economic, social and cultural rights does not diminish in any aspect over time.
3. The State should take all necessary steps to improve the material conditions of teaching staff in the nation's schools and to ensure the effective right to free primary education for all. The State should take measures to improve the quality of education at all levels.
4. The State should give priority to efforts that seek to relieve the extremely difficult economic, social and cultural situation of internally displaced persons.

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(1) Constitutional Court, Judgment T-570/92 (translation by the Commission).
(2) See Constitutional Court, Judgment C-251/97, September 28, 1997.
(3) IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, at 23.
(4) See I/A Court H.R., "Interpretation of the American Declaration on the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights," Advisory Opinion OC-10/89, July 14, 1989, Series A, No. 10.
(5) See Committee on Economic, Social and Cultural Rights of the United Nations, General Observation No. 3, adopted at the Fifth Session, 1990, E/1991/23; Limburgh Principles, Human Rights Quarterly, Vol. 9, No. 2, 1987, at 121.
(6) See World Bank, World Development Indicators, 1998, at 16, 18.
(7) Oscar Arcos Palma, Dando Palos de Ciego, Ciendías Magazine, at 10.
(8) See World Bank, at 242, 248.
(9) See CEPAL, Economic Balance for Latin America and the Caribbean, 1997.
(10) See *id.*
(11) See *id.*, at 104, 106. The indicators are 7 per 1,000 live births in Colombia, but only 2 to 3 per 1,000 live births in the region.
(12) See World Bank, at 64.
(13) World Bank, at 68. Along the same lines, see "Market alone will not correct inequities," in Latin America Weekly Report, March 4, 1997. According to that report, the wealthiest 10% of the Colombian population earns 41 times more than the poorest 10% of the population. See also Albert Berry, The Income Distribution Threat in Latin America, in Latin America Research Review, Vol. 32, No. 2, 1997, at 3-40.
(14) See "Tarea de matemáticas", El Tiempo, May 8, 1995. The minimum wage established for 1995 was \$118,933.50 pesos.
(15) See Ciendías, at 10.
(16) Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by Member Parties pursuant to Articles 16 and 17 of the Covenant, Concluding Observations of the Committee, December 8, 1995, E/C.12/1995/12, item 21.
(17) *Id.*
(18) Annual Report of the Inter-American Commission on Human Rights 1979-1980, OEA/Ser.L/V/II.50 Doc. 13, rev. 1, October 12, 1980, at 151.
(19) See World Bank, at 248.
(20) Speech of President Andrés Pastrana Arango, on the occasion of the presentation of the Development Plan to the National Planning Council, November 17, 1998.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER IV

VIOLENCE AND VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

A. INTRODUCTION

1. In this Chapter, the Inter-American Commission on Human Rights (the "Commission," the "IACHR" or "the Inter-American Commission") will seek to analyze the violence which occurs constantly and with extreme intensity in Colombia, resulting in numerous massacres, internal displacement, executions, injuries to persons, threats, deprivations of liberty and attacks on physical objects each year. The Commission will consider both that violence which is related, directly or indirectly, to the armed conflict as well as the violence which occurs outside of that context. The Commission will consider, to the extent possible, all of that violence for which international law relating to human rights protection provides guiding norms. Thus, the Commission will discuss the acts of violence carried out by Colombian State agents and organs and their proxies or collaborators as well as by the armed dissident groups acting in Colombia. For the purposes of this analysis, the Commission will apply international human rights norms, particularly the American Convention on Human Rights (the "Convention" or the "American Convention"), and will also refer to international humanitarian law, where relevant.

B. LEGAL FRAMEWORK FOR THE ANALYSIS

1. Role and Competence of the Commission

2. Before discussing its concerns and other matters relating to the violence and ongoing hostilities in Colombia, the Commission believes it useful to clarify various issues concerning its competence to investigate and condemn acts of violence. In accordance with the legal framework established by member states of the Organization of American States (the "OAS"), the Commission is expressly charged with monitoring and promoting respect for and defense of fundamental human rights by each of those states. ([1](#)) The Commission's duty, therefore, is to apply human rights instruments to cases and situations involving State responsibility.

3. Under the individual petition procedure set forth in its Statute and the American Convention on Human Rights, the Commission's jurisdiction extends only to situations where the international responsibility of a member State is at issue. ([2](#)) Thus, the IACHR is authorized to receive, investigate and decide cases lodged against member States for the acts or omissions of their agents and organs that allegedly violate the human rights guaranteed in the American Convention or the American Declaration of the Rights and Duties of Man (the "Declaration"). The Commission's jurisdiction also encompasses cases of transgressions of these same rights by private persons or groups who are, in effect, State agents or when such transgressions by private actors are acquiesced in, tolerated, or condoned by the State.

4. The Commission as well as the Court have also consistently pointed out that the State has a duty under the American Convention and the Declaration to prevent and to investigate acts of violence committed by private parties and to prosecute and punish the perpetrators accordingly. The Commission thus may process individual cases alleging the failure of a State to comply with this duty. At the same time, the Commission recognizes that in situations of civil strife the State cannot always prevent, much less be held responsible for, the harm to individuals and destruction of private property occasioned by the hostile acts of its armed opponents.

5. As noted in its two previous country reports on Colombia, OAS member States opted deliberately not to give the Commission jurisdiction to investigate or hear individual complaints concerning illicit acts of private persons or groups for which the State is not internationally responsible. If it were to act on such complaints, the Commission would be in flagrant breach of its mandate, and, by according these persons or groups the same treatment and status that a State receives as a party to a complaint, it would infringe the sovereign rights and prerogatives of the State concerned.

6. This limitation on its competence to process individual complaints does not mean that the Commission has been indifferent or silent in the face of atrocities and other violent acts committed by dissident armed groups, drug traffickers and other private actors in Colombia and other OAS member States. Outside of the context of individual cases, the Commission has frequently referenced the atrocities committed by armed dissident groups in its press releases, in communications with governments and in its reports on the situation of human rights in the various member States of the OAS. In this regard, for example, the Commission stated in its "Second Report on the Situation of Human Rights in Colombia: "

[T]he Commission is . . . emphatic in its condemnation of the terrible aggression perpetrated against the Colombian people by irregular armed groups. The Commission considers the use of terrorism, whatever its form, to be utterly reprehensible as are blackmail, extortion, kidnapping, torture and assassination. (3)

7. A relatively recent expression of the Commission's condemnation of illicit acts committed by an armed dissident group in Colombia is found in the following text of an official press release issued by the Commission on April 1, 1998:

The Inter-American Commission on Human Rights has learned that the Revolutionary Armed Forces of Colombia ("Fuerzas Armadas Revolucionarias de Colombia" - FARC), on March 23, set up a roadblock for almost eight hours on the highway which connects Bogotá to the western plains of Colombia. During the period which the roadblock was in place, the armed dissident group halted the movement of those who traveled on this highway, many of whom were returning to Bogotá after an extended weekend, and detained several persons. The FARC subsequently freed some individuals but continued to hold others under its control. According to information received by the Commission, the FARC have threatened to execute the persons who remain in captivity.

The Commission has indicated, on other occasions, that international norms absolutely prohibit, in any armed conflict, executions and any other act of violence against members of the civilian population who do not participate directly in the hostilities. These norms also prohibit the taking of hostages and arbitrary deprivation of liberty. The Commission reaffirms its prior statements on this occasion and energetically repudiates any violation of these international law norms committed against any individual.

The IACHR again emphasizes that the most diverse lines of thought recognize essential values which require respect for human dignity, even in conflict situations. The IACHR, with absolute independence and objectivity, has consistently and uniformly expressed this same

position in a coherent manner, in respect of the States in this hemisphere and, in appropriate cases, in reference to the actions of non-State groups. This has occurred, as is public knowledge, in situations which have taken place in various member States of the Organization, including Colombia.

For these reasons, the Inter-American Commission on Human Rights, through this press release, exhorts the group which holds under its control several persons kidnapped in the roadblock which the FARC put in place on March 23 to respect the lives, security and health of those individuals and to proceed to liberate them immediately. (4)

8. The Commission has been equally clear that when organized private groups take up arms to overthrow an elected government, the State has a right under domestic and international law to use legal and appropriate military force to put down such insurrection in order to defend its citizenry and the constitutional order. However, during such situations of internal hostilities, the Commission has received from Colombia and other OAS member States numerous complaints alleging serious violations of the fundamental rights guaranteed in the American Convention and Declaration arising out of the conduct of military operations by State security forces and its other agents. In order to properly judge the specific claims raised in such petitions, the Commission has found it necessary at times either to directly apply rules of international humanitarian law, i.e. the law of armed conflict, or to inform its interpretations of relevant provisions of the American Convention by reference to these rules.

9. As the Commission noted in recent decisions against Colombia and other States, (5) the American Convention continues to apply during situations of internal armed conflict. Indeed, even when Article 27 of the Convention is invoked, permitting States to temporarily suspend the free exercise of certain rights during genuine emergency situations, including internal hostilities, that same article also absolutely prohibits States parties to this instrument from ever suspending a core of fundamental human rights and guarantees, including inter alia, the prohibitions against arbitrary deprivations of life and the right to be free from cruel, degrading and inhumane treatment and torture, including rape. Where a State is responsible for violating these fundamental rights during an internal armed conflict or other emergency situation, the State may thus also be responsible for an additional violation of Article 27 in some cases. The Commission notes that the Colombian Constitution also specifically provides that, even in states of emergency or exception, "[i]t will not be possible to suspend human rights nor fundamental liberties." (6)

2. The Commission's Use of International Humanitarian Law

10. Nonetheless, although one of their underlying purposes is to prevent warfare, the American Convention and other universal and regional human rights instruments were not designed specifically to regulate in detail internal conflict situations and, thus, they do not contain specific rules governing the use of force and the means and methods of warfare. International humanitarian law, in contrast, does not generally apply in peacetime and its fundamental purpose is to place restraints on the conduct of warfare so as to diminish its effects on the victims of the hostilities.

11. Thus, the Commission invokes the norms provided by both human rights law and international humanitarian law in analyzing specific petitions involving alleged abuses by State agents and their proxies which arise in the context of internal armed conflicts. The Commission proceeds in this manner because both sets of norms apply during internal armed conflicts, although in many cases international humanitarian law may serve as lex specialis, providing more specific standards for analysis. Of course, it should be noted that the Commission will apply human rights norms alone in those cases involving alleged abuses by State agents which do not occur in the context of the hostilities.

12. As previously noted, complaints alleging, for example, arbitrary deprivation by State agents of the right to life protected under the American Convention clearly fall within the Commission's jurisdiction. In this regard, both Article 4 of the Convention and humanitarian law applicable to internal armed conflicts protect this essential right and, thus, prohibit summary executions in all circumstances. However, the Commission in certain instances may not be able to resolve such a case, where it is connected with an armed conflict, by reference to Article 4 of the American Convention alone. This is because the Convention is devoid of rules that either define or distinguish civilians from combatants and other military targets. Nor does the Convention specify the circumstances under which it is not illegal, in the context of an armed conflict, to attack a civilian or when civilian casualties as a consequence of military operations do not imply a violation of international law. Consequently, the Commission must necessarily look to and apply definitional standards and relevant rules of international humanitarian law as sources of authoritative guidance in its resolution of this and other claimed violations of the American Convention in combat situations.

13. For the same reasons which frequently require the Commission to refer to international humanitarian law in resolving individual cases, the Commission also finds it necessary to utilize humanitarian law along with human rights law, in general reports such as this one, for the purpose of analyzing a State's international responsibility relating to violence, where much of that violence occurs in the context of an armed conflict. Moreover and importantly, humanitarian law rules governing internal hostilities apply equally to and expressly bind all the parties to the conflict, i.e. State security forces, dissident armed groups and all of their respective agents and proxies. In contrast, human rights law generally applies to only one party to the conflict, namely the State and its agents. Humanitarian law thus may provide the Commission, in the preparation of a report such as this one, with a set of accepted legal standards that enable it to examine the conduct not only of the State's security forces, but of its armed opponents as well, and to note and classify the acts of violence that infringe these standards. ([7](#))

14. If the Commission could not refer to international humanitarian law in preparing reports such as this one, it would be placed in the extremely difficult situation of being asked to analyze the conduct of armed dissident groups without reference to any previously-established standards. The General Assembly of the OAS has, on several occasions, passed resolutions recommending that the Commission "refer to the actions of irregular armed groups" in reporting on the human rights situation in the member States of the inter-American system. The General Assembly passed such resolutions, for example, during its regular session in Chile in 1991 and in the Bahamas in 1992. ([8](#)) As noted above, international human rights law norms, including the American Convention on Human Rights, the American Declaration on Human Rights and other instruments, only apply where State responsibility is alleged. International humanitarian law provides the only legal standard for analyzing the activities of armed dissident groups. It is therefore absolutely necessary that the Commission reference international humanitarian law in order to fairly and adequately address the activities of those groups in its reporting.

15. The Commission is mindful that because of the peculiar and confusing conditions frequently attending combat, the ascertainment of crucial facts relating to situations arising in the context of hostilities often cannot be made with clinical certainty. Accordingly, the Commission believes that the appropriate standard for judging the belligerent actions of those engaged in hostilities must be based on a reasonable appreciation of the overall situation prevailing at the time the action occurred and not on the basis of speculation or hindsight. The appropriate classification of and attribution for claimed violations of the Convention and international humanitarian law connected with hostilities will depend on the particular circumstances involved. Where the attending circumstances are unclear or unknown, the Commission may not, in good faith, be able to attribute responsibility for the claimed violation to the proper party and thus may abstain from reaching a conclusion regarding the alleged violation of international law.

16. The Commission has taken the opportunity in several individual cases to note that, apart from what has already been said, its competence to apply or consult humanitarian law rules is also supported by the text of the American Convention, by its own case law and by the jurisprudence of the Inter-American Court of Human Rights. (9) The Commission has especially noted that in those situations where the American Convention and humanitarian instruments apply concurrently, Article 29(b) of the American Convention necessarily requires it to take due notice of and, where appropriate, give legal effect to applicable humanitarian law rules. (10)

17. In its observations regarding this Report, the Colombian State questioned the manner in which the Commission has invoked the application of international humanitarian law. The State suggested that, by applying international humanitarian law to armed dissident groups as well as to the State, the Commission has placed these two parties to the armed conflict on the same level and failed to adequately condemn the illegal and arguably atrocious acts committed by the armed dissident groups.

18. The Commission believes that it has made clear that it does not consider the State and armed dissident groups to be on the same level. The State has a unique status with certain rights duties and obligations under international law. For example, as a party to the American Convention and other human rights treaties, the Colombian State has freely assumed the sole responsibility and basic duty of respecting and ensuring the human rights protected in these instruments to all persons subject to its jurisdiction. This duty and responsibility cannot be abdicated by the State during civil strife or any other emergency situation. The fact that humanitarian law rules are equally binding on the government and dissident armed forces in no way affects the status of either party to the conflict and, thus, cannot be interpreted as legitimizing the cause for which the dissidents have taken up arms, much less recognition of their belligerence. It merely means that the contending parties have the same obligation to respect the restraints and prohibitions applicable to the waging of hostilities. As the Commission notes in this Report, humanitarian law does not preclude the State from punishing members of dissident armed groups for the commission of crimes under its domestic law. Therefore, the Colombian State is perfectly free to try such persons for each and everyone of their violent acts that transgress its laws even if those acts otherwise do not violate humanitarian law. Such trials, however, must afford defendants the due process safeguards set forth in applicable human rights and humanitarian law treaties binding on the Colombian State.

19. However, the Commission's role is not to apply domestic criminal law to the acts of the armed dissident groups. Instead, the Commission must analyze the acts of armed dissident groups in the light of applicable international law norms, which are those of international humanitarian law. The Commission notes that Colombian State agents have, in fact, repeatedly asked the Commission to analyze the activities of armed dissident groups in conformity with international humanitarian law. For example, during its on-site visit to Colombia, high-level authorities of the Military Forces provided the Commission with bound volumes of violations of international humanitarian law allegedly committed by armed dissident groups. Civilian authorities and National Police officers have also frequently presented to the Commission materials regarding alleged humanitarian law violations committed by armed dissident groups. The Commission has always granted proper weight to the information included in materials provided by the State and has used them, where appropriate, in the preparation of this Report.

3. The Internal Armed Conflict and Applicable Norms in Colombia

20. The Commission is not required to determine whether the nature and level of the domestic violence in Colombia constitute an internal armed conflict or to identify the specific

humanitarian law rules governing the conflict. This is because Colombia, unlike other States that all too frequently choose to deny the existence of such hostilities within their territory for political or other reasons, has openly acknowledged the factual reality of its involvement in such a conflict and the applicability of Article 3 common to the four 1949 Geneva Conventions ("common Article 3"), the 1977 Protocol Additional to the Geneva Conventions of August 12, 1949, Relating to the Protection of Victims of Non-International Armed Conflicts ("Protocol II"), and other customary law rules and principles governing internal armed conflicts. ([11](#)) The Colombian Constitution itself clearly establishes that, "[i]n all cases international humanitarian law norms will be respected." ([12](#))

21. Indeed, few OAS member States other than Colombia have so publicly embraced international humanitarian law. Nor have other States genuinely sought to the same extent to disseminate, with the invaluable assistance of the International Committee of the Red Cross ("ICRC"), basic precepts of international humanitarian law to its security forces, the other parties to the conflict and its citizenry at large. The Colombian government and vast sectors of civil society believe that respect for basic rules of humanitarian law is indispensable to "humanize" the conflict and, thereby, contribute to conditions propitious for negotiations between the warring parties and the eventual restoration of peace. ([13](#))

22. The Commission wishes to express its emphatic support for these policies and goals. However, it has noted with alarm that, despite these dissemination efforts and professed policies, the conflict in Colombia during the past several years has been increasingly characterized by massive and systematic violations of the most fundamental human rights and humanitarian law rules, committed by all sides, particularly against the civilian population.

C. THE APPLICABLE LEGAL NORMS

1. Human Rights Law

a. The Right to Life

23. The right to life is the most fundamental of all human rights. The right to life has special importance, because it is the crucial basis for the exercise of all other rights. Article 4 of the American Convention provides that, "[e]very person has the right to have his life respected. . . . No one shall be arbitrarily deprived of his life."

24. As noted above, the contours of the right to life may change in the context of an armed conflict, but the prohibition on arbitrary deprivation of life remains absolute. The Convention clearly establishes that the right to life may not be suspended under any circumstances, including armed conflicts and legitimate states of emergency. ([14](#))

25. The Colombian Constitution similarly recognizes the centrality of the right to life, providing that: "The right to life is inviolable." ([15](#)) The Colombian Constitution further provides that the death penalty will not be applied in Colombia.

b. The Right to Humane Treatment

26. As a State party to the American Convention, Colombia is bound by Article 5 of that instrument which provides, in relevant part, that:

1. Every person has the right to have his physical, mental and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

The prohibition on torture and cruel and unusual treatment is also non-derogable, even in times of armed conflict or declared states of emergency.([16](#))

27. The concept of torture is distinguished from cruel and inhumane treatment principally based on the characteristics, the motivation and the degree of severity of the treatment in question.([17](#)) In the inter-American human rights system, torture is understood to be:

any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.([18](#))

28. The Colombian State has signed the Inter-American Convention to Prevent and Punish Torture, which details and expands upon the duties and responsibilities set forth in Article 5 of the American Convention, and the Colombian legislature has approved its ratification. Colombia has not yet deposited its instrument of ratification, because the Constitutional Court is engaging in its obligatory review of the treaty. Nonetheless, in the interim, the State has a good faith obligation to refrain from any act which would be inconsistent with the treaty's object and purpose. In addition, Colombia has ratified the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

29. The Colombian Constitution provides the parallel domestic norm to Colombia's international obligations in this area. The Constitution specifically establishes that, "[n]obody will be subject to torture nor cruel, inhuman or degrading treatment or punishment."([19](#))

c. Prohibition on Forced Disappearances

30. The forced disappearance of persons is considered to be a particularly grave violation of international human rights law. In addition, the systematic practice of the forced disappearance of persons constitutes a crime against humanity.([20](#))

31. The Inter-American Court of Human Rights has held that "the forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obliged to respect and guarantee."([21](#)) Similarly, the preamble to the Inter-American Convention on Forced Disappearance of Persons reaffirms that forced disappearance of persons "violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights."([22](#))

32. The forced disappearance of persons generally entails a violation of the right to life and the right to humane treatment already discussed. A disappearance also violates, at a minimum, the right to juridical personality, the right to personal liberty and the right to due process of law and judicial protection.

33. In the inter-American human rights system, a forced disappearance is considered to be:

the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees. ([23](#))

34. The Colombian State has signed, but not yet ratified, the Inter-American Convention on Forced Disappearance of Persons, which provides detailed provisions regarding the State's responsibility to prevent, investigate and prosecute forced disappearances. As noted above in connection with the Inter-American Convention to Prevent and Punish Torture, pursuant to its signature, the State is obliged by international law principles to act in good faith to avoid engaging in any acts which would be inconsistent with the treaty's object and purpose. In any case, the duties and obligations set forth in the Convention on Forced Disappearance of Persons do not, in practice, expand upon those established in international customary law and the American Convention which are already binding upon the State.

35. Colombian domestic law also provides for a clear prohibition on the forced disappearance of persons. The relevant provision of the Colombian Constitution establishes that, "[n]o one will be subjected to forced disappearance." ([24](#))

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(1) See Charter of the Organization of American States, art. 106 ("There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters."); American Convention on Human Rights, art. 41 ("The main function of the Commission shall be to promote respect for and defense of human rights."). (1) See Charter of the Organization of American States, art. 106 ("There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters."); American Convention on Human Rights, art. 41 ("The main function of the Commission shall be to promote respect for and defense of human rights.").

(2) See American Convention on Human Rights, art. 44; Statute of the Inter-American Commission on Human Rights, arts. 19-20.

(3) IACHR, Second Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.84, Doc. 39 rev., at 247 [hereinafter Second Report].

(4) IACHR, Press Release No. 5/98, April 1, 1998.

(5) See IACHR, Report No. 26/97, Case No. 11.142 (Colombia), September 30, 1997, at par. 171; IACHR, Report No. 55/97, Case No. 11.137 (Argentina), December 22, 1997, at par. 158.

(6) Political Constitution of Colombia, art. 214(2).

(7) The Commission notes that the Colombian State has challenged the right of the Commission to apply humanitarian law in individual cases concerning alleged excesses by its security forces but has never challenged the Commission's right to use humanitarian law in the preparation of general reports such as this one.

(8) See "Strengthening of the OAS in the Area of Human Rights," Resolution adopted at the eleventh plenary session of the twenty-first regular session of the General Assembly, Santiago, Chile, June 3-8, 1991, AG/RES. 1112 (XXI-O/91), OEA/Ser.P/XXI.O.2, 20 August 1991, Volume 1, at 78; "Annual Report of the Inter-American Commission on Human Rights," Resolution adopted at the eighth plenary session of the twenty-second regular session of the General Assembly, Nassau, The Bahamas, May 18-23, 1992, AG/RES. 1169 (XXII-O/92), OEA/Ser.P/XXII.O.2, 21 June 1992, Volume 1, at 62.

(9) See, e.g., IACHR, Report No. 26/97, Case No. 11.142 (Colombia), September 30, 1997, par. 175; IACHR, Report No. 55/97, Case No. 11.137 (Argentina), December 22, 1997, par. 162.

(10) Article 29(b), the so-called "most-favorable-to-the-individual clause", provides that no provision of the American Convention shall be interpreted as "restricting the enforcement or exercise of any right or freedom recognized by virtue of the laws of any State Party or another convention to which one of said states is a party."

(11) See, e.g., Constitutional Court Decision No. C-574, October 28, 1992. The Commission also notes that the armed dissident groups in Colombia make frequent reference to international humanitarian law norms, treating them as applicable. The ELN has specifically declared that it considers itself to be bound by the 1949 Geneva Conventions and Protocol II. See Public Declaration by Commander Manuel Pérez to the press, July 15, 1995.

(12) Political Constitution of Colombia, art. 214(2).

(13) When the municipal elections were held on October 26, 1997, more than eight million voters cast an additional ballot for peace. Through this ballot, the citizenry voted in favor of asking the parties to the armed conflict to respect international humanitarian law. See Technical Secretariat of the Citizenry Mandate for Peace, Life and

Liberty, "Toward Compliance with the Mandate of the Citizenry in Favor of Peace, Life and Liberty," November, 1997.

⁽¹⁴⁾ See American Convention on Human Rights, art. 27.

⁽¹⁵⁾ Political Constitution of Colombia, art. 11.

⁽¹⁶⁾ See American Convention on Human Rights, art. 27.

⁽¹⁷⁾ See United Nations Human Rights Commission, General Comment 7 (16^o Session), doc.A/37/40, par. 2.

⁽¹⁸⁾ Inter-American Convention to Prevent and Punish Torture, art. 2.

⁽¹⁹⁾ Political Constitution of Colombia, art. 12.

⁽²⁰⁾ See Inter-American Convention on Forced Disappearance of Persons, pmbl., par. 6; Steven R. Ratner & Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law*, 1997, at 74.

⁽²¹⁾ Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 155.

⁽²²⁾ Inter-American Convention on Forced Disappearance of Persons, pmbl., par. 3.

⁽²³⁾ Inter-American Convention on Forced Disappearance of Persons, art. 11.

⁽²⁴⁾ Political Constitution of Colombia, art. 12.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER V

ADMINISTRATION OF JUSTICE AND RULE OF LAW

A. LEGAL FRAMEWORK

1. This Chapter will focus on several different aspects of the administration of justice and rule of law in Colombia. First, the Inter-American Commission on Human Rights (the "Commission," the "IACHR" or the "Inter-American Commission") will examine the impunity which prevails in Colombia and the lack of response from the State to the population's reasonable demands for justice in cases of human rights violations. The Commission will then proceed to analyze the application of the due process rights guaranteed to criminal defendants in the American Convention on Human Rights (the "Convention" or the "American Convention"). The Commission will also make reference to reforms to the administration of justice which have been proposed. The norms to be applied thus derive from a number of different provisions of the American Convention and other international instruments as well as from the jurisprudence of the international bodies which interpret these instruments. In many cases, Colombian domestic law includes provisions parallel to those found in international human rights law.

1. The Administration of Justice in Relation to Human Rights Violations

2. Article 1(1) of the American Convention on Human Rights requires States Parties to "respect the rights and freedoms recognized [therein] and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms." The Inter-American Court of Human Rights (the "Court" or the "Inter-American Court") has clarified that a State fails to comply with its obligation to respect rights when State agents, or persons acting with the tolerance or acquiescence of the State, violate the rights protected in the Convention. ([1](#)) The Court has established an even broader obligation, however, in relation to the duty to ensure the free and full exercise of the rights and freedoms guaranteed in the Convention. The Court has stated that:

This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation. ([2](#))

3. The Commission and the Court have established that the duty to investigate and punish the perpetrators of human rights violations generally requires the State to carry out a serious, impartial and effective criminal proceeding. ([3](#)) The requirement of a criminal proceeding derives from the fact that other proceedings do not provide for an adequate

sanction for most human rights violations, which would also generally constitute criminal acts. For example, disciplinary sanctions which may be assessed by the Procurator General of the Nation pursuant to Colombian law are not adequate in cases of extrajudicial executions. A criminal proceeding, on the other hand, provides for an investigation and even compensation to the victims or their family members, as well as an adequate sanction. An effective criminal investigation and sanction also serve as the best means of complying with the State's additional obligation to prevent further human rights violations. For these reasons, the Commission will focus on criminal proceedings in Colombia in analyzing impunity and the State's response to human rights violations through the administration of justice.

4. The right of victims and their family members to an adequate administration of justice in relation to human rights violations also derives from Articles 8 and 25 of the Convention. Articles 8 and 25 provide individuals with the right of access to a remedy for violations of their rights, the right to pursue and be heard in judicial proceedings before a competent tribunal and the right to a timely decision by the appropriate legal authority. Article 25(1) of the American Convention sets forth that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention.

Article 8(1) of the Convention provides that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

5. The Colombian Constitution similarly provides for the right to access the judicial system to petition for and receive a remedy for violations of rights. Thus, Article 229 of the Constitution provides that, "[t]he right of all persons to have access to the administration of justice is guaranteed." Article 87 of the Constitution provides that, "[a]ll persons can appear before the judicial authorities to require compliance with a law or administrative act." Article 89 establishes that:

In addition to the remedies established in the previous articles, the law will establish any other remedies, actions or procedures necessary to allow for the protection of the integrity of the legal system and the protection of the rights of individuals, groups or collectives, as against the action or omission of State authorities.

Finally, Article 92 of the Constitution establishes the right of any individual to "request the competent authority to apply criminal or disciplinary sanctions in cases arising from the acts of the State authorities."

6. The Colombian Constitution further provides for the application of due process guarantees in proceedings instituted with the objective of receiving a remedy for violations. The Constitution provides broadly that, "[d]ue process will apply in all judicial and administrative cases."

2. The Administration of Justice and the Right to Due Process for Criminal Defendants

7. The general principles regarding the rights of criminal defendants are set forth in Article 8 of the Convention. Article 8(1), cited above, establishes the right of a criminal defendant to due process and to be heard by a competent, independent and impartial tribunal. Article 8(2)

establishes that, "[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law." Article 8(2) then proceeds to establish the following specific minimum guarantees to be granted to defendants in criminal proceedings:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. the right not to be compelled to be a witness against himself or to plead guilty; and
- h. the right to appeal the judgment to a higher court.

8. Article 7 of the Convention, relating to the right to personal liberty, also includes provisions relating to due process for criminal defendants. Thus, Article 7(2) provides that, "[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto." Article 7(3) provides that, "[n]o one shall be subject to arbitrary arrest or imprisonment."

9. Article 7(4) further provides that, "[a]nyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him." Article 7 also includes several due process rules regarding detention before trial and review of detention which will be discussed in greater depth in the Chapter of this Report relating to the rights of detained persons.

10. Colombian law similarly establishes due process rights for criminal defendants. Article 29 of the Constitution provides, in pertinent part, that:

All persons are presumed innocent until they have been declared guilty in a judicial proceeding. Any accused person has the right: to a defense and to the assistance of a lawyer of his own choosing, or one provided by the state, during the investigation and the trial; to a fair and public proceeding without unjustified delays; to present evidence and to controvert the evidence brought against him; to appeal a conviction and to not be judged twice for the same events.

Evidence obtained in violation of due process is null and void.

Article 33 of the Constitution further provides that "[n]o one will be obliged to make

statements against himself."

11. Article 28 of the Constitution also sets forth due process rights relating to the detention of criminal suspects or defendants. That article provides that, "[n]o one may be . . . reduced to prison or arrest or detained . . . except pursuant to a written order of the competent judicial authorities, according to the formalities of the law, and for reasons previously defined in the law."

B. IMPUNITY AND DENIAL OF JUSTICE

12. As the Commission noted in its special report on Colombia, included in its 1996 Annual Report, the problems of impunity and denial of justice continue to be prominent in Colombia. Impunity in relation to all types of crimes is widespread. In June of 1996, the Superior Council of the Judiciary reported that between 97% and 98% of all crimes go unpunished, and that 74% of crimes go unreported. Other State authorities provide similar statistics. According to information issued by the National Police, 90% of all crimes go unpunished. According to the 1996 report of the Commission for the Rationalization of Public Spending and Finances, the level of impunity in all cases has reached 99.5%. That organization asserts that only one out of every 100 crimes reaches the trial stage of criminal proceedings. Another sign of impunity is the inability of the State to carry out arrest warrants against defendants. As of January 1998, State entities reported that there existed 214,907 outstanding arrest warrants which had not been executed. ([4](#))

13. This situation has not changed in any significant manner from that described by the Commission in its "Second Report on the Situation of Human Rights in Colombia" in 1993. At that time, the Ministry of Justice considered that only 20% of crimes came to the attention of the authorities. Of those 20% of all cases, only 4% reached a final decision by the judicial authorities. ([5](#))

14. It appears that the rate of impunity is even greater in relation to crimes involving human rights violations, resulting in a failure by the State to comply with its responsibilities and a denial of justice to the victims of violations and/or their family members. Human rights monitors assert that virtually 100% of all crimes involving human rights violations go unpunished. The experience of the Commission in the cases that are brought before it substantially supports this assertion. The Commission is aware of only a very few cases in which State agents responsible for human rights violations have received criminal convictions.

15. In some well-known cases, domestic authorities and international bodies, such as the Commission, have pressed for sanctions to no avail. For example, in the case of the massacres in Trujillo, processed before the Commission as Case 11.007, the petitioners allege that little has been achieved as regards the criminal sanction of those responsible. As part of a friendly settlement proceeding initiated in this case before the Commission, a special committee composed of governmental and non-governmental bodies and organizations carried out an investigation into the massacres, which provided significant information about what had happened and the identity of the perpetrators. The President of Colombia then accepted international responsibility for the human rights violations which occurred. State entities proceeded to carry out a number of programs to assist the victims of the violence and the rest of the Trujillo community. The Office of the Procurator General also revoked a prior disciplinary decision, which had imposed no disciplinary sanctions, and issued a new decision requiring the dismissal of an Army colonel and a National Police lieutenant. Nonetheless, the petitioners allege that seven years after the violent events in Trujillo, the criminal proceedings have not resulted in the sanction of those responsible for the human rights violations which occurred. The Commission has confirmed that the individual named by numerous sources as having been responsible for coordinating the paramilitary group in the area, Henry Loaiza Ceballos (aka "El Alacrán"), has never been convicted. In fact, eight years

after the massacres, the proceeding against him has thus far resulted only in the formulation of formal charges against him.

16. Impunity in Colombia is structural and systemic.(6) It is not simply a question of leaving numerous individual crimes unpunished. Rather, the issue is one of the creation of an entire system of impunity which affects the culture and life of the nation even for those individuals who are not directly affected by human rights violations or other crimes. Most international observers agree that this high level of impunity is itself one of the most serious human rights violations occurring in Colombia.(7) The United Nations Special Rapporteur for the Independence of Judges and Lawyers visited Colombia at the end of 1996. He noted in his report that the lack of an appropriate investigation and trial in cases involving human rights violations constitutes one of the most serious concerns regarding the administration of justice in Colombia, both before the civilian courts as well as, in particular, before the military courts.(8) In addition, impunity for those responsible for committing human rights violations is one of the most important factors contributing to the continued violation of human rights and to the general increase in violence. The Commission deplores the situation of impunity that exists in Colombia and notes that the State will face responsibility for all violations of human rights that occur until such time as it takes the necessary measures to ensure that justice is administered fairly and effectively in Colombia.

1. The Military Justice System

17. The problem of impunity is aggravated by the fact that the majority of cases involving human rights violations by members of the State's public security forces are processed by the military justice system.(9) The Commission has repeatedly condemned the military jurisdiction in Colombia and in other countries for failing to provide an effective and impartial judicial remedy for violations of Convention-based rights, thereby insuring impunity and a denial of justice in such cases.(10) In Colombia specifically, the military courts have consistently failed to sanction members of the public security forces accused of committing human rights violations.

18. The Colombian Ministry of Defense has cited figures indicating that more than 45% of criminal proceedings carried out under the military justice system result in convictions. However, those statistics do not state what types of crime result in convictions. The Commission has, on several occasions, asked the Ministry of Defense to provide a breakdown of the types of cases which result in criminal convictions by type of crime, victim, etc... Yet, this information has never been made available. It is generally understood that almost all of these convictions relate to crimes which are traditionally military in nature, such as desertion and disobedience of direct orders. On the other hand, cases of human rights violations tried in the military courts are protected by impunity.

19. The problem of impunity in the military justice system is not tied only to the acquittal of defendants. Even before the final decision stage, the criminal investigations carried out in the military justice system impede access to an effective and impartial judicial remedy. When the military justice system conducts the investigation of a case, the possibility of an objective and independent investigation by judicial authorities which do not form part of the military hierarchy is precluded. Investigations into the conduct of members of the State's security forces carried out by other members of those same security forces generally serve to conceal the truth rather than to reveal it. Thus, when an investigation is initiated in the military justice system, a conviction will probably be impossible even if the case is later transferred to the civil justice system. The military authorities will probably not have gathered the necessary evidence in an effective and timely manner. In those cases which remain in the military justice system, the investigation will frequently be conducted in such a manner as to prevent the case from reaching the final decision stage.

20. The military criminal justice system has several unique characteristics which prevent

access to an effective and impartial judicial remedy in this jurisdiction. First, the military justice system may not even be properly referred to as a true judicial forum. The military justice system does not form part of the judicial branch of the Colombian State. Rather, this jurisdiction is operated by the public security forces and, as such, falls within the executive branch. The decision-makers are not trained judges, and the Office of the Prosecutor General does not fulfill its accusatory role in the military justice system.

21. Second, the judges in the military justice system are generally members of the military in active service. The courts martial ("consejos verbales de guerra") are also generally composed of members in service. In 1995, the Constitutional Court interpreted the Constitution as allowing only retired, not active, military officers to serve on courts martial. The Court decided that these entities administered justice, even though they did not form part of the judicial branch. The constitutional principles requiring impartiality and objectivity in the administration of justice thus applied to their actions. The Court determined that these principles were compromised where members of the armed forces in active service served on the courts martial. The Court noted, in this context, that:

[T]he social conflict situation faced by the country for the last several years places members of the forces of public order . . . in a situation where they must participate in the different repressive actions required to subdue the enemies of the [institutional] order and, at the same time, serve as judges of the excesses committed in the course of those actions which constitute crimes. ([11](#))

22. The Commission believes that the reasoning set forth by the Constitutional Court explains one of the most serious problems inherent in the processing of human rights cases by the military justice system. Nonetheless, the Colombian legislature responded to the Constitutional Court decision by modifying Article 221 of the Constitution to provide specifically that active military officials may serve on the courts martial.

23. Thus, currently, the commander of the respective division, brigade or battalion serves as the judge in first instance in cases brought against members of the public security forces in the military justice system. The commander carries out the activities of a first instance tribunal in conjunction with the officers which he names to participate in courts martial. The decision at the first instance level is then subject to appeal to the Superior Military Tribunal. The President of the Superior Military Tribunal is the general commander of the Military Forces.

24. This arrangement allows for military officials to serve as judges of first instance over incidents which occurred in operations that they ordered and directed, as commanders of the military unit involved. The Commission made special note of the lack of impartiality inherent in such a situation in the case of Arturo Ribón Avilán, known as "the Milk" case. In that case, the Commission found that the National Police in Bogotá had extrajudicially executed members of the M-19 armed dissident group whom they found distributing milk in a neighborhood in the south of Bogotá. The Commission found that the criminal proceeding initiated in the military criminal justice system did not constitute an adequate investigation or provide an effective judicial remedy, because the military commander who directed the operation in which the persons were killed also served as judge in that proceeding. ([12](#))

25. In addition, the proceeding takes place within the hierarchy of the security forces. The members of the courts martial respond hierarchically to their superiors in almost all aspects of their lives as soldiers or police officers. Pursuant to the norms governing the public security forces, they are bound to follow the orders of their superiors or face severe consequences. It is thus difficult, if not impossible, for these individuals to become independent and impartial judges free from the influence of their commanders or other superiors. As noted above, their commanders may also have ordered and directed the very operation which they are asked to analyze as members of a court martial. Their commanders

may face responsibility if any irregularities are found. This situation may lead to pressure by commanders on the courts martial or outright orders designed to obtain a verdict absolving soldiers of all responsibility for any acts they allegedly committed in violation of human rights.

26. Also, throughout the proceedings in the military justice system, members of the military are engaged in judging the actions of their military colleagues, making impartiality difficult to achieve. Members of the military often feel bound to protect their colleagues who fight by their side in a difficult and dangerous context. This problem was raised by the Constitutional Court in its 1995 decision regarding the courts martial. Other Colombian State authorities have also noted that members of the State's security forces have "a deep-seated sense of esprit de corps" which is sometimes misinterpreted as requiring them to cover up or remain silent about crimes committed by fellow soldiers or police officers. ([13](#))

27. The Commission understands that certain crimes truly relating to military service and military discipline may be tried in military tribunals with full respect for judicial guarantees. Thus, the Colombian Constitution provides, in Article 221, that crimes committed by members of the armed forces "in active service, and related to that service" will fall under the jurisdiction of military tribunals. ([14](#)) The Commission considers, however, that various state entities have interpreted excessively broadly the notion of crimes committed in relation to military service.

28. First, the Superior Council of the Judiciary, responsible for deciding jurisdictional conflicts, has consistently issued decisions granting jurisdiction to the military courts in cases where acts which would constitute grave human rights violations are alleged. Traditionally, the tribunal sent almost all cases involving crimes allegedly committed by members of the security forces to the military jurisdiction, without seriously analyzing the requirement of connection to service. The tribunal also resisted with vehemence any suggestion that the military jurisdiction should not receive cases involving crimes against humanity or other particularly serious human rights violations. The tribunal at one point stated that any such suggestion formed part of a "pseudo-Marxist" current of thought. ([15](#))

29. This position led the Superior Council of the Judiciary to transfer the criminal proceeding carried out against retired three-star general Farouk Yanine Diaz to the military jurisdiction on November 26, 1996. Retired general Yanine was being investigated for alleged involvement in the organization and support of paramilitary groups in the Middle Magdalena region of Colombia in the 1980s. The specific case transferred to the military jurisdiction involved the alleged forced disappearance and extrajudicial execution of 19 merchants in the Middle Magdalena region in October of 1987. ([16](#)) On June 24, 1997, retired general Yanine was absolved of all responsibility and his case was dismissed. Because of his status as general, Yanine was tried by the general commander of the Military Forces. At that time, General Harold Bedoya held that position. General Bedoya had previously made statements to the Colombian media defending General Yanine.

30. On August 5, 1997, the Constitutional Court of Colombia issued an extremely important decision delimiting the jurisdiction of the military justice system. ([17](#)) That decision declared unconstitutional certain provisions of the Military Criminal Code (Código Penal Militar) which had been interpreted as granting broad jurisdiction to the military justice system. The Court held that the requirement that acts be committed "in relation to [military] service" constituted a significant limitation on military jurisdiction. The Court specifically held that the military courts might not hear particularly serious crimes, including crimes against humanity. The Court held that such crimes stand in complete contradiction to the duties and responsibilities of the public security forces and thus could not be committed in relation to military service. Finally, the Court held that the military jurisdiction should be treated as "exceptional." Thus, in situations causing doubt regarding the proper criminal jurisdiction,

cases should be processed by the civilian justice system.

31. The Commission believes that this decision of the Constitutional Court provides an interpretation of military jurisdiction which corresponds to the limits which should be placed on that jurisdiction pursuant to international human rights law. The Commission wishes to highlight the contribution made by this decision to the incorporation of international human rights standards in domestic law as required by the Constitution. The decision constitutes a truly meritorious step by a State entity in Colombia's struggle toward full human rights protection.

32. Unfortunately, the Commission has received information indicating that the decision of the Constitutional Court has not yet led to a significant change in the distribution of cases involving members of the public security forces accused of human rights violations. The military justice system still processes the majority of human rights cases, particularly the most notorious ones, a year after the Constitutional Court decision was issued. According to the information received by the Commission, several State entities are responsible for this situation.

33. The Superior Council of the Judiciary continues to resolve new jurisdictional conflicts by sending cases involving acts which would constitute grave human rights violations to the military justice system. The Commission understands that the tribunal has begun to submit some of the most serious cases, involving massacres or similar acts, to the civilian justice system. The Commission considers this change to be extremely important. However, in many other cases, the Superior Council continues to apply a very broad interpretation of acts committed in relation to military service.

34. For example, that tribunal transferred the case known as "Caloto" or "El Nilo" to the military justice system at the end of 1997, several months after the Constitutional Court issued its decision. The Office of the Prosecutor General of the Nation had handled the case until the General Inspector for the National Police decided to seek jurisdiction, thereby initiating the jurisdictional conflict. The Caloto case does not appear to have any relation to acts carried out in relation to military service. The case deals with a National Police and paramilitary massacre of a group of indigenous persons in the Department of Cauca. The case is processed before the Commission as Case 11.101 and is currently in friendly settlement proceedings at the international level.([18](#))

35. Some recent decisions of the Superior Council do not even cite the Constitutional Court decision when resolving difficult questions regarding jurisdiction in cases allegedly involving human rights abuses.([19](#)) The Commission understands that certain members of the Superior Council of the Judiciary consider that they must independently interpret the Constitution to reach decisions regarding the competence of the military justice system. However, the Colombian Constitution itself places with the Constitutional Court the authority to interpret the Constitution and to ensure its integrity and supremacy.([20](#)) The Commission believes that Superior Council's resolve to decide cases in defiance of the Constitutional Court decision constitutes a serious challenge to the rule of law in Colombia.

36. In addition, in those cases presented to it for transfer to the civilian justice system, based on the Constitutional Court decision, the Superior Council has refused to order the transfer. The Constitutional Court decision expressly established that the new rule of law set forth therein would apply to all proceedings in which no decision had yet been issued. As a result, some cases processed in the military justice system, in which a decision had not been reached, would necessarily need to be transferred to the civilian justice system. However, the Superior Council of the Judiciary has been unwilling to accede to the transfer of cases previously taken up by the military justice system.

37. For example, in the case known as Ríofrío,([21](#)) a civilian judge requested that the

military justice system transfer to him the portion of the case brought against several military officials. He was asked to make this request by the Delegate Procurator in Criminal Matters. The case against these officials had been processed by the military justice system pursuant to a 1994 decision of the Superior Council of the Judiciary granting jurisdiction to that forum. The civilian judge requested the transfer pursuant to the intervening decision of the Constitutional Court. When the military justice system refused to grant the civilian judge's request for a transfer, the jurisdictional conflict returned to the Superior Council of the Judiciary. That tribunal issued a decision in July 1998, in which it refused to decide the conflict on the grounds that it already decided the jurisdictional question in the case in 1994. The Superior Council refused to treat the decision of the Constitutional Court as a factor which might require it to reconsider its prior decision. The lawyers for the civil party in the Ríofrío case are considering the possibility of filing a tutela action against the Superior Council of the Judiciary seeking a decision from the Constitutional Court ordering the Superior Council to follow its decision.

38. The difficulties faced in cases brought before the Superior Council of the Judiciary might be avoided through decided action of other State entities in favor of compliance with the Constitutional Court decision. For example, the State's security forces have the competence independently to transfer to the civilian justice system those cases which belong in that jurisdiction pursuant to the Constitutional Court's decision. Such independent transfers would allow the security forces to demonstrate their support for the implementation of limitations on military jurisdiction. The security forces have pledged such support in relation to the proposed new Military Penal Code which seeks to reform the military jurisdiction by incorporating the limitations set forth by the Constitutional Court. During the meeting it held with representatives of the Military Forces during its on-site visit, the Commission was told that steps were being taken to allow for such automatic transfers. The officers present at that meeting told the Commission that representatives of the State's security forces would meet with counterparts from the Office of the Prosecutor General and the Office of the Procurator General to determine which cases should be transferred.

39. However, to the Commission's knowledge, the different entities never reached an agreement leading to the automatic transfer of cases by the military to the civilian justice system. In practice, it is thus necessary for the appropriate State entities to formally petition for a change of jurisdiction. The security forces then decide whether a given case will be transferred. If the petition to transfer is denied, the jurisdictional conflict must go before the Superior Council of the Judiciary with low probabilities of a favorable result for civilian jurisdiction.

40. Not only have the State's security forces failed to automatically transfer cases to the civilian jurisdiction, they also continue to affirmatively request jurisdiction over cases being processed in the civilian justice system which appear to fall outside of their jurisdiction based on the Constitutional Court's decision. The Caloto case presents such a situation. Even more recently, the Army has requested the transfer to the military justice system of an investigation initiated by the Office of the Prosecutor General of the Nation regarding the alleged involvement of General Fernando Millán Pérez, commander of Brigade V in Bucaramaranga, in the formation of paramilitary groups. The Office of the Prosecutor General has refused to relinquish jurisdiction. The Superior Council of the Judiciary will thus decide the jurisdictional conflict.

41. The Commission notes that, in response to formal petitions, the security forces did transfer a significant number of cases to the civilian justice system after the decision by the Constitutional Court. As of March 9, 1998, the Ministry of Defense reported that 178 criminal proceedings had been transferred from the military justice system to the Office of the Prosecutor General of the Nation in compliance with the Constitutional Court decision. (22) In its observations to this Report, the Colombian State noted that the central command of the Military Forces now reports that 471 criminal cases have been transferred from the

military justice system to the ordinary justice system.

42. The Commission values the importance of these decisions to transfer cases. However, the Commission notes that a significant number of petitions to transfer have also been denied. In addition, Colombian non-governmental organizations allege that the transferred cases do not involve human rights violations.

43. In February of 1998, in a hearing on the general human rights situation in Colombia, the Commission asked the Government to provide it with information regarding the types of cases that had been transferred. The Government was also asked to provide a list of any cases open before the Commission that had been transferred. The Commission did not receive information regarding the transfer of any of the cases that it is currently processing. The Government did send a list of the cases that had been transferred, including few details other than the crime allegedly committed. The Commission notes that many of the transferred cases relate to crimes of extortion, embezzlement and unjust enrichment. Other cases involved crimes of perjury and even escape of prisoners. The Commission notes that these cases probably do not involve human rights violations. The Commission is concerned that the public security forces may have permitted the transfer of certain limited types of cases to show compliance with the Constitutional Court decision while maintaining matters involving the most serious human rights violations in the military justice system.

44. The Commission is also concerned that the civilian authorities involved in the administration of justice have not always acted decisively to assist in the implementation of the Constitutional Court decision. The Office of the Prosecutor General and the Office of the Procurator General, as well as other State entities, expressed to the Commission their interest in transferring human rights cases to the civilian justice system on the basis of the Constitutional Court decision. However, a coordinated policy between entities as to the procedures to adopt to seek transfers of cases does not appear to exist. Civil parties to cases often receive varied and contradictory information from the different entities when they seek assistance regarding the transfer of their human rights cases.

45. The Office of the Delegate Procurator for Criminal Matters has initiated the majority of the requests for the transfer of cases to the civilian justice system. Representatives of that Office have the competence to request that the authorities in the military justice system as well as the civilian system take certain actions in criminal proceedings. They have used this authority to request military judges to transfer cases which they are processing to the civilian courts. In other cases, they have petitioned civilian judges to seek jurisdiction over cases processed in the military justice system, leading to a formal jurisdictional conflict where the security forces refuse to cede jurisdiction. The Commission recognizes and values the effort made by the Office of the Procurator General.

46. However, it is not clear why the Office of the Procurator General has taken the primary role in seeking the transfer of cases. The procurators are not judicial officials and thus may only request that authorities with jurisdictional competence take actions. Meanwhile, the Office of the Prosecutor General forms part of the judiciary and has jurisdictional powers. Thus, prosecutors may also make requests to the military courts for the transfer of cases from that jurisdiction to their own. Unlike the delegate procurators, the prosecutors may also directly initiate jurisdictional conflicts which must be resolved by the Superior Council of the Judiciary in those cases where the military justice system refuses to transfer cases which they request.

47. Yet, the Office of the Prosecutor General has not been active in seeking the transfer of cases from the military jurisdiction to its own jurisdiction based on the Constitutional Court decision. Nor has the Office set forth any policy as to how it will handle petitions by civil parties requesting that it take action to remove cases from the military justice system. The Commission has received several complaints from civil parties and their lawyers regarding

communications which they received in response to their requests that the Office of the Prosecutor General seek to obtain jurisdiction over human rights cases in the military justice system.

48. For example, in the Ríofrio case mentioned above, the lawyer for the civil party first sought assistance from the Office of the Prosecutor General before enlisting the support of the Delegate Procurator for Criminal matters to petition the civilian judge to request the transfer of the case. The lawyer filed a request with the National Directorate of Prosecutors (Dirección Nacional de Fiscalías) of the Office of the Prosecutor General of the Nation asking that body to seek the transfer of the case. The National Directorate denied the request, arguing that the Code of Criminal Procedure provided that a party to the proceeding must initiate a jurisdictional conflict by petition before the judicial authority believed by the party to have proper jurisdiction over the case. The National Directorate argued that it functions as an administrative entity rather than as a judicial authority and thus could not receive the petition presented by the civil party. The National Directorate asserted, in turn, that it does not act as a party to proceedings before the various prosecutors from the Office of the Prosecutor General or before any other judicial authority and thus could not formulate the petition for the transfer. ([23](#))

49. Acting on the basis of this response, the attorney for the civil party presented a new petition directly to the Human Rights Unit, the jurisdictional unit of the Office of the Prosecutor General of the Nation which he believed to have proper jurisdiction over the case. He received a response from the Office of the Prosecutor General of the Nation indicating that his petition had been transferred to the National Directorate of Prosecutors, identified as the proper entity to deal with the issue. ([24](#)) No unit within the Office of the Prosecutor General ever took any action to seek transfer of the case to its jurisdiction.

50. The Commission is extremely concerned by the continued tendency for the military justice system to treat the majority of cases involving alleged human rights violations by members of the State's public security forces. This situation seriously undermines the positive efforts to combat human rights violations currently being carried out in other areas by the various entities of the Colombian State. The Commission urges all State entities to work together to ensure that the civilian jurisdiction handles all cases not directly related to military service.

51. After many years of discussion regarding possible reforms to the military justice system, the executive branch finally presented to the legislature a proposed new Military Penal Code on September 9, 1997. This proposed reform to the Military Penal Code would incorporate the parameters for the military jurisdiction set forth in the Constitutional Court decision, explicitly removing from the military justice system crimes of torture, genocide, forced disappearance and other grave human rights violations. ([25](#))

52. The proposed legislation contains other reforms that would seek to ameliorate problems existing under the current Military Penal Code. For example, the draft Code establishes the right of victims and their family members to constitute themselves as civil parties in criminal proceedings carried out before the military justice system. Currently, this right is established only pursuant to jurisprudence of the Constitutional Court, and there exists no provision in the Code regulating the right. The Commission has also received complaints indicating that the right to join the proceedings as a civil party, set forth by the Constitutional Court, ([26](#)) has not always been respected. Clarification of this point in the law would thus be extremely important. The Commission has previously emphasized the importance of the right to act as a civil party in those cases where such participation is allowed by law. ([27](#))

53. The proposed legislation would also limit the defense of due obedience. The proposed Code would establish that an allegation of due obedience would only serve as a defense if the act in question was carried out in compliance with a "legitimate" order from a "competent"

authority.([28](#))

54. Finally, the reform legislation attempts to separate the duties of judge and serviceman by establishing that those officers who are assigned to serve within the regular hierarchy of the State's security forces may not also serve as judges. The law would thus require that those serving as judges be assigned exclusively to that duty. These judges would be removed from military duty and the hierarchical command structure. This reform would address some of the issues relating to lack of impartiality and independence described above.

55. The Commission recognizes the immense effort put into the preparation of this proposed reform to the Military Penal Code. The Commission commends the good faith of the different State entities which worked together to seek a compromise which would allow protection for human rights and, at the same time, be acceptable to all. However, the Commission joins with other international observers in noting that the new proposed Code fails to adequately address certain problems relating to the administration of justice and the protection of human rights.([29](#))

56. First, the provision in the proposed Code regulating the right to participation of the civil party places several significant limitations on this right. Pursuant to the proposed reform, the civil party would not have the ability to challenge any determinations that are not directly related to his claim for damages. The Code thus envisions the role of the civil party as one of plaintiff in a suit for damages rather than as participant seeking access to justice and a full remedy, including the investigation and sanction of those responsible for committing human rights violations. Prior Commission decisions have established, to the contrary, that civil parties should be recognized as playing "an important role in propelling the criminal process and moving it forward."([30](#)) The provision also limits the access of the civil party to certain documents included in the record of the case.([31](#))

57. Second, many observers have questioned the effectiveness of the limitations on the due obedience defense. They suggest that the proposed new rule relating to this defense may be too vague, because it does not clearly establish that due obedience will not constitute a defense in cases where compliance with orders requires actions in violation of human rights.

58. Third, some critics assert that the proposed Code does not provide adequately for a true separation of the judicial function from the military hierarchy. They question whether complete impartiality and objectivity can be achieved where the judges continue to be members of the military who act within the installations of the military unit over which they hold jurisdiction. They note that the judges will continue to form part of the public security forces rather than the judicial branch. They also point to the fact that the military commanders would still be responsible for evaluating the performance of the judges within their brigade or battalion.

59. Finally, experts have expressed doubt as to whether the incorporation of the parameters set forth by the Constitutional Court will truly result in the elimination of military jurisdiction over cases involving grave human rights violations and other crimes not related to military service. As noted above, several State entities have shown resistance to such a change in reaction to the Constitutional Court's decision. It is not clear that a legislative change will be more effective. For example, the Superior Council of the Judiciary has indicated that it will continue to apply its own interpretation of the constitutional provision establishing military jurisdiction. That body may thus decide that the new Military Penal Code provides an excessively restrictive interpretation of constitutional military jurisdiction and refuse to apply it in the manner intended.

60. The Commission nonetheless notes that adoption of this proposed reform to the Military Penal Code, with some modifications, would constitute an important advance in the protection of human rights. Although both the President and the public security forces

pledged to actively seek passage of the measure, the legislature decided in December of 1997 to postpone the debate until the following year. At the time of the drafting of this report, a new Military Penal Code had not yet been adopted, although the new Government of President Pastrana had announced its interest in the passage of this legislation.

2. The Civilian Criminal Justice System

61. The civilian criminal justice system, consisting of both the ordinary and the regional justice systems, has also failed to effectively combat impunity and provide for the adequate investigation and sanction of human rights offenders. As noted above, the overall impunity rate is calculated at almost 100% in human rights cases. To reach this rate, even those proceedings carried out in the civilian justice system must fail in their task. ([32](#))

62. There exist several factors leading to this failure. The Colombian State has not always provided the criminal justice system with sufficient resources and support to allow it to carry out its work effectively. ([33](#)) There do not exist adequate numbers of prosecutors, judges, public defenders and jails to handle the great number of crimes committed each year in Colombia, including crimes which involve violations of human rights. Those public officials who carry out these tasks do not receive a level of remuneration that adequately reflects the nature and quantity of the work burden which they bear. As a result, some of these public employees simply refuse to carry out certain tasks or fail to act with the energy necessary to ensure the investigation and sanction of human rights crimes. Criminal investigations frequently fail, for example, because the investigations are carried out so slowly that the crime is allowed to prescribe. In other cases, prosecutors fail to bring charges against detained suspects within the time period allowed by law.

63. The Commission also received information indicating that, in some courts in some areas of the country, corruption has interfered with the effective administration of justice. According to this information, certain judges and prosecutors are influenced in their decisions by links to criminal organizations.

64. The State entities charged with the investigation, prosecution and decision of human rights cases also sometimes lack the political will to combat human rights violations. The Commission has received information indicating, for example, that some prosecutors simply do not pursue cases regarding alleged human rights violations, choosing instead to open cases regarding crimes by armed dissident groups or others. During the Commission's visit to the Urabá region of the Department of Antioquia, the regional prosecutor for Carepa provided the Commission with a list of open criminal investigations in that jurisdiction. ([34](#)) That list contained more than 200 cases. Of those 200 cases, 117 involved crimes of rebellion or terrorism in which armed dissident groups or their members were named as the suspects. Cases involving other crimes also named members of armed dissident groups as suspects. Only 13 cases of any nature named paramilitary groups as suspects. No case involving the crime of organization of illegal paramilitary groups named a member of the State's security forces as a suspect. The distribution of the cases opened by the regional prosecutor does not correspond to the information received by the Commission reporting numerous human rights violations in the area by paramilitary groups, sometimes acting in coordination with members of the public security forces.

65. Prosecutors and investigators sometimes treat individuals who denounce crimes committed by paramilitaries or the State security forces as though they have acted improperly or illegally in questioning State or paramilitary actions. The Commission has received complaints regarding cases in which investigators have suggested that victims of alleged human rights violations are cooperating with armed dissident groups by denouncing violations.

66. As noted in Chapter IV of this Report, State security forces have also traditionally shown

an unwillingness to execute arrest warrants against paramilitary groups involved in human rights violations. Without the arrest of these suspects, the criminal justice system cannot effectively sanction those violations.

67. The legitimate fear of public authorities involved in the administration of justice, as well as witnesses, also contributes to the ineffectiveness of criminal proceedings in human rights cases processed in the civilian justice system. Those responsible for human rights abuses sometimes ensure their impunity by threatening or attacking those who might contribute to a sanction against them. In its "Second Report on the Situation of Human Rights in Colombia," the Commission noted that:

Fear of falling victim to some reprisal has gripped judges, regardless of their rank in the judiciary, attorneys who defend their clients, the parties involved in legal disputes, criminal investigations, police who collaborate in investigating criminal prosecutions and witnesses who are key in determining the authorship of the facts under investigation and whose testimony can shed light on the facts and convict the guilty parties. ([35](#))

The Commission believes that fear continues to play an important part in ensuring impunity in general, and particularly in human rights cases, in Colombia.

68. In 1992, several non-governmental organizations issued a study regarding violence against judges and lawyers during the period from 1970 to 1991. ([36](#)) That study found that, during the period in question, an average of 25 judges and attorneys had been assassinated or assaulted each year because of their professional practice. The members of the judiciary most affected by this violence were those involved in criminal investigations and trials. The study found that drug trafficking was responsible for violence in 58 cases of violence out of a total of 240 for which an author or motive were identified. Paramilitary groups were responsible for 80 of those cases, State agents for 48 cases and the guerrilla movement for 32 cases. The Colombian State offered similar statistics. According to the State, between 1971 and 1991, 515 judges were targets of violence, including 278 homicides. ([37](#)) According to information received by the Commission, the situation has not changed significantly in recent years. One exception might be an increase in violence against judges and lawyers by paramilitary groups.

69. In April of 1998, the murder of attorney Eduardo Umaña caused a great impact on Colombian society. Mr. Umaña had frequently denounced human rights violations and sought prosecution of the persons responsible, as well as serving as a defense attorney in criminal cases brought against labor leaders and others. Three armed individuals entered his apartment in Bogotá on April 18, 1998 and shot Mr. Umaña to death.

70. The Commission has not received information which would assure it that the State is taking all necessary measures to prevent violence against judges, lawyers and others involved in the administration of justice. The same impunity which prevails in the majority of cases also tends to prevent effective investigations and sanctions in cases of violence against these persons. The Commission urges the State to provide the necessary protections for these individuals and, at the same time, reminds those officials involved in the administration of justice of their duty, which may not be renounced, to provide for effective investigations and sanctions against those who commit human rights violations.

71. The structure of the criminal justice system in Colombia also contains certain rigid elements which make effective investigations and sanctions more difficult and restrict the rights of victims and their families to access to justice and a remedy. For example, the victims and their family members may only participate in criminal proceedings as civil parties after a suspect has been named and a formal investigation has been opened. ([38](#)) These individuals are thus excluded from the initial investigation stage of the proceedings in which suspects are identified. The victim or his family members may have important information

which would lead to the identification of those responsible for the crimes. Yet, they are precluded from requesting the gathering of evidence or the taking of testimony until after a suspect has already been named.

72. The Commission wishes to emphasize that some judges and prosecutors have sought to fully discharge their duties and to combat impunity. In this regard, the Commission reiterates its recognition of the work of the Human Rights Unit of the Office of the Prosecutor General of the Nation. In its report on Colombia included in the 1996 Annual Report, the Commission noted that the Human Rights Unit had been able to "push forward criminal investigations in several important human rights cases, including several cases under study by the Commission."

73. The Human Rights Unit was created by the Prosecutor General as a new strategy for fighting impunity. The Unit began to function on October 1, 1995 with competence over all territory in Colombia in cases involving violations of human rights and international humanitarian law assigned to it. The Unit consists of 25 prosecutors and 10 members of the Technical Investigation Corps (Cuerpo Técnico de Investigación – "CTI").

74. The Unit continues to move criminal investigations forward at a faster rate than is the norm in Colombia and also continues to issue arrest warrants against members of the Military Forces, paramilitary groups and others. In 1997 and 1998, the Unit issued more than 190 preventive detention orders and brought formal criminal charges against 56 individuals. (39) According to information provided to the Commission by the Government, judicial decisions have been issued in thirteen cases prosecuted by the Unit. The majority of those decisions were convictions of members of paramilitary groups and armed dissident groups. At least one decision did reach several State agents who were convicted of kidnapping, homicide and formation of armed death squads.

75. Nonetheless, the Human Rights Unit faces obstacles which prevent the full realization of its potential to combat impunity. The size of the unit presents an obvious problem. The small number of prosecutors assigned to the Unit cannot possibly address the overwhelming number of serious human rights cases which arise in Colombia. Although the convictions the Unit has achieved are significant, they do not begin to reach all of the authors of human rights violations and all of the cases.

76. This problem is aggravated by the fact that the National Directorate for Prosecutors has not made clear the criteria which it utilizes for assigning cases to the Human Rights Unit. Victims and non-governmental human rights organizations have complained of arbitrariness in the selection of cases. Some organizations have received unclear responses to requests that the Human Rights Unit takes jurisdiction over certain cases. These organizations may be told that the cases do not fall within the parameters established for the Human Rights Unit. Yet, no information is provided regarding which cases do come within those parameters.

77. The Unit has also not always received adequate support from other State entities. The Unit frequently has difficulty ensuring the execution of the arrest warrants which it issues. For example, the Unit has issued arrest warrants against both Fidel and Carlos Castaño. Yet, despite Carlos Castaño's very public activities, he has not been detained. In addition, the Commission has received information indicating that some civil and military institutions in Colombia have suggested that the Human Rights Unit should be dismantled. Those suggestions appear to stem, at least in part, from the pressure which the Unit has brought to bear on important military officials as a result of its investigations.

78. Many of the prosecutors from the Human Rights Unit have received threats as a result of their work and several, including the prior director of the Unit, have been forced to flee the country and seek shelter abroad. The Commission received information regarding one case in which a member of the State's public security forces accused of committing human rights

violations stated in a public hearing that the Human Rights Unit defended subversives and that its members would suffer the consequences. The Commission is concerned by the fact that the paramilitary groups have announced a similar position in formal communiqués. For example, the Peasant Self-Defense Organizations for Córdoba and Urabá (Autodefensas Campesinas de Córdoba y Urabá - "ACCU") prepared a letter in which the organization refers to the Human Rights Unit as "the insurgency in institutional form." (40)

79. The Commission is also concerned about the information it has received regarding the murder of Edilbrando Roa López. Mr. Roa was an investigator with the CTI group assigned to the Human Rights Unit. This investigator had been involved in various investigations into human rights cases, including the case of the forced disappearance of Nidia Erika Bautista. At the time of his death, he was investigating a massacre that took place in the Mesopotamia region of the Department of Antioquia. Members of paramilitary groups had threatened several witnesses in the case. On September 3, 1998, Mr. Roa was travelling to the region to investigate these threats when he was detained in a roadblock. He was subsequently killed along with the driver of the vehicle which transported him. The Commission has also received information regarding the possible existence of a plan to attack State agents working with the Office of the Prosecutor General of the Nation, particularly the Human Rights Unit, who have been assigned to carry out investigations against paramilitary groups.

80. The Commission has received information indicating that the State does not always take the special measures necessary, under these circumstances, to ensure the safety of the members of the Unit. Because the Unit for Human Rights has shown its potential to serve as an effective tool against impunity in human rights cases, the Commission strongly urges Colombia to maintain the Unit and to provide it with the material and human resources necessary to allow it to intensify its work.

C. DUE PROCESS RIGHTS FOR CRIMINAL DEFENDANTS

81. The Commission has received numerous complaints regarding violations of the due process rights of criminal defendants. The majority of these complaints arise in the context of the regional justice system. The Commission will thus focus its analysis on issues of due process in that system. Some of the due process failings mentioned in the discussion of the regional justice system may also present themselves in cases processed in the other jurisdictions. The Commission does not attempt here to analyze all of the due process complaints brought to its attention but rather to focus on several broad issues of special concern. The Commission will likely be asked in the future to address additional due process issues, in the context of individual cases or general reports, such as the constitutional and legislative provisions which provide for an exception to the right of appeal in certain criminal cases.

1. Background on the Regional Justice System

82. The regional justice system has its origin in laws and emergency decrees from the 1980s establishing a "public order" jurisdiction. This special jurisdiction was established to handle cases involving particularly serious crimes, such as terrorism and drug trafficking, which presented special risks to those involved in the administration of justice. Additional emergency decrees issued in 1990 and 1991 restructured the public order jurisdiction and established special measures for the protection of those involved in the process. These new measures included a provision to maintain secret the identity of those involved in the proceedings, including the judges and prosecutors.

83. Pursuant to authority granted by a transitory provision of the 1991 Constitution, a special legislative commission converted these decrees into permanent legislation. At the same time, it was established that this special jurisdiction would expire in the year 2002. However, a 1996 law reduced that time period and dictated that the regional justice system must cease

to exist by June 30, 1999.

84. The current jurisdiction of the regional justice system includes drug-related crimes, crimes against the state and constitutional order, arms manufacturing and trafficking, terrorism and membership in illegal armed groups. In practice, a wide array of cases is processed by the regional justice system.

85. In fact, one of the first problems associated with the regional justice system relates to the inadequate description of the crimes which fall within its competence. Because the jurisdiction of the regional justice system is not clearly delineated, many different types of crimes at least begin their processing in this system. Even if these cases are later transferred to another jurisdiction, the defendants have meanwhile been subjected to the due process violations which occur in all stages of the processing of a case in the regional justice system, as described below.

86. The vague description of the jurisdiction of the regional justice system also leads to a situation in which certain individuals with resources or influence may avoid this jurisdiction while less fortunate individuals are unable to do so. A study conducted by the law school at the National University of Colombia found that 25% of the defendants in the regional justice system are rural peasants, while 18% are street merchants. Another 9.3% are manual laborers and 7.5% are bus drivers. ([41](#))

2. Due Process Issues in the Regional Justice System

87. The Commission has received information indicating that members of the State's public security forces sometimes detain suspects without an arrest warrant. These officials generally assert that the capture was justified as a capture in flagrante delicto, carried out against an individual caught in the act of carrying out a crime. As noted above, Colombian law prohibits arrests without warrant in most cases. ([42](#)) There does exist an exception for cases of detention in flagrante delicto. ([43](#)) However, the Commission has been informed that the requirements for an in flagrante capture have frequently not been fulfilled in cases of arrest without warrant.

88. As was also noted above, Article 7(2) of the American Convention specifically provides that no one shall be deprived of physical liberty except "under the conditions established beforehand" by the constitution or laws. Authorities violate this provision when they carry out captures in cases where neither of the two possible conditions for arrest under Colombian law, capture in flagrante delicto or capture with an arrest warrant, are met. The Inter-American Court has specifically held that detentions in violation of domestic law provisions which require an arrest warrant, except in the case of captures in flagrante delicto, constitute a violation of Article 7(2) and (3) of the Convention. ([44](#))

89. The Commission received information regarding the alleged illegal detention of Juan González Huber and Eduardo Herminso Guillen. Members of the Army captured these two individuals in Puerto Rico, Department of Caquetá on October 14, 1997. The two detainees were accused of involvement in the bombing of a bridge carried out that same day presumably by armed dissident groups.

90. The Army never suggested that there existed an arrest warrant for the two individuals, and the local prosecutor testified that she had not issued such a warrant. The requirements for a detention in flagrante delicto pursuant to Colombian law were also apparently not met.

91. Colombian law permits a detention in flagrante delicto when the person detained is surprised in the moment when he is carrying out a criminal act or when he is surprised with objects, instruments or other traces which indicate that he committed a criminal act

"moments before." A detention in flagrante is also allowed where the arresting authority has followed the detainee from the scene of the crime or where the detaining authority has responded to cries for help.([45](#))

92. However, Army officials recognized that they did not detain the two individuals until 40 minutes after the explosion. They asserted that they decided to capture Juan Gonzalez Huber and Eduardo Herminso Gullen based on second-hand information provided to them by civilians in the area who allegedly identified the two men as having taken part in the bombing.([46](#)) Colombian law would not appear to permit a capture without an arrest warrant under these circumstances.

93. The Commission has also received information indicating that Colombian authorities sometimes fail to inform suspects in cases processed by the regional system of the reasons for their capture. According to this information, the suspect also may not be informed of the charge or charges against him within a reasonable time. Even when the legal situation of the accused is formalized and preventive detention is ordered, the charges against the accused are not always made clear. This failure to inform the accused of the reasons for his arrest and the charges against him constitutes a blatant violation of Article 7(4) of the Convention.

94. Analysts of the regional justice system have also pointed out due process problems arising from the fact that members of the State security forces carry out much of the preliminary investigation. This situation results partly from a provision of the law which allows judicial police assigned to the different security forces or to the Office of the Prosecutor General to carry out investigations, including interrogation of the accused in some cases, on their own or pursuant to orders from the prosecutor.([47](#)) However, in some cases, members of the security forces take it upon themselves to carry out investigations without any clear authority to do so.

95. Members of the security forces prepare reports, based on their investigations, regarding suspects. These reports are placed directly on the record in the proceeding before the regional justice system. These reports frequently do not clearly identify the testimonial or documentary sources upon which they rely. In some cases they are even treated as secret documents in the proceeding, precluding any possibility for the accused or his lawyer to controvert their contents. Yet, the prosecutors and judges in the regional justice system frequently treat them as important evidence. Such a procedure places severe limitations on the accused's right to a defense.

96. The initial gathering of evidence by members of the security forces also often includes interviews of witnesses and suspects. These investigative activities often take place without the presence of either a defense attorney or a prosecutor or other judicial authority. The information obtained is then frequently introduced directly into the criminal file and utilized as evidence for issuing preventive detention orders or even for convictions. These procedures present several serious due process problems.

97. First, Article 8(2)(d)-(e) of the American Convention establishes the right of the accused to have the representation of a lawyer. The Commission has interpreted this provision to include the right to have a lawyer present for all important stages of the proceedings, particularly where the defendant is held in detention. Thus, for example, the Commission has noted that procedures which do not allow for the presence of an attorney "during the first part of the proceeding, in which decisive evidence against the defendant may be produced, could seriously affect his right to a defense."([48](#)) The Commission has also established the right of a defendant, in general, to have an attorney present when giving a statement or undergoing interrogation.([49](#))

98. Yet, according to the information received by the Commission, persons accused in the regional justice system and held in detention frequently do not have a defense attorney

present in the initial stages of the investigation when they are interrogated and when important evidence gathering takes place. In addition, confessions and adverse witness testimony obtained without the presence of a defense attorney in these early stages are placed in the record and utilized to reach important decisions regarding the fate of the defendant.

99. Second, the lack of supervision by prosecutorial or judicial authorities over important evidence gathering, including confessions by the defendant, means that there sometimes will not exist adequate assurances as to the integrity of the evidence and/or confessions obtained. Yet, again, prosecutors and judges use this evidence to make important determinations once a formal criminal proceeding has been opened without any further confirmation or analysis.

100. Presumably for these reasons, Colombia law establishes that an acceptance of responsibility by the accused in the initial investigation stage will only be treated as a confession if rendered before the prosecutor. ([50](#)) However, the Commission has received information indicating that this provision is routinely ignored and that prosecutors and judges treat confessions obtained in any stage of the proceedings before any authority as a strong if not decisive indicator of guilt.

101. Also, the presence of a judge, prosecutorial authority or defense attorney when an accused person is questioned is necessary to ensure that other rights, in addition to due process rights, are not violated. When a suspect is left alone with members of the security forces for questioning, there exists a greater danger that he may be subjected to torture or inhumane treatment, in violation of Article 5 of the Convention.

102. The information provided to the Commission regarding the detention of Juan González Huber and Eduardo Herminso Guillen may provide an example of the due process difficulties involved in initial investigations controlled essentially by members of the State's security forces. In that case, the two suspects were presented to the local prosecutor in Puerto Rico, Caquetá after their arrest. However, the commander of the local Army base testified that he retrieved the two suspects from the police station several hours later and informed the prosecutor that he would interrogate them and then return them. ([51](#)) This officer further testified that he took the two suspects to his military base and held them there during the night. He stated that his soldiers rotated in the questioning of the suspects during the night. ([52](#)) The information available to the Commission indicates that no judge, prosecutor or defense lawyer was present during this interrogation, despite the fact that Juan Gonzalez Huber had specifically requested an attorney.

103. The two suspects subsequently declared before the authorities that they were subjected to tortures during the time they were held by the Army. They stated that they were tied to a tree on the base grounds and were hit in the stomach and the head by the soldiers. The soldiers also allegedly threatened them with death if they did not confess to the bombing of the bridge.

104. A confession obtained while the suspects were held at the military base was subsequently introduced on the record. The commander of the base indicated that he had taped the confession at midnight on the night that the two suspects were captured. The Office of the Regional Prosecutor was then asked to bring formal charges against the suspects and order preventive detention based on the tapes which were referred to as containing a "confession." ([53](#))

105. In this case, the Office of the Regional Prosecutor declared the proceedings and confession to be invalid and ordered the suspects to be freed. However, the Commission has received other complaints and information, from various sources, regarding cases of confessions obtained by torture. In some of those cases, the confessions are subsequently

used in proceedings against the suspects.

106. The Commission wishes to emphasize that torture of detained suspects violates the fundamental right to be free from torture and inhumane treatment protected in Article 5 of the Convention. Article 8(3) of the Convention also establishes clearly that confessions shall not be treated as valid if made under coercion of any kind. (54) The Commission considers that the current procedures and practices permitted in the initial investigation stage of cases before the regional justice system create conditions propitious for the violation of these rights.

107. The Commission has also detected a serious due process problem in the fact that certain regional prosecutors are based in military installations. These prosecutors work from offices physically placed in military bases and tend to be seen as the prosecutors for the respective military battalion or brigade. They generally work in close cooperation with military authorities.

108. The Commission believes that this situation seriously compromises the objectivity and independence of the prosecutor. At a minimum, under these circumstances, members of the Army have greater access to the prosecutor than do other individuals, including other State authorities and private individuals. In fact, for private individuals, it may be quite difficult to obtain any access because of restrictions on entry into military installations. Yet, these regional prosecutors are charged with pursuing a variety of crimes. The investigation and prosecution of many of these crimes would require significant contact with authorities and individuals outside of the military.

109. In practice, according to credible information received by the Commission, the regional prosecutors who act in military installations become members of the team that works in those installations. Although they do not depend hierarchically upon the military officers in a technical sense, they tend to act upon the orders of the commander of the brigade or battalion in coordination with the soldiers.

110. Thus, for example, the Commission has received complaints alleging that these regional prosecutors in military installations act as facilitators for the actions which the Army seeks to execute by providing the legal formalities necessary. According to these complaints, they sign arrest warrants and orders to search presented to them by the military without carrying out any independent analysis as to whether the legal and factual foundations for those orders exist.

111. The Commission has also received credible information indicating that these prosecutors sometimes accompany Army units in their operations to ensure that any actions they carry out may be legalized in the moment with a hastily drawn up order permitting a search or arrest. One non-governmental organization claimed to have knowledge of several cases in Barrancabermeja in which prosecutors participated in military search and seizure operations carrying Army weapons and in full military uniform.

112. Given the broad authority granted to prosecutors in Colombia, the Commission expresses its extreme concern that some regional prosecutors act in a manner which does not guarantee the criminal defendant his right to confront an independent and impartial decision-maker. The Commission notes that it has always found serious human rights issues in situations where the military enjoy authority to carry out criminal investigations and arrests. This body expresses its hope that the current regional justice system does not serve as a façade for just such a system.

113. The Colombian public received information regarding other alleged instances of military intervention in proceedings before the regional justice system upon the death of well-known

criminal defense lawyer Eduardo Umaña. In a document prepared before his death, Mr. Umaña denounced a case in which the commander of the Nueva Granada battallion directly intervened before the regional justice system to impede the release of a defendant. (55) This commander sent a letter to the judicial authorities charged with the investigation on April 23, 1996. In that letter, he stated that he had learned from the prosecutors that the defendant would be released shortly. He asked that the defendant not be released and informed the authority that several witnesses had provided information regarding the criminal conduct of the accused individual.

114. On May 29, 1996, the judicial authority issued an order for preventive detention against the suspect, giving as grounds the commander's letter. This authority apparently did not even interview the witnesses mentioned by the commander or read their written statements directly. Rather, he depended on the information provided by the commander and complied with this officer's request to maintain the accused individual in prison.

115. Another frequent complaint received by the Commission regarding the regional justice system relates to the defendant's right to be assisted by an attorney. According to these complaints, restrictions are often imposed in the regional justice system making it difficult for the defendant to speak with his attorney in private. The Commission considers that such limitations constitute a flagrant violation of the defendant's right "to communicate freely and privately with his counsel," protected by Article (8)(2)(d) of the American Convention.

116. The Commission has also received significant information indicating that many defendants in the criminal justice system do not receive adequate representation from their attorneys. This lack of adequate representation has the greatest impact on poorer defendants. These individuals do not have sufficient financial resources to hire a private attorney. The State therefore has the obligation to provide an attorney. The Colombian Code of Criminal Procedure provides for the provision of defense attorneys to indigent defendants. In first instance, the State must seek to name a public defender from the Office of Public Defenders in the Office of the Human Rights Ombudsman. In those cases where a public defender is not available, the State names a de oficio defender. The de oficio defender is an attorney who does not serve as a public defender by profession but who must fulfill the obligation to serve as criminal defense attorney when called by the State to do so.

117. In practice, there exist far too few public defenders to satisfy the needs of defendants who must be provided with a state-appointed attorney. As a result, a great number of defendants receive the assistance only of a de oficio defender. The de oficio defenders have frequently been accused of failing to provide a serious and competent defense. The Commission has received complaints indicating that the de oficio defenders appear for proceedings only when absolutely required to do so and only to sign the documents necessary to prove that a lawyer represented the defendant. The de oficio lawyers rarely object to any proceedings carried out and generally do not engage in any independent preparation of the defense case. In addition, in many cases, the defense lawyer is named just as an investigative or other proceeding or hearing is about to begin, precluding any possibility for reasonable preparation.

118. The Commission notes that international standards have established that the right to counsel means the right to effective counsel. (56) The State does not discharge its duty in this regard by simply appointing an attorney but rather must ensure that the defendant is receiving an adequate defense by state-appointed counsel. Where the State fails to do so, it violates the provisions of Article 8(2)(e) of the American Convention.

119. One of the most criticized aspects of the regional justice system has been the use of "secret" or "faceless" prosecutors, judges and witnesses. The reserve of the identity of crucial actors in the criminal proceeding has been a central element of this jurisdiction.

120. Reforms implemented in 1996 by the Office of the Prosecutor General of the Nation sought to limit the use of anonymity in the proceedings in the regional justice system. The Prosecutor General issued a resolution providing that the use of reserve of identity for judicial authorities would be used only as an exceptional measure. In addition, it was established that a conviction could not be based on evidence provided by anonymous witnesses alone. The Commission considers that these restrictions constitute an important, although insufficient, step towards limiting the arbitrariness imposed by the "faceless" justice system. However, defense attorneys have indicated to the Commission that the new restrictions have not yet had a significant effect on the functioning of the system.

121. In the context of Colombia and other countries, the Commission has repeatedly noted that "faceless" justice systems do not provide adequate due process guarantees for criminal defendants. ([57](#)) The anonymity of the prosecutors, judges and witnesses deprives the defendant of the basic guarantees of justice.

122. Because the defendant does not know who is judging or accusing him, he cannot know whether that person is qualified to do so. Nor may he know whether there exists any basis to request recusal of these authorities based on incompetence or lack of impartiality. As a result, the defendant cannot be guaranteed trial by a competent, independent and impartial court as guaranteed by Article 8(1) of the American Convention.

123. The defendant is also prevented from carrying out any effective examination of the witnesses against him. The right to examination is largely important, because it provides the defendant with the opportunity to question the witness's credibility and knowledge of the facts. The defendant cannot adequately examine a witness if he does not possess any information regarding the witness's background or motivations and does not know how the witness obtained information about the facts in question. The "faceless" justice system thus also leads to the violation of Article 8(2)(f) of the American Convention, guaranteeing the right of the defense to examine witnesses.

124. These dangers, inherent in a criminal system which provides for the anonymity of its central participants, have had a very real impact in the regional justice system in Colombia. The provisions allowing for the anonymity of witnesses have led to particularly serious anomalies.

125. In some cases, the same witness has provided incriminating evidence against defendants in testimony provided under several code names. In this manner, judges are led to believe that several witnesses corroborated one another's testimony against the defendant when, in fact, only one witness existed. For example, César Carrillo, ex-president of the Workers' Labor Union (Unión Sindical Obrera), was charged with terrorism and placed in preventive detention based on "cloned" testimony. In that proceeding, it was discovered that prosecutors duplicated the testimony of one witness and provided different code names for each of the duplicated statements. The Office of the Procurator General of the Nation found that the "cloned" testimonies had served as the basis for the charges brought against Mr. Carrillo and other members of the union and sanctioned three prosecutors. ([58](#)) Several months later, Mr. Carrillo was finally released from detention.

126. Important information calling into question the credibility of secret witnesses has been revealed as well. For example, certain witnesses who testify against defendants in proceedings in the criminal justice system have received payment from the military according to the number of convictions which they help to obtain. The State's security forces have also sometimes provided these witnesses with food and lodging during extended periods of time. One of the witnesses in the criminal proceeding against the members of the Workers' Labor Union revealed that he received these types of payments for his testimony in that case and others. In at least one case, it has been suggested that a member of a paramilitary group served as a witness presented by the Army in a criminal proceeding in the regional justice

system.([59](#)) The due process rights of the defendant are, of course, severely compromised if he is convicted on the basis of this type of testimony without any opportunity to question the credibility of the witness. Yet, in most cases, the defendant does not have access to information which would reveal these credibility issues, because the identity of the witnesses is held in reserve.

127. The Commission thus expresses its most serious concern regarding the lack of due process rights for defendants prosecuted in the regional justice system. The system was instituted as a well-intentioned effort to combat the impunity which the Commission itself has named as a serious human rights problem. However, the rights of the defendant to due process of law, as guaranteed in the American Convention and other international instruments, may not be sacrificed to achieve this lofty goal.

128. In any case, carefully conducted studies have shown that the regional justice system has not served as an effective tool for combating impunity. One such study found that this system only manages to issue final decisions in 8% of the proceedings initiated in relation to crimes falling within its jurisdiction.([60](#))([61](#))

129. The Commission does note that the Human Rights Unit of the Office of the Prosecutor General of the Nation is a unit composed of prosecutors who act within the regional justice system. The Commission has expressed its opinion that this Unit has acted in a manner which has allowed more serious and effective investigations. The Commission expresses its firm belief, nonetheless, that the Unit could operate at the same level of effectiveness without recurring to the regional justice system, thereby protecting the rights of defendants.

130. The Commission is aware that legislation has been presented on several occasions to dismantle the regional justice system earlier than the June, 1999 date for its automatic elimination. However, such legislation has never been enacted and is now unlikely to be approved and implemented before the automatic deadline. The Commission deeply regrets that the Colombian State has not acted previously to implement the reiterated recommendations of this and other bodies urging that the system be dismantled. The Commission now calls upon the Colombian State to immediately dismantle the regional justice system and to take all measures necessary to ensure that it is not extended in time or reinstated.

D. PROPOSED CONSTITUTIONAL REFORMS RELATING TO THE ADMINISTRATION OF JUSTICE

131. Over the last several years, the President and certain members of Congress proposed, on various occasions, constitutional reforms which would have resulted in significant changes to the administration of justice in Colombia. Many of these reforms, which were eventually either withdrawn or defeated in most cases, have raised serious questions about their compatibility with Colombia's obligations under the American Convention and other human rights instruments.

132. One such reform sought to prevent the Constitutional Court from reviewing declarations of states of emergency and to eliminate the current time constraints on such declarations. This proposed reform also would have converted certain emergency measures into permanent legislation, including a measure that would authorize the military to investigate crimes, including those involving civilians, even in non-emergency situations. This reform package also included a measure to legalize detention without a warrant for a period of up to seven days.

133. Additional proposals for reform sought to limit or bar civilian criminal and disciplinary investigations of members of the State's security forces. This reform would have had the

result of replacing civilian disciplinary investigations carried out against the Military Forces and the police by the Office of the Procurator General of the Nation with internal military disciplinary investigations. As to criminal investigations, jurisdiction would presumptively lie with the military justice system and would only be granted to the Office of the Prosecutor General of the Nation in certain circumstances and upon request of that Office. Thus, civilian prosecutorial authorities would not be permitted to begin an investigation into alleged wrongdoing unless and until a decision was issued granting jurisdiction to the Office of the Prosecutor General. The Commission views with particular concern these proposed reforms.

134. For the reasons set forth above, almost all crimes committed by members of the public security forces are tried in military courts, which have been found not to be impartial and which have created a situation of impunity to protect those servicemen. The constitutional reforms would have made it much more difficult for impartial civil prosecutorial authorities to even initiate investigations against members of the military and the police.

135. Similarly, the reforms would have precluded disciplinary review of actions by members of the security forces and the police by civilian authorities. Such a change would have several problematic consequences. First, civil disciplinary proceedings currently serve at times to fill partially the gap left by ineffective criminal proceedings. Thus, at least some sanction is levied against members of the public security forces who commit violations, even though that sanction is often light in comparison to the abuse committed and cannot satisfy the right to justice of the victim or his family members. However, a prohibition of review by the Procurator General in cases involving members of the security forces would preclude use of even this mechanism.

136. Second, the Office of the Procurator General currently plays the important role of providing a form of civil review of the criminal proceedings carried out in the military tribunals. The Office of the Procurator General has jurisdiction to carry out disciplinary investigations and punishment of military officials who improperly conduct criminal proceedings. This important civil review of actions taken by military officials in the military justice system would cease to exist under the reforms proposed.

137. The Commission considers that many of these reforms would have constituted a step backward in the protection of human rights in Colombia after the important advances made in the 1991 Constitution in favor of human rights. The Commission hopes that similar reforms will not be reintroduced and urges the organs of the Colombian State to consider the requirements set forth by the American Convention and other international human rights instruments when it considers proposing changes to domestic law.

E. RECOMMENDATIONS

Based on the foregoing, the Commission makes the following recommendations to the Colombian State:

1. The State should take immediate and concrete steps to combat the extremely high level of impunity, that exists in all types of criminal cases, and particularly in traditional human rights cases. These steps should necessarily include serious, impartial and effective criminal investigations of those allegedly responsible for committing crimes and the imposition of corresponding legal sanctions.
2. As an important measure to combat impunity, the State should provide full support, including adequate financial and human resources, to the Office of the Prosecutor General of the Nation and should take special measures to expand the personnel and capacity of the Unit of Human Rights so that it may efficiently discharge its mandate.
3. The State should provide adequate resources and support to allow other elements of the criminal justice system, including prosecutors, public defenders and jails, to function properly.

4. The State should take all measures necessary to ensure that all arrest warrants issued by prosecutors and judges against members of paramilitary groups and others are executed in a timely manner.
5. The State should take all measures necessary to ensure the safety of witnesses, prosecutors, judges and other individuals involved in the administration of justice.
6. The State should take all measures necessary and consistent with its international legal obligations to ensure that the jurisdiction of the military justice system is limited to crimes truly related to military service. In this regard, the State should ensure that cases involving serious human rights violations are not processed by the military justice system.
7. Each and every State entity which has a role in the criminal justice system should take all possible measures within its competence to fully implement the jurisprudence set forth in Sentence C-357/98 issued by the Constitutional Court on August 5, 1997.
8. The State should take immediate steps to eliminate the regional justice system in compliance with the repeated recommendations of the Commission and other international organs.
9. The State should take measures to ensure that the State's public security forces do not exercise improper influence over the administration of criminal justice or individual criminal proceedings.
10. The State should ensure that the rights of criminal defendants guaranteed in Article 8(2) of the Convention are fully respected in all criminal proceedings at all times. The State should ensure, in this context, that criminal defendants receive timely and adequate representation from a lawyer. For this purpose, the State should expand the public defender system.
11. The State should take immediate and forceful measures to stop the use of torture to obtain confessions. These measures should include the investigation and sanction of those State agents who have engaged in torture to obtain confessions as well as the exclusion of all evidence obtained by these means from criminal proceedings.
12. Any constitutional reform which is contemplated should comply with international instruments relating to human rights and should not undermine the progress made in the Constitution of 1991.

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(1) See I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, pars. 169-70.

(2) *Id.*, par. 166.

(3) See *id.*, par. 177; IACHR, Report No. 4/98, Case 9853 (Colombia), April 7, 1998, par. 46; IACHR, Report No. 28/92, Multiple Cases (Argentina), October 2, 1992, pars. 32, 50; IACHR Report No. 10/95, Case 10.580 (Ecuador), September 12, 1995, pars. 42-48.

(4) See "Hay 214,907 sindicados sin capturar," *El Tiempo*, January 5, 1998.

(5) See "La acción del Gobierno en la lucha contra la impunidad," *in* Presidential Adviser for Human Rights, *Lucha contra la Impunidad*, 1989, at 66, 67.

(6) In its observations to this Report, the Colombian State stated that it "shares with the Commission the belief that impunity is a structural problem which impacts in general the life of the nation and its culture." At the same time, the State suggested that the Commission should recognize the existence of a perception in society that the creation of the Office of the Prosecutor General has contributed to a change in the public's beliefs regarding impunity. The Commission would like to point out that, in Chapter II of this Report, it noted that the establishment of the Office of the Prosecutor General constituted an important step forward in the administration of justice in Colombia.

(7) See *e.g.*, Report of the United Nations High Commissioner for Human Rights, E/CN.4/1998/16, March 9, 1998, par. 117.

(8) See E/CN.4/1998/39/Add.2, Chapter V, par. 1.

(9) The State's public security forces include both the Military Forces and the National Police.

(10) See *e.g.*, IACHR, Second Report on the Situation of Human Rights in Colombia, OEA/Ser.L/V/II.84, Doc. 39 rev., October 14, 1993, at 246 [hereinafter IACHR Second Report]; Report on the Situation of Human Rights in Brazil, OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, at 40-42.

(11) Constitutional Court of Colombia, Sentence C-141, March 29, 1995.

(12) See IACHR Report No. 26/97, Case 11.142 (Colombia), September 30, 1997, pars. 113, 139.

(13) Procurator General of the Nation, Second Report on Human Rights, June, 1993, *cited in* IACHR Second Report, at 95.

(14) Emphasis added.

(15) See Superior Council of the Judiciary, Case No. 10916-A/162, January 23, 1997.

(16) This case is currently being processed by the Commission under number 11.603. The reference to the case in this Chapter does not in any way imply a prejudgment by the Commission of the admissibility or the merits of the case.

- (17) See Constitutional Court, Sentence C-357/98, August 5, 1997.
- (18) The reference to the case in this Chapter in no way constitutes a prejudgment of its admissibility or merits.
- (19) See, e.g., Superior Council of the Judiciary, Case No. 14851-A, November 6, 1997.
- (20) See Political Constitution of Colombia, Art. 241.
- (21) The Commission is processing this case under the number 11.654. The reference to the case in this Chapter in no way constitutes prejudgment as to its admissibility or merits.
- (22) See Note from National Defense Ministry to Ministry of Justice , March 9, 1998.
- (23) See Office of the Prosecutor General of the Nation, National Directorate for the Prosecutors, Resolution No. 0357, October 21, 1997.
- (24) See Note from the Office of the Prosecutor General of the Nation to Reinaldo Villalba Vargas, November 19, 1997.
- (25) See Proposed Law Number 064, House of Representatives, September 9, 1997, Arts. 2-3 [hereinafter Proposed Law 064].
- (26) See Constitutional Court, Decision No. 275/94, June 15, 1994.
- (27) See, e.g., IACHR, Report No. 28/92, Multiple Cases (Argentina), October 2, 1992, par. 34; IACHR, Report No. 29/92, Multiple Cases (Uruguay), October 2, 1992, par. 41.
- (28) See Proposed Law 064, Art. 34(2).
- (29) See Report of the United Nations High Commissioner for Human Rights, E/CN.4/1998/16, March 9, 1998, par. 143.
- (30) See, e.g., IACHR, Report No. 28/92, Multiple Cases (Argentina), October 2, 1992, par. 34.
- (31) See Proposed Law 064, Arts. 301-02.
- (32) Some commentators have suggested that the high rate of impunity in the civilian justice system makes irrelevant the discussion regarding limitations on the jurisdiction of the military justice system. These commentators suggest that effective investigations and sanctions will be equally rare even if international recommendations to exclude serious human rights cases from the military justice system are eventually adopted. The Commission is of the opinion that the effort to remove from the military jurisdiction cases not involving military crimes continues to be important. The Commission considers that the military justice system has characteristics inherent to its very conception and structure which prevent victims of human rights violations and their family members from obtaining impartial investigations and access to an effective remedy in that jurisdiction. On the other hand, the civilian criminal justice system provides, in theory, the recourse required in human rights cases. Thus, the Colombian State should simultaneously focus on ensuring that serious human rights cases are processed in the civilian justice system and on resolving the problems currently afflicting that system.
- (33) In this respect, the Commission is pleased to receive information from the Colombian State indicating that public funding directed at the administration of justice was doubled between 1990 and 1994. In this same period, there was a 53% increase in the number of functionaries assigned to the administration of justice. Between 1992 and 1993, salaries for these employees were raised at rates between 37% and 132%. The Commission has nonetheless received significant information indicating that the resources dedicated to the administration of justice are still insufficient.
- (34) See Note to the Inter-American Commission on Human Rights from the Office of the Prosecutor General of the Nation, Regional Directorate of Prosecutors for Medellín, Office of the Regional Prosecutor for Carepa, December 5, 1997, annexing a document entitled "Initial Investigations, Office of the Regional Prosecutor 103 for Carepa."
- (35) See IACHR Second Report, at 106.
- (36) See International Commission of Jurists and Andean Commission of Jurists, Colombia Section, Justicia para la justicia: Violencia contra jueces y abogados en Colombia 1979-1991, 1992.
- (37) See Ministry of Justice and Law, Republic of Colombia, Crimen organizado y justicia, 1995, p. 32.
- (38) See Criminal Procedure Code, art. 45.
- (39) See "Derechos humanos, en alerta roja," El Tiempo, September 9, 1998.
- (40) Letter from the Peasant Self-Defense Organizations for Córdoba and Urabá to the Prosecutor General of the Nation, May 21, 1998.
- (41) See National University of Colombia, Department of Law and Political and Social Sciences, Unit for Legal and Social Research, Justicia sin rostro. Estudio sobre la justicia regional [hereinafter Justicia sin rostro].
- (42) See Political Constitution of Colombia, Art. 28.
- (43) See id., Art. 32.
- (44) See I/A Court H.R., Suárez Rosero Case, Judgment of November 12, 1997, pars. 44-47.
- (45) See Code of Criminal Procedure, Art. 370.
- (46) See Memorandum from the Armed Forces of Colombia, National Army to the Regional Prosecutor for Florencia, October 15, 1997.
- (47) See Code of Criminal Procedure, Arts. 312, 313.
- (48) See Annual Report of the Inter-American Commission on Human Rights 1985-1986, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, September 26, 1986, at 154.
- (49) See IACHR, Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.61, Doc. 47, October 5, 1983, at 91.
- (50) See Code of Criminal Procedure, Art. 322.
- (51) See Testimony of José Henry Martínez Campo, Commander of the Cazadores Battalion in Puerto Rico, Caquetá, before the Office of the Regional Prosecutor for Florencia, Department of Caquetá, October 18, 1997.
- (52) Id.
- (53) See Resolution of the Regional Directorate of Prosecutors, Santafé de Bogotá, Specialized Terrorism Unit, October 30, 1997.
- (54) Article 10 of the Inter-American Convention to Prevent and Punish Torture similarly establishes that no statement obtained through torture shall be admissible as evidence in a legal proceeding except as evidence in an action against those accused of committing torture.
- (55) See "Memorias anticipadas de Umaña," El Tiempo, April 22, 1998.
- (56) See, e.g., Miguel Angel Estrella v. Uruguay (74/1980) (29 March 1983), Selected Decisions of the Human Rights Committee under the Optional Protocol, International Covenant on Civil and Political Rights, Vol. 2, at 93; Application No. 9127/80 (6 October 1981) (unpublished), Strasbourg Digest of Case Law, vol. 2, at 846.
- (57) See, e.g., Annual Report of the Inter-American Commission on Human Rights 1996, at 658 (Colombia), 736 (Peru).
- (58) See "Procuraduría sanciona a fiscales de la USO," El Tiempo, March 13, 1998.
- (59) See "El documento de Umaña," El Tiempo, April 22, 1998.
- (60) See Justicia sin rostro, at 152.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER VI

INTERNAL DISPLACEMENT

A. BACKGROUND AND LEGAL FRAMEWORK

1. The phenomenon of internal displacement has reached such proportions in Colombia in recent years that the Inter-American Commission on Human Rights (the "Commission," the "Inter-American Commission" or the "IACHR") considers it to be one of the gravest aspects of that country's overall human rights situation. Because the sheer magnitude of internal displacement in Colombia today constitutes nothing less than a humanitarian catastrophe, the Commission has decided to prepare this Chapter which, *inter alia*, examines the causes of internal displacement, the actual situation of displaced persons in various parts of the country, and the State's responses to this human crisis.

2. The Commission is aware that the plight of internally displaced persons is particularly tragic and cruel. Their ranks in Colombia and elsewhere tend to disproportionately include those requiring special assistance and services, such as children, the elderly and expectant mothers. Although the displaced are frequently forced to flee their homes for the same reasons as refugees, the fact that they remain within national territory means that they cannot qualify as refugees or benefit from the special regime accorded to refugees under international law. Their presence within national territory also means that their government must assume primary responsibility for guaranteeing their security and well-being.

3. Recognizing the seriousness of the situation of displaced persons, the Commission decided, during its 91^o session held in February 1996, to name a special rapporteur to work with this issue. This rapporteurship has permitted the strengthening of relations between the Commission and the United Nations Representative to the Secretary General on Displaced Persons. In addition, the special rapporteur has collaborated with the Inter-American Institute of Human Rights and other organizations to study the issue of displaced persons in the Americas.

4. Internally displaced persons are entitled to enjoy in free equality the same rights and freedoms under the American Convention on Human Rights (the "Convention" or the "American Convention"), and other domestic and international law norms, as the rest of the country's citizenry. In fact, however, they rarely do since displacement in and of itself essentially contradicts the enjoyment of basic human rights. Even when people are forced to leave their homes for legitimate reasons, their displacement generally entails multiple human rights violations. This is particularly true during internal armed conflicts, which are one of the principal causes of internal displacement worldwide. It is during such conflicts that the basic rights and needs of the displaced are most imperiled and least respected and protected.

5. Internally displaced persons, however, do not forfeit their inherent rights because they are displaced; they can invoke international human rights and, where relevant, humanitarian law to protect their rights. As the Commission has noted on repeated occasions, there exist certain fundamental guarantees protected in the American Convention which may not be

suspended even in times of armed conflict or other emergency. The American Convention and other human rights and humanitarian law treaties, such as the United Nations Convention on the Rights of the Child, contain guarantees of particular relevance to displaced persons. However, there are areas in which the protection provided in these instruments is not sufficiently specific in relation to the situation of displaced persons. This is because these instruments were not specifically tailored to meet the varied needs of the internally displaced.

6. For example, although the American Convention and other treaties provide for the right to life and physical integrity, as well as the right to freedom of movement and residence, they do not provide for an express right not to be unlawfully displaced, to have protection and assistance during displacement, and to enjoy a secure return and reintegration. Moreover, the American Convention does not guarantee an explicit right to find refuge in a safe part of the country, nor an express guarantee against the forcible return of internally displaced persons to places of danger.

7. Shortcomings in existing human rights and humanitarian law applicable to displaced persons have been extensively studied and analyzed by Francis M. Deng, who in 1992 was appointed by the United Nations Secretary General as his Representative on Internally Displaced Persons. Both the General Assembly and the Commission on Human Rights of the United Nations encouraged Mr. Deng to prepare an appropriate normative framework for the internally displaced based on his research and findings. In April 1998, Mr. Deng presented to the United Nations Human Rights Commission, at its fifty-fourth session, a report with an addendum entitled "Guiding Principles on Internal Displacement." The United Nations Human Rights Commission adopted by consensus a resolution co-sponsored by more than fifty states, including Colombia, which, *inter alia*, took note of the inter-Agency Standing Committee's decision welcoming the Guiding Principles and encouraging its members to share them with their Executive Boards, as well as Mr. Deng's stated intention to make use of these principles in his dialogue with governments and all those whose mandates and activities relate to the needs of the internally displaced. ([1](#))

8. The Commission notes that the Guiding Principles on Internal Displacement ("Guiding Principles") essentially restate in a single document general principles of protection, established in the American Convention and other treaties, in more specific detail and address the grey areas and gaps in the law previously identified by Mr. Deng. The document consists of thirty principles that address all phases of displacement: the norms applicable before internal displacement occurs (that is, protection against arbitrary displacement), those that apply in actual situations of displacement, and those that apply to the post-conflict period.

9. For purposes of these Principles, internally displaced are:

Persons or groups who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally-recognized state border. ([2](#))

10. The Commission welcomes and fully supports these Guiding Principles. As the most comprehensive restatement of norms applicable to the internally displaced, the Guiding Principles will provide authoritative guidance to the Commission on how the law should be interpreted and applied during all phases of displacement. (The Guiding Principles on Internal Displacement are attached to this Chapter as Annex 1).

11. Colombian law also contains provisions on the internally displaced. Law No. 387, of July 18, 1997, adopted to address the issue of forced internal displacement, defines in its first article the concept of displacement, using a definition similar to that found in the Guiding

Principles.([3](#))

12. Furthermore, Law 387 of 1997 "adopts measures for prevention of enforced displacement, assistance, protection, consolidation, and socioeconomic stabilization of persons displaced by violence," and provides for a series of mechanisms for guaranteeing such rights for the displaced and for preventing the causes of displacement.([4](#))

13. The Colombian Constitution also contains rights of particular importance for the displaced. For instance, Article 42 of the Constitution provides that the State "and society shall ensure the integral protection of the family." Article 24 of the Constitution also recognizes that every Colombian "has the right to move freely in the national territory".

B. CURRENT SITUATION OF INTERNAL DISPLACEMENT

1. General Information on the Causes and Effects of Internal Displacement

14. Different studies on the number of displaced people in Colombia offer estimates that vary from 700,000 to 1,200,000. All sources, however, describe the last four years as the worst in the country's history. Some point out that this situation, which in 1996 alone affected 180,000 people, affected an even greater proportion of the population in 1997 and early 1998. A study by the Colombian Episcopal Conference estimates the number of persons displaced between January and October 1997 at 250,000.([5](#)) CODHES (Bureau for Human Rights and Displacement) calculated that in the first half of 1998, 148,000 people were affected by violence and forced to abandon their places of residence.([6](#)) Other figures estimate that in 1997, every hour, four families began their exodus through the national territory seeking "refuge".([7](#))

15. Although figures published by CODHES and the Archdiocese of Bogotá on displacement in the past decade have been refuted by the Government – but accepted by the Office of the Human Rights Ombudsman and UNICEF –, the Commission has no option but to take them as indications. According to these statistics, in the country as a whole, 920,000 people have been displaced since 1985; of these an estimated 235,000 are thought to have settled in Bogotá, and a further 180,000 people displaced in the same interval are said to be living in Medellín.

16. According to a report in 1997 by the Archdiocese of Cali, 2.5% of the inhabitants of the capital of El Valle Department were displaced for various reasons, and every day of the year at least three families displaced by violence arrive in Cali from the Departments of El Valle, Cauca, Nariño, Antioquia, Chocó, and the Atlantic Coast.([8](#))

17. Sources connected to non-governmental organizations that mainly work with the displaced consider that, while displacement has increased in the northern regions, 1997 was also a key year in the emergence of new displacement trends in the southeast region. Populations in these regions were allegedly victims of massacres and threats following their participation in peasant protest marches during the coca growers' strike of 1996. They were also the targets of reprisals by the armed forces, after soldiers were detained by the FARC in Las Delicias, Putumayo, during "zone recovery" operations undertaken by paramilitary groups.([9](#))

18. In August 1997, the National Information Network, a dependency of the Office of the Presidential Adviser on Integral Assistance for the Population Displaced by Violence, published "The First Consolidated Report on Volume and Geographical Distribution of Displacement from 1996 to June 1997". The table below is taken from this report, which does not include all the municipalities or departmental capitals:([10](#))

Displaced Families by Reception Area (January 1996 - June 1997)			
Department	Municipalities	Families	People
Antioquía	11	2,451	11,084
Atlántico	2	161	751
Bolívar	7	961	5,048
Caqueta	4	175	823
Cesar	5	550	3,072
Córdoba	15	1,015	4,863
Chocó	4	1,102	5,510
Huila	3	109	517
Magdalena	5	224	1,142
Norte Santander	5	81	452
Santander	4	190	867
Sucre	7	379	1,918
Tolima	1	110	630
Total	73	7,508	36,677

19. Displacement in Colombia tended traditionally to be associated with the mass exodus of peasant families driven out of their fields and customary places of residence by outsiders. In recent years, however, segments of the urban population (urban poor, teachers, trade unionists) and indigenous groups have swelled their ranks. This shows that new causes of displacement have been added to the original causes. These new causes include the escalation of the armed conflict and upsurges in human rights violations, as in the northeastern regions of Antioquia, which witnessed an announced "cleansing" campaign against guerrilla collaborators.

20. Some international groups that conducted observation missions on the ground in Colombia informed the Commission that they had noted new and additional characteristics of forced displacement. They found that, in addition to displacement as a consequence of the internal armed conflict, displacement was also occurring for economic reasons. This displacement for economic reasons was intended to permit control over large areas of land, sometimes with the objective of establishing important economic projects in certain areas. These organizations also observed a new phenomenon of "itinerant displacement." This phenomenon takes place when displacement caused by violence later evolves into economic migration, thereby creating a "culture of uprootedness" as the displaced struggle for survival.

21. The Delegate Procurator General for Human Rights in Colombia has identified four types of displacement:

1. Displacement of peasant populations deliberately brought about by the different actors involved in the violence through killing or physically assaulting peasants until they manage to drive away the entire group or community. This is mainly caused by paramilitary groups in the Chocó region, part of the Urabá region in the Department of Antioquia, in Bolívar and in Magdalena;

2. Non-deliberate displacement resulting from confrontation between armed groups, bombardment, or military actions that indiscriminately target the local population, who lack minimum guarantees and protection for their life and physical integrity. This situation arose in the regions of Antioquia, Magdalena Medio, Bolívar and Meta;

3. Displacement caused by groups of people intent on taking possession of the land, who act

through private-interest action groups that force peasants to abandon their homes and crops;

4. Voluntary displacement of people to forestry or wildlife reserves, whose aim is to cultivate illicit crops cultivation and who generate another type of conflict.([11](#))

22. For its part, the study by Dr. Alejandro Reyes, a political analyst, states that displacement is significantly more pronounced in areas where political violence coincides with violence associated with land ownership (Atlantic Coast, Chocó and the Urabá region of Antioquia) than in areas where, despite the level of political violence, the incidence of land disputes is less (Northeast, Central Andean Region, Southwest).([12](#)) Dr. Reyes believes that, "in local wartime conditions it is not only impossible to put forward social demands, but the problem becomes one of how to safeguard the stability of the population in their territory, since the territory acquires strategic value for the opposing sides. Displacement occurs when threats force a dilemma between property and life and the State is incapable of providing protection for the population."([13](#)) This analysis and the Commission's own confirmations during its on-site visit, satisfy it in the conviction that there is a close connection between social injustice, particularly land takeovers, and internal displacement, the prime causes of which predate the current armed conflict.([14](#))

23. The Commission has received information stating that 65% of heads of displaced households who owned land had to abandon it as a result of the acts of violence that forced them to flee. This statistic tends to confirm once more that, concealed behind the phenomena of violence and armed confrontation, are economic interests associated with the so-called agrarian counter-reform that affects small and medium-scale landowners.([15](#)) Currently, 67% of heads of displaced households are not gainfully employed.([16](#))

24. Toward the end of 1997, the Permanent Consultation on Internal Displacement in the Americas (CPDIA)([17](#)) released its report compiled following several on-site visits, the first of which was at the request of the Colombian Government. The report mentions the following general and specific impacts or consequences of displacement: 1) defenselessness and isolation of displaced communities during both emergency periods and return or resettlement, together with a lack of humanitarian assistance through integral, inter-institutional and multi-disciplinary projects; 2) as a result of these shortcomings displaced persons have no possibility of legal access to new homes, lands, or jobs, and are forced to undertake a struggle for survival, competing amongst themselves to secure a space in "squatter slums or illegal urban settlements"; 3) breakup of families and communities, and dissipation of social ties in general; 4) swift-moving process of concentration of rural properties to the disadvantage of the population, along with drastic changes in land use and ownership.

25. The Commission considers that the psycho-social consequences of displacement, which pass without attention, have accelerated the destruction of the social fabric and have contributed to the impoverishment of the population, the disintegration of the family, malnutrition, sickness, alcoholism, drug addiction, prostitution, school absenteeism and common crime.([18](#))

2. Sectors Disproportionately Affected by Internal Displacement

26. In its study on population and the effects of displacement, the Archdiocese of Cali states that the displaced population is "young, unproductive, composed of poor, small land-owning peasants forced to leave their places of work by multiple threats to their lives". The ranks of the displaced disproportionately include women, children, and indigenous people.([19](#))

Women: According to CODHES figures, 59% of displaced people are women, many of them

widows with several children; of the women, 65% are themselves minors([20](#)). Such magnitude augurs great fragility in the family unit, given that in many resettlement areas women must shoulder family responsibilities alone, while men look for some kind of work in or away from the immediate vicinity of their new location.

27. The vast majority of displaced women have peasant backgrounds and are forced to seek refuge in very precarious living quarters in the impoverished neighborhoods found on the outskirts of urban centers, where they can raise neither crops nor animals in order to feed their families; in most cases they also do not have access to basic health services.

28. Although the Colombian Constitution and specific national legislation may have recognized equal rights for women, and despite the fact that the State has ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (also known as the Convention of Belem do Pará), thereby incorporating a new gender focus, many of these norms and the great majority of governmental programs fail to encompass internally displaced women.

29. The Commission notes that Principle 19(2) of the Guiding Principles on Internal Displacement refers directly to the situation of women, establishing that: "Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses." However, the information the Commission has in its possession indicates that this requirement has not been fully complied with.

Children. According to the Colombian Episcopal Conference, approximately 70% of displaced persons are minors; this figure includes young mothers who, having lost their husbands and means of support, bring up infants on their own.

30. Non-governmental sources say that 85% of displaced children do not receive a primary education and only 20% have access to medical care. The study by the Archdiocese of Cali claims that "functional illiteracy is a trait common to most members of households displaced by violence" and is due to the important school dropout rate during displacement. The Commission also believes that the lack of real access to free mandatory primary education contributes to a situation in which displaced children are not accepted and integrated into the towns where they have relocated. As to health programs, 81% of the displaced persons interviewed by the Archdiocese team said they had access to none.

31. A census conducted by the Office of the Human Rights Ombudsman in the Turbo shelters in November 1997 counted more than 2,000 children, who benefited from neither proper nutrition nor sanitary programs, despite the poor hygiene conditions in the place; nor did the census find any education programs to which they had access. A similar situation was recorded by a census carried out in Pavarandó, with nearly 1,800 children up to the age of 14, and many other temporary accommodation centers that lack even the most basic means for caring for displaced children. Several displaced children from Finca Bella Cruz, relocated in the Department of Tolima, were found to be suffering from advanced malnutrition

32. Such shortcomings prevent children from developing healthily. The American Declaration of the Rights and Duties of Man, the American Convention, and other universally recognized instruments, reflect the consensus that children have the right to special care and integral protection. As direct victims of the conflict, displaced children should be treated with priority and without discrimination in receiving the benefits of government programs designed for children

33. The United Nations Convention on the Rights of the Child, which Colombia has ratified, and Article 19 of the American Convention require the State to provide protection for the

child, ensuring the provision of food, sanitary, and medical assistance. For its part, the Guiding Principles establish that: "Certain internally displaced persons, such as children, especially unaccompanied minors, ... shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs ".(21)

34. Conscription of children under the age of 15 is absolutely forbidden under the provisions of international humanitarian law, as well as under the United Nations Convention on the Rights of the Child. The Guiding Principles also provide that: "In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities."(22) However, the Commission has received information and is investigating complaints alleging that displaced children have been recruited by armed dissident groups and, especially, by paramilitary groups.

35. Furthermore, the Commission has received reports according to which large numbers of infants born during displacement or in accommodation centers have not been registered with the competent authorities and, therefore, have no documentation of any kind. It should be mentioned that the right to recognition as a person before the law is a universally recognized principle of international law. In this respect, the Guiding Principles also stress the need to carry out an effective documentation process for all displaced persons, including children.

Indigenous peoples. According to data obtained by this Commission, displacement affecting indigenous groups in Colombia is extremely grave. In the Department of Córdoba, the displaced indigenous population numbered over 10,000. Figures such as this compound the massive displacement that the indigenous communities of the Department of Antioquia, who were forced off their ancestral lands by the violence of paramilitary groups, have endured since 1996.

36. The Zenú community of El Volao, Necoclí Municipality, in the Urabá region of the Department of Antioquia, was displaced by the Self-Defense Groups of Córdoba and Urabá (ACCU) in March 1995. Several indigenous families in south Tolima were also displaced following the murder of their leaders, intimidation by the army, paramilitary operations, and guerrilla attacks in March 1996.

37. The CPDIA, for its part, considers that the region of El Chocó, in particular Bajo Atrato, where there are plans to construct the Atrato-Truando Canal, has become a war zone. In this area, those most affected are afro-Caribbean communities and indigenous groups, whose displacement is frequently the outcome.

38. It should be stressed that Principle 9 of the Guiding Principles expressly mentions that: "States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands."

39. The actions taken against some indigenous communities must be evaluated in light of this principle, international law, and the provisions in the American Convention relating to equality and to non-discrimination for reasons of race, language, national origin, and religion.

3. Living Conditions of the Internally Displaced

40. As displacement figures have risen exponentially, national and international assistance programs have been unable to keep up with all the needs of displaced people. The humanitarian assistance provided by the Colombian State has not met international standards of speed, effectiveness and neutrality, due to a variety of political, bureaucratic and census reasons. The 1997 census performed by the National Information Network determined that the number of people displaced by violence who had received assistance

from the Government totaled 38,033. The Colombian State points out that the International Committee of the Red Cross found that 661,540 displaced persons received humanitarian assistance during 1997. However, the Red Cross included in its figures not only the assistance provided by the Government but also by international organizations and non-governmental organizations. Some Government officials responsible for assistance to displaced persons have criticized the lack of State assistance for this population. The representative of the Office of the Presidential Adviser for Displaced Persons in Antioquia denounced publicly that he did not receive any public funding for assistance to the displaced. ([23](#))

41. The Commission also notes that the fact that many displaced persons lack documentation is a source of great obstacles, for adults as well as children. Undocumented persons face difficulties in getting registered and obtaining documentation of citizenship. This situation provokes, among other things, a loss of property, due to the inability to provide documentary evidence, and the inability to obtain protection for human rights. For example, most of the aid programs available to displaced persons require applicants to provide certification of their status as displaced persons. This certification is very difficult to obtain, except in a few municipalities which have made a special effort to resolve the situation of the undocumented persons. The land distribution problem is also aggravated by the documentation difficulties of the displaced population.

42. It should be noted that Principal 1 of the Guiding Principles provides that internally displaced persons should not suffer any discrimination as a result of their condition. A system that requires displaced persons to obtain special documents classifying them as such could violate this principle. In addition, international human rights law guarantees the fundamental right of all persons to juridical personality. The American Convention provides that this is a non-derogable right. ([24](#)) Paragraph 20 of the Guiding Principles also provides very clearly that, to give effect to the right that displaced persons have to juridical personality, "the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights. . . . In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents."

a. Situation in Camps and Settlements

43. A recent phenomenon has been the creation of displaced persons' camps. In the wake of the peasant killings in Urabá, in April and December 1997, the town of Pavarandó Grande de Mutatá became "the biggest displaced persons camp in Colombian history" with more than 5,000 residents. ([25](#)) According to figures provided by international organizations, most of the camp residents came from 48 black communities. Half of these were children under 14 years old, some of whom are thought to have died as a result of lack of medical care and high malnutrition levels. The Pavarandó camp was the site in Colombia that most "resembles a typical refugee camp" with rows of tents bearing the insignia of the Red Cross and other non-governmental organizations providing food and medical care. According to reports from non-governmental organizations, the infrastructure was inadequate, and the displaced complained that the supply of food rations they received was erratic and insufficient." ([26](#))

44. The first programs for return and relocation of families in Pavarandó began in January 1998. Most of the displaced persons were returned to six camps in the area of the Bajo Atrato in the Chocó Department. However, before the return process could be entirely completed, the displaced persons in Pavarandó fell victim to renewed acts of violence. In early September 1998, fearing an attack from paramilitary forces, the nearly one thousand people waiting to return to the Urabá region of the Chocó Department left the camp at Pavarandó. The paramilitary forces accused them of supporting FARC (Fuerzas Armadas Revolucionarias de Colombia) guerrillas, who, in August 1998, attacked the 17th Army

Brigade stationed in the area. ([27](#)) The Commission describes this renewed displacement of the displacement victims who had been living in Pavarandó as extremely grave.

45. The Commission was able to observe the difficult living conditions in the camps during its visit to the Turbo Sports Hall shelter in the municipality of Apartadó, Department of Antioquia. The people living in the Sports Hall come from several different parts of Riosucio in the Chocó portion of the Urabá region. They fled to the Municipality of Turbo to escape a terror campaign, waged by paramilitary groups, as well as military air strikes at the end of 1996. The residents complained to the Commission that several communities had been bombed and terrorized through executions of local residents. According to these residents, over the course of several hours, houses were looted and their inhabitants then forced to vacate. They told the Commission that the paramilitaries had taken control of the area where they had lived. On February 27, 1997, the displaced people reached the Turbo Sports Hall shelter, where at the date of the drafting of this report, there were still some 330 people living in cramped and exposed conditions.

46. The Commission observed that the residents of this camp were living in exceedingly overcrowded conditions. Most of the displaced sleep on beds packed in side by side in the large, open space inside the Sports Hall. The residents complained of lack of privacy. They also protested that the food assistance provided by the Government (25,000 pesos worth of goods for 15 days) was not enough. Despite government promises, the shelter was left without gas for cooking and with insufficient water for the amount of people. In November, aid was officially suspended to 75 families for lack of funds, while disease and the risk of epidemic increased, in particular among the children, several of whom showed symptoms of advanced malnutrition. The Commission also recorded several complaints alleging the disappearance or execution of some of the people displaced to Turbo.

47. Based on the information that it received during and after its visit to the Sports Hall and to other shelters in Turbo, the Commission decided, on December 17, 1997, to ask the Colombian State to adopt precautionary measures to protect the life and safety of the displaced persons temporarily residing there. The use of precautionary measures for entire communities of displaced persons was a new type of action in terms of the development of the legal mechanisms for protection in the inter-American System. The Commission considered that the seriousness of the situation required this move. The decision was based on information received by the Commission, during the weeks after its visit to Turbo, indicating that members of paramilitary groups had made their presence known to the displaced persons on several occasions. On December 11, 1997, two armed individuals, recognized as paramilitaries, entered the Turbo Sports Hall and asked for a member of the displaced persons community. On December 14, another paramilitary member was seen inspecting the "Unidas Retornaremos" shelter.

48. The Commission more recently received a copy of a letter addressed to the President of the Republic regarding another group of displaced persons, who have settled in shelters in the Municipality of Dabeiba, Department of Antioquia. The letter, signed by displaced people from the town of La Balsita and dated August 9, 1998, describes the situation of this community. According to the letter, more than 1,000 people were displaced when a group of approximately 400 paramilitary forces entered the towns surrounding La Balsita on November 21, 1997, killing 21 peasants and disappearing others. The paramilitary group specifically warned the peasants that they should leave their towns if they wanted to save their lives.

49. On November 30, 1997, the community settled in the municipality of Dabeiba, where 250 people live in two provincial meeting halls in very cramped conditions and sleep on the floor. The kitchen and washroom are located in the same area where the people sleep. The residents of these shelters complain that they are in short supply of water. They also complain that they sometimes go three weeks without receiving food.

50. These residents also say that some of the local officials in the community of Dabeiba, as well as the commander of the local army post, have used threats in order to pressure the displaced people into returning to their districts, without offering to provide protection for their life or physical integrity. The displaced persons in Dabeiba maintain that army personnel have also told them that they will suffer serious consequences if it is found that any of them have "given a glass of water to a guerrilla." Two members of the displaced persons' community were murdered.

b. Persons Displaced to Panama

51. A large group of displaced persons, who fled from Riosucio, Unguía and other areas of the Chocó portion of the Urabá region at the end of 1996 and beginning of 1997 as a result of paramilitary incursions taking place at the time, sought first to flee to Panamá. This group established impromptu camps in the Darién region of Panamá. However, soon thereafter, the displaced persons were told that they could not stay in the neighboring country. According to the displaced peasants, the list of conditions that they formulated to the Colombian Government to allow a return was ignored and the displaced persons were forced to return to Colombia without the guarantees that they had sought.

52. Some of the refugees were taken to Apartadó, Department of Antioquia at first. These refugees were placed in a shelter where they lived in overcrowded and unhygienic conditions. In addition, at this time, Apartadó was experiencing the same paramilitary violence that had forced many of the displaced persons to flee from the Chocó area.

53. The Colombian Government took a significant number of the displaced persons that fled originally to Panamá to the Cupica Bay on the Pacific coast of the Chocó Department. Many of the peasants displaced from the Chocó region to Panamá currently remain in Cupica. Despite the fact that the Government forcibly removed these persons to this site, it has failed to provide them with adequate humanitarian assistance during their time there. According to the information received by the Commission, the displaced persons do not receive adequate food and only very rarely receive meat to cook. They have access to only one doctor for the entire displaced persons population and medicines for serious illnesses are not available. When serious illnesses arise, the sick person must travel to Solano Bay, two hours away by boat. Because of the transportation difficulties, a few sick individuals have waited four days to be taken to the hospital.

54. According to the information presented to the Commission, the displaced persons from the Chocó Department are still discussing with the Government the conditions for their safe and dignified return. Meanwhile, the situation at the sites continues to be extremely difficult. The Commission has also received information indicating that paramilitary groups maintain absolute control over some areas of the Chocó region causing insecurity and new displacements.

c. Situation of the Displaced Persons from Finca Bella Cruz, Department of Cesar

55. On February 14, 1996, paramilitary groups executed an armed operation against the peasant community at the Finca Bella Cruz, located in the municipalities of La Gloria, Pelaya and Tamalameque in the Department of Cesar. The peasants were forced to abandon their homes and crops as a result of the attack. Some eyewitnesses have stated that members of the armed forces were present and participated with the paramilitaries in the attack. The attack apparently took place in reprisal for the activities of the peasants in claiming the lands that they had occupied for almost three years. On March 13, 1996, a month after the attack, the peasants from Bella Cruz obtained a judicial decision ordering that they be granted title over the uncultivated land. That land had also been claimed by the "Marulanda Investments" group, a company run by the descendants of a landowner, also of the Marulanda name, who had expelled the peasants living in the area with the assistance of paramilitary groups in the

1940s.

56. Following the promulgation of a European Parliament resolution condemning the attack on the peasants, the Government of Colombia launched an inquiry into these grave acts of violence and into the responsibility of members of the Government with an alleged interest in Finca Bellacruz. According to information provided to the Commission, the investigation initiated by the Human Rights Unit of the Office of the Prosecutor General of the Nation led to the detention, in May 1998, of Francisco Alberto Marulanda Ramírez, brother of Carlos Arturo Marulanda, ex-ambassador for Colombia to the European Community. On January 15, 1999, the Office of the Prosecutor General also issued an arrest warrant against Carlos Marulanda.

57. Near the end of March 1996, the peasants managed to secure an agreement with the Government enabling them to return to their lands after spending several weeks living in overcrowded conditions in a privately-owned building in Pelaya. However, the Institutional Verification Committee set up under the agreement with the displaced persons and made up of representatives of the Government, armed forces, non-governmental organizations, and the persons affected, was unable to gain access to Finca Bellacruz on April 8, 1996, because the area was considered too dangerous due to the presence of paramilitary groups.

58. Some days later, on April 19, 1996, a team of officials from the Colombian Institute of Agrarian Reform (INCORA) were attacked by paramilitary groups guarding the ranch, as they attempted to carry out measurements essential for delivering to the peasants their lots and title deeds. According to complaints by non-governmental organizations the paramilitary forces cut off part of the scalp of one of the officials. Ever since, despite various attempts by INCORA, access to the ranch has been impossible because of the violence of the paramilitary forces. Between November and December 1996, the authorities relocated some of the displaced families in several different departments. Some had success in Tolima but those who were supposed to go to Cundinamarca were turned away by the Governor. For several months the Governor refused to comply with the Government's decisions and directives, declaring that the displaced people were "guerrillas who posed a grave threat to the security of the department." The Governor also instructed the mayors to refuse the group temporary relocation. According to the most recent information obtained by the Commission, there are still some 50 families that have yet to be permanently resettled, and none of these families has been able to return to their lands or regain the title deeds the State was to award them.

59. Thus, the court decision awarding title and the attempts of the INCORA officials became meaningless. The responsibility of the authorities in failing to ensure protection for the physical integrity of the displaced persons, the impossibility of pursuing the judicial inquiry into the alleged grave violations of human rights and of humanitarian law, and the blocking of the award of the title deeds constitute challenges that the Government cannot allow to go without resolution.

d. Petitions and Peace Community Proposals

60. Some communities of displaced people have organized themselves into "Peace Communities," demanding respect as members of the civilian population and/or submitting lists of petitions for their return. The communities displaced from the Riosucio area of the Department of Chocó, who have settled in Pavarandó, Department of Antioquía, presented a proposal to the Government in July 1997 in order to avoid further breakup of their communities. After stating that the resolve of their members was being worn down by overcrowding, unemployment, and lack of prospects, they proposed an overall agreement and negotiation of a series of socioeconomic development and community survival initiatives involving the State, international cooperation agencies, and entities like the Diocese of Apartadó, the Office of the Human Rights Ombudsman, and the International Committee of the Red Cross (ICRC). The Community from Turbo has also presented a list of petitions and has demanded a meeting with the President of the Republic to discuss the issue of the

"unfulfilled promises."

61. The representatives and inhabitants of the 28 communities forming San José de Apartadó in the Urabá region of Antioquia decided, in April of 1997, to publicly sign a declaration demanding respect for their neutrality and an end to the war. A Special Observation Committee was formed out of several national and international delegations, as well as a Member of the Dutch Parliament. However, the parties to the armed conflict have not always respected the neutrality of the community. From its declaration of neutrality to the visit of the Commission in December of 1997, 43 members of the Community of Peace of San José de Apartadó were killed by paramilitary groups, the Military Forces and the FARC. Members of the Military Forces have indicated that they do not accept the declaration of neutrality, because they consider it a declaration of alliance with the armed dissident groups. Upon analyzing the incidents of violence committed against the Community of Peace of San José de Apartadó, the Commission asked the State to adopt precautionary measures on behalf of the entire community on December 17, 1997.

C. IDENTIFICATION OF THE PARTIES RESPONSIBLE FOR INTERNAL DISPLACEMENT

62. Unlike the essentially rural displacement situations that Colombia saw in the first half of this century, which resulted from a quest for or seizures of cultivable lands, in recent years the phenomenon has become an integral part of the military strategy of the main actors. The chaos, vulnerability, and terror inspired in the population are part of a *modus operandi*. Observers and victims agree that none of the armed actors answers for their acts and all accuse each other of manipulating the peasants and terrorizing the population. This diffusion of blame further ensures impunity.

63. The Human Rights Ombudsman considers that "the migration of these people arises from the fact that members of the military and police, paramilitary organizations, and armed groups force them to flee their homes and occupations to avoid the death, torture, insults, and other misfortunes visited on their relatives, friends, and neighbors. Displacement in Colombia is the joint responsibility of all sides in the conflict and reveals that the warring factions have an utter contempt for basic principles of humanity." ([28](#))

64. Amnesty International's most recent report on displacement in Colombia also notes that, "[i]n the vast majority of cases, displacement of the civilian population is not a casual, sporadic or inevitable by-product of counter-insurgency operations--it is a crucial tool in the armed forces' strategy to combat the insurgent forces. Targeted areas are "cleansed" of the real or potential support base of the guerrillas and repopulated with peasant farmers who are paramilitary supporters." ([29](#))

65. In 1996, a report produced by the Colombian Episcopal Conference research team, updated by CODHES and published in "Desplazados internos en Colombia" ([30](#)) apportion blame for displacement as follows:

- 33% to paramilitary organizations
- 29% to guerrilla groups
- 16% to Government Forces
- 15% to unknowns or others, and
- 6% to urban militias. ([31](#))

66. Other non-governmental organizations calculate similar percentages. According to Amnesty International, "paramilitary organizations [are] the primary cause of displacement: some 35% of internal displacement is caused by paramilitary organizations, 17% by the armed forces and police and 24% by armed opposition groups." ([32](#))

1. Government Security Forces

67. According to the Report in 1994 of the Representative of the U.N. Secretary General on Internally Displaced Persons, "testimonies received by the Representative as well as the discussions he had with the Government indicate that the civilian population living in combat zones is the most susceptible to being displaced." ([33](#)) Indeed, according to Mr. Deng, in zones controlled or influenced by the guerrillas, currently around two-thirds of the country, the armed forces often resort to air raids, followed by ground searches, which often force the people to move temporarily or permanently.

68. Most observers agree that during the period of effect of Presidential Decree No. 717, of April 18, 1996, when almost 25% of the country was declared a "special public order zone ", in which the armed forces were granted emergency powers, the situation of displaced persons worsened, and that "an extremely high percentage of human rights violations and infringements on provisions of humanitarian law has gone unpunished." ([34](#))

69. Several non-governmental and international organizations insist that persons displaced as a result of bombardment by government security forces are placed, after fleeing their communities, in camps or settlements closely guarded or controlled by the military and police. The siting of military barracks very close to where people, displaced or otherwise, are concentrated, leads to the assumption that accusations regarding the use of human shields by some military commanders are not far removed from the truth.

70. The insecurity of these persons is increased by their inability to perceive objectively as protectors of their lives or physical integrity, those who, very often, accused them of being "guerrillas" and forced them to vacate their communities and leave behind their entire means of survival in order to become outcasts in regions or cities unknown to them.

71. The Commission also examined the conditions surrounding the implementation of illicit-crop eradication programs by the military in zones allegedly under guerilla control. The aim of such programs is to destroy coca plantations using chemicals like tebuthiuron, which is classed as one of the most harmful to humans and future crops. ([35](#)) Reports from several sources allege that military forces have caused the displacement of coca growers using these methods, as well as extreme violence against persons they alleged were connected with insurgents. Although Government authorities are entitled to prevent and suppress crime, and, in particular, to eliminate illicit crops, the security forces must respect the basic rights of the population at all times and may not use methods irreconcilable with international law.

2. Armed Dissident Groups

72. From the outset and for both historical and strategic reasons, armed dissident groups have opted to operate in rural areas and gradually advance on urban centers. In 1994, the Episcopal Conference reported that armed dissident groups were engaging in the use of anti-personnel mines, hostage-taking, kidnappings, destruction of civilian property, and attacks on vital civil works. All such actions by insurgent groups bring about displacement of people. Although observers agree that rural zones are the worst affected, armed violence does not exclude towns and cities, where persons displaced from rural areas again encounter the same kinds of violations and insecurity. On this point, the report of the CPDIA says that, "these groups [of armed dissidents] have also been the cause of urban displacement and its effects were seen in parts of Medellin." ([36](#))

73. According to the Archdiocese of Cali, the information provided by displaced households shows that urban militias and guerrilla forces are among the chief causes of the displacement of the persons who arrive in Cali. These households also maintain that actions against the civilian population by dissident groups that operate in the Departments of El Valle, Cauca,

Nariño, Putumayo, and Antioquía are also direct causes of displacement. ([37](#))

74. Even though the Commission does not have jurisdiction under the American Convention to take cognizance of complaints against groups whose acts are not attributable to the State, it considers appropriate at this point to stress that respect for provisions of international humanitarian law applies to all parties in a conflict, and, in particular, to reiterate the applicability of the Guiding Principles, which require that all groups and persons respect the basic rights of internally displaced persons in their relations with them.

3. Paramilitary Groups

75. Based on information it has received in this regard, the Commission believes that paramilitary groups are the biggest cause of collective displacement of the rural population. According to humanitarian, ecclesiastical, and international observer organization sources, the escalation of paramilitary activity in recent years has mainly taken the form of "cleansing" operations against civilian populations suspected of helping or contributing logistically to guerrilla groups or those that occupy land that the paramilitaries wish to acquire. In 1994, the Report of the Representative of the U.N. Secretary-General on Internally Displaced Persons, considered that:

NGOs and victims of human rights violations, as well as a large number of government officials, told the Representative that these groups are the primary source of violence and related displacement and that in many cases they enjoy at least the tacit support of the Army while in many areas they are financed and used by drug-traffickers. ([38](#))

76. The Commission also received information indicating that the Colombian State has failed to take administrative, legislative, judicial or other actions to block or prevent the activities of these groups. The State thereby contributes to the impunity of these groups and the displacement that results from their actions, which are often announced in advance.

77. In referring to the case of the displaced from the Finca Bellacruz, the former Presidential Adviser on Human Rights said that:

These (paramilitary) groups have attempted to defend the interests of given sectors against guerrilla forces but have committed abuses, excesses, and crimes. It was precisely these groups that, in February 1996, allegedly drove out the peasants (of Bella Cruz), [now] victims of displacement ... In the municipalities of Pelaya and neighboring municipalities there is a situation of intense conflict, the main victim of which is the civilian population, mostly peasants, caught between guerrilla and paramilitary groups.

78. The Archdiocese of Bogota notes that paramilitary groups are the primary cause of displacement to the capital. Of the displaced households consulted, 42% placed responsibility with these groups for the killing, terror, and threats that persuaded them to flee.

79. As was analyzed in Chapter IV of this Report, the Commission considers that under international law the State of Colombia could be implicated in certain paramilitary group actions. For this reason, in certain circumstances, provisions of both human rights and humanitarian law could apply to actions conducted by paramilitary groups ([39](#)).

D. THE STATE'S RESPONSE

80. The Commission was able to confirm that there is agreement in both government and non-governmental circles as to the gravity of the internal displacement phenomenon and the pressing need to prevent it and to protect the victims. There is also consensus among national observers and representatives of international organizations that the State has made

some effort to provide solutions for the displaced. However, many agree that the policy adopted thus far by the Government to deal with this situation has not been adequate and has failed to diminish it. The most serious aspect of this lack of effective response is the absence of governmental measures to prevent the incidents that provoke the forced displacement of persons, despite the fact that this preventive aspect is conceived as a central focus of governmental policy. It must be noted, in this connection, that the vast majority of forced displacements were announced in advance by the elements responsible for causing them or were denounced by the affected communities, supervisory bodies, the Church or organizations from civil society.

1. Political Framework of the State for Assistance and Protection for the Internally Displaced

81. The Commission acknowledges the will of the State in recent years to deal with the internal displacement situation within the overall framework of protection of human rights. The Commission welcomes the boost given at the same time to the advancement of human rights and humanitarian law by the incorporation of international instruments and specific agreements on internal displacement into national law, through Article 93 of the Constitution, or through legislation. These efforts have made it possible to pass a significant number of legal norms and to implement government and quasi-governmental programs that have helped to provide some measure of assistance and protection to the displaced.

82. In 1994, the Government mentioned in the National Plan for Development and Social Progress that it attaches priority to adopting a clear policy on displacement. In September 1995, Document No. 2804 of the Economic and Social Policy Council (CONPES) ([40](#)) created the National Program of Integral Assistance for the Population Displaced by Violence in Colombia ("National Assistance Program"), with the aims of providing assistance to this population and preventing the dynamics of violence that generate the phenomenon. However, only a few months later the authorities admitted that the Program had been plagued with "difficulties with inter-institutional management and coordination, information, and funding." ([41](#))

83. On April 28, 1997, the Office of the Presidential Adviser on Integral Assistance for the Population Displaced by Violence was created with the purpose of coordinating all operations, measures, and mechanisms of the National Assistance Program ([42](#)). Funding for the Program is provided for under Decree 1458, of May 30, 1997, which governs the nature and functioning of the Fund for Rehabilitation, Social Spending, and Combating Crime, and in which a special item for displacement was created. CONPES Document 2924, of 1997, also presented strategies for prevention, immediate assistance and socio-economic consolidation and stabilization.

84. Law No. 387, of July 18, 1997, which was a Government initiative, reorganized several agencies that work with the internally displaced and stipulated the need for the National Assistance Program to coordinate with non-governmental organizations and international agencies specializing in this area. Against the backdrop of this law, a National Plan for Integral Attention for the Population Displaced by Violence was designed. The National Plan set forth the actions that the Government would need to take to protect the displaced population. The Plan was intended to complement the government policy directives set forth in the CONPES documents. It included several new protocols for actions to be followed by the various entities that work with displaced persons.

85. The conception of the State was also that actions planned for the medium and long terms should lay the foundations of socioeconomic stability for the displaced population as part of a process of voluntary return or resettlement in other rural or urban zones. This stability would be achieved by providing them access to the National System of Agrarian Reform and Rural

Development and Social Welfare Programs.

86. In 1997 the Government also requested the Office of the United Nations High Commissioner for Refugees (UNHCR) to open an office in Colombia with the aim of reaping the benefits of the experience gained under its mandate in processes of return of the displaced population. The State has also worked with various international agencies to develop an early warning information system.

2. Shortcomings and Deficiencies of the State on the Issue of Internal Displacement

87. The Commission recognizes that the Colombian State, through its governing bodies, has taken steps to apply the recommendations of experts in addressing the issue of internal displacement. However, the sheer multitude of problems preventing the government from reaching its goals, some of which the State authorities themselves recognize, so far rules out any possibility of a significant decline in internal displacement.

88. The shortcomings in the State's response have largely been due to the fiscal problems it faces, as well as to the "spread of armed insurgency, which encompasses regions where peasants have mobilized for land, and where there are also clashes with legitimate Government forces, thus turning all these areas into war zones, where most of the victims are peasants and displacement occurs as a result." (43) The Commission assumes that the State has trouble gaining access to some parts of the country in order to carry out judicial inquiries, owing to the intensity or escalation of internal armed conflict there. The Commission understands that in some cases implementation of policies for the prevention and protection of the internally displaced can become virtually impossible. However, in many cases where these might reasonably have been contemplated, the competent agencies have shown no particular desire to initiate and execute such actions.

89. The Commission views with concern the following shortcomings in the application of the National Assistance Program:

- Human rights violations and infringements of provisions of humanitarian law allegedly committed by members of the military and security forces against the civilian population go unpunished. This situation both encourages the continuation of such abuses and helps to protract and increase displacement itself. To date, the Commission has received no reports of convictions of members of the armed or security forces alleged to have committed such violations in the course of armed operations. The impunity with which paramilitary groups act and operate has also been an exponential factor in the displacement of the rural population.
- The fact that the Government has opted for a policy of assistance rather than one of prevention and adequate protection may be warranted in Colombia's current environment, but in no case can it provide an admissible excuse. Indeed, eradicating the causes of and preventing displacement are primarily duties of the State.
- Apart from the problems relating to the prevention of displacement, major shortcomings have also been discovered in relation to provision of assistance to persons already displaced. Despite budgetary problems, it has been found that there is a great deal of duplication or overlapping of effort in the National Assistance Program and that there has been no real coordination among the various government agencies, or between the Government and inter-governmental and non-governmental organizations. These deficiencies have left a large number of displaced families unregistered, resulting in a denial of

access to basic welfare programs. The Commission notes that the current trend under international law, established by the U.N. Committee on Economic, Social and Cultural Rights and backed by the Inter-American Commission, requires that States cover the vital necessities of the civilian population throughout a conflict and that they provide for a supply of food, drinking water, satisfactory conditions of hygiene, and medical care for the sick and wounded.

- The National Assistance Program has not taken into consideration the urgency of designing a policy to ensure proper documentation of the displaced population. This situation not only harms children, whose birth in many cases has not even been registered, but also the displaced in general in terms of their legal standing. The responsibility for ensuring proper documentation lies unavoidably with the State. It is not acceptable that the letter of the law cannot be complied with primarily because of a lack of personnel prepared to provide this documentation and other similar reasons.
- The policy of socio-economic consolidation has not addressed the difficulties faced by the general population, and particularly the displaced population, in obtaining access to land to be cultivated. This reality confirms the conclusions of experts who have found that the agrarian reform process has been interrupted in those regions "where the violence caused by the guerrillas, counter-insurgency operations, paramilitary groups and the territorial expansion of the drug trade comes together to cause the forced displacement of persons, particularly peasants. A relation has been established between factors which have impeded agrarian reform, in various ways and at different times, with the violent expulsion of peasants from their homes. . . . Thus, for example, peasants settled on lands purchased by INCORA have been threatened and forced to seek authorization from the Institute to renounce their lots and leave." ([44](#))
- There is also a serious problem as regards lack of development alternatives in coca producing areas. The CPDIA mission assessed the situation of illicit cultivation areas in the Departments of Putumayo, Guaviare, Caquetá, and Meta, where government control has caused massive displacement of coca farming peasants. Most of these peasants were colonists, who arrived from other parts of the country over the past several years and settled in the hope of finding an alternative livelihood. The CPDIA believes that these territories have turned into virtual theaters of confrontation, declared "zones of public order," and that flaws in the government's crop substitution program combined with the unsafe conditions in these areas has clearly encouraged the displacement of the peasant population.
- Encouraging or providing incentives for return to zones where conflict persists, or where the State cannot guarantee the safety of its citizens, exposes displaced people to the danger of being taken hostage or becoming the target of violence by one of the warring parties. It also banishes any possibility of consolidating resettlement areas, thus, effectively ruling out titling of lands awarded to displaced persons. On this subject, the Commission recalls that Principle 21 of the Guiding Principles on internal displacement insists on due respect and guarantees the right to property of these persons. The Guiding Principles also provide that return must take place in conditions of safety and with dignity. By the same token, the Committee on the Elimination of Racial Discrimination adopted on August 16, 1996, General Recommendation XXII with regard to refugees and displaced persons on the basis of ethnic criteria. The recommendation stresses that "all such refugees and displaced persons

have the right freely to return to their homes of origin under conditions of safety, that State parties are obliged to ensure that their return is voluntary, and that the displaced have, upon return, the right to restoration of property or adequate compensation when this is not possible."

- o The work directed at extending cellular telephone capabilities and implementing an early warning information system has been ineffective, despite the inclusion of these possibilities in the CONPES documents and the constant requests for such innovations by the public and private sectors in the affected regions. This lack of progress has contributed to the failure to prevent forced migratory movements.
- o In designing its policies, the National Assistance Program does not appear to have taken into consideration the characteristics of the State, the fragility of some institutions, and, above all, the absence of transmission mechanisms between the central authorities and the departments. Nor did it create quick, coordinated mechanisms with national and international, religious and non-governmental organizations that for many years have shouldered practically unaided all responsibility for providing assistance to internally displaced persons.

90. The Colombian State deserves recognition for the passage of Law 387 of 1997 and the creation of the Office of the Presidential Adviser on Integral Assistance for the Population Displaced by Violence. However, the humanitarian aid and legal protections available to displaced persons leave much to be desired. The scarce resources dedicated to the problem and the avoidance of responsibility in some cases expose the true situation. True and effective aid and protection should take place in addition to and in coordination with the legal and organizational work which is taking place.

91. In its observations regarding this Report, the Colombian State informed the Commission that the Government has already become aware of some of the difficulties mentioned above. Solutions to some of these problems are included in the National Development Plan 1998-2002 proposed by President Pastrana. According to the State, one of the essential components in the new policy on displaced persons will be a greater emphasis on prevention and socio-economic stabilization. The goal is to move beyond the prior focus on assistance. The Commission is pleased to receive this information regarding the new policies of the Government regarding displaced persons. The Commission will observe with interest the trajectory of these policies. However, the Commission must note that some observers have expressed concern regarding the delay in the development of a strategy for resolving the displaced persons issue and regarding the decision of the President to close the various branches of the Office of the Presidential Adviser for Displaced Persons in different parts of the country.

92. The Commission wishes to underscore that it is the primary duty of the Colombian State to provide protection and humanitarian assistance to internally displaced persons within its jurisdiction. If the magnitude of the problem is such that it exceeds the State's budgetary possibilities or capacity to furnish assistance, it has the obligation to seek assistance from the international community in carrying out the necessary humanitarian tasks.

E. INTERNATIONAL COOPERATION

93. In this area, the Commission takes note of the fact that the participation of the international community and of specialized agencies in providing assistance and protection to the displaced population has been increasing in response both to the magnitude of the phenomenon and to formal requests from the State for international assistance in order to enable it to assess and address the situation.

94. Several international organizations with a mandate in Colombia have recently adopted the aim of focusing their attention on the magnitude of the phenomenon. Accordingly, the ICRC has gone to considerable lengths in performing its mandate to protect all victims of armed conflict. The Office of the United Nations High Commissioner for Human Rights in Colombia includes the magnitude of the problem as a permanent item on its agenda. The UNHCR has made several *in loco* visits and in 1998 decided to set up an office in Colombia. The European Union has made funds available for humanitarian assistance and for reconstruction of uprooted groups. Some cooperation agencies have strengthened their presence in the country in order to ensure greater integrality in their work. In 1997, the CPDIA undertook its second mission in the country to assess the deteriorating displacement situation and to observe government policies and implementation of recommendations that the CPDIA and other international organizations made in previous years. ([45](#))

95. The international community has contributed, by providing financial and technical support for implementation of immediate attention and protection programs by local non-governmental organizations. However, according to the evaluation of CPDIA experts, "in the absence of a body to coordinate these initiatives, sometimes overlapping or dissipation of efforts has occurred, and certain regions have been helped while others have received little assistance." ([46](#))

96. The Commission considers that the presence of the ICRC, UNHCR, and other agencies with experience in issues relating to internal displacement, refuge, and resettlement is crucial in areas where the conflict is most intense. These organizations may also provide suitable solutions, not overlapping or erratic ones, to the crisis. Such solutions should combine with the readiness the State has shown in recent years to follow the recommendations of experts or of specialized agencies.

97. The IACHR urges greater cooperation between the Government of Colombia and international agencies that work on the issue of internal displacement, in order to take steps that are more effective both in preventing displacement and in providing protection and assistance to persons already displaced. Specifically, the Commission urges the Government, in cooperation with these agencies and with the Representative on Internally Displaced Persons of the Secretary General of the U.N., to provide the means for creating lasting solutions, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes, or to resettle in another part of the country.

F. SITUATION OF HUMAN RIGHTS DEFENDERS WORKING WITH DISPLACED PERSONS

98. The Commission wishes to express its concern over the hazardous situation that human rights activists in charge of assisting displaced persons face in the course of their professional labors. The Commission considers that human rights activists working with the displaced, connected to government institutions or otherwise, whose activity involves providing legal protection or humanitarian assistance for displaced persons, have been the target of serious human rights violations, an alarming number of which have resulted in extrajudicial executions.

99. According to the Third Annual Report of the Office of the Human Rights Ombudsman, activists are prominent persons in government and non-governmental institutions whose activities providing legal protection and humanitarian assistance to the displaced population are very visible, for which reason they quickly become targets for the parties to the conflict. ([47](#))

100. Disturbing proof of the foregoing was the execution by unidentified individuals on August 11, 1998, of Amparo Jiménez Payares, a journalist and official of the National Displaced Persons Network (a government agency) for El Cesar and La Guajira. Mrs. Jiménez

had received several threats after writing a report in relation to peasants displaced by violence in the Municipality of Pelaya, Department of El Cesar. The authorities have caught three suspects in connection with the murder of Mrs. Jimenez, including alleged conspirators and actual perpetrators.

G. RECOMMENDATIONS

Based on the foregoing, the Commission make the following recommendations:

1. The parties in the armed conflict should observe the Guiding Principles on Internal Displacement, to avoid and especially to prevent the conditions that lead to forced internal displacement.
2. The State should order all of its institutions and agents to respect international and domestic provisions relating to internally displaced persons, with special attention to the obligation to respect their rights to life, physical integrity and personal security. The Colombian State should publish widely the text of the Guiding Principles on Internal Displacement.
3. The State should ensure resettlement or return to habitual places of residence. The Commission underscores that processes of return must take place voluntarily and in conditions that ensure the safety and dignity of returnees.
4. The Colombian State should implement an information campaign on the situation of the displaced, stressing their condition as noncombatant civilians, who are not liable to recruitment by any of the parties to the conflict, in order to avoid confusion caused by accounts disseminated by representatives of the State, including members of the armed forces and police.
5. The Colombian State should carry out humanitarian assistance and development programs in coordination with international agencies that specialize in the issue, ensuring proper accommodation, satisfactory conditions of health and hygiene, and that members of the same family are not separated.
6. The Colombian State should ensure that all elected or appointed authorities at the national and local levels respect the principles of equality and non-discrimination, in order to avoid the rejection of internally displaced persons.
7. The Colombian State should consolidate judicial mechanisms so as to prevent the proliferation of impunity benefiting institutional and/or private actors who have caused internal displacement and a corresponding deep-seated feeling of extreme vulnerability in the affected population.
8. The Colombian State should accord priority to strengthening protections for human rights activists working with the displaced.
9. The Colombian State should launch a documentation campaign for internally displaced persons in as short a time as possible, utilizing the experience gained by several countries in the region and the cooperation of organizations experienced in this area.
10. The State should strengthen the presence of the international sector and coordinate to carry out jointly effective assistance programs that provide coherent, lasting solutions.
11. The State should implement a land distribution policy under the legal framework in place that provides greater involvement and protection for INCORA officials so that they can fully

perform their functions in the different stages of awarding land to displaced persons.

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- (1) Commission on Human Rights Resolution 1998/50, 17 April 1998, E/CN.4/1998/53/Add. 2 The member States of the OAS which co-sponsored the resolution were the following: Peru, Uruguay, Costa Rica, Ecuador, Argentina, Chile, Colombia, El Salvador, Guatemala, and Nicaragua.
- (2) Guiding Principles for Displaced Persons, [annexed to](#) Report of the Representative of the Secretary-General for Displaced Persons, Mr. Francis M. Deng, submitted pursuant to United Nations Commission on Human Rights Resolution 1997/39, E/CN.4/1998/53/Add. 2 [hereinafter Guiding Principles].
- (3) Article 1 of Law 387 establishes that:
A displaced person is anyone who has been obliged to migrate within the national territory, abandoning his place of residence or his customary occupation, because his life, physical integrity, and personal security or freedom has been jeopardized or is threatened owing to the existence of any of the following situations: internal armed conflict, internal disturbances and tensions, widespread violence, massive violations of human rights, breach of international humanitarian law, or other circumstances originating from prior situations that might or do drastically disturb the public order.
- (4) Office of the President, Jacquín Strauss de Samper, First Lady of the Nation, Los Desplazados: Esa Colombia que no podemos ignorar, 1997 [hereinafter Report of the Office of the President].
- (5) GAD (Support Group for Displaced People's Organizations), Éxodo, Informe sobre el Desplazamiento Forzado en Colombia, enero 1 - octubre 31 de 1997 [hereinafter Éxodo].
- (6) CODHES is a non-governmental organization based in Bogotá that specializes in this issue.
- (7) Éxodo, [op. cit.](#)
- (8) Life, Justice, and Peace Commission, Archdiocese of Cali, Desplazados en Cali: Entre el miedo y la pobreza, 1997 [hereinafter Report of the Archdiocese of Cali].
- (9) Éxodo, [op. cit.](#)
- (10) National Information Network document, August 1997. In mid-1998, the Network still had no official figures on displacement in the major cities and some municipalities. See Office of the Presidential Adviser on Integral Assistance for the Population Displaced by Violence, May 1998.
- (11) Office of the Delegate Procurator General for Human Rights, Reply to Proposal No. 131 of April 1997, [cited in](#) the Final Report on the on-site technical assistance mission on internal displacement in Colombia of the Permanent Consultation on Internal Displacement in the Americas (CPDIA), Technical Secretariat, Inter-American Institute of Human Rights, 1997 [hereinafter Report of the CPDIA].
- (12) Alejandro Reyes Posada, El problema territorial del desplazamiento forzoso, [annexed to](#) Report of the CPDIA.
- (13) [Idem.](#)
- (14) [Idem.](#); Alfredo Molano, Ventana al Porvenir, Siguiendo el corte, 1990.
- (15) Report of the Colombian Episcopal Conference, Derechos Humanos: Desplazados por violencia en Colombia, 1995 [hereinafter Report of the Episcopal Conference].
- (16) Report of the Archdiocese of Cali, [op. cit.](#), pp. 42-45.
- (17) The CPDIA was established in November 1992 on the initiative of the regional representatives of specialized agencies of the United Nations System and the World Food Program (WFP). The Inter-American Commission on Human Rights, the Organization for International Migration, the Inter-American Institute of Human Rights, and the International Committee of the Red Cross joined this initiative. Several international non-governmental organizations and independent experts have also taken part in it. The Inter-American Institute of Human Rights acts as the Technical Secretariat for the Group.
- (18) In its observations, the State noted that the Colombian Institute for Family Welfare (Instituto Colombiano de Bienestar Familiar) and UNICEF do have programs to address the psycho-social consequences of forced displacement. The State does recognize, however, that work in this area is difficult and is often not treated as a priority given the urgency of the more immediate needs of the displaced population.
- (19) This Report also contains separate Chapters in which the Commission refers specifically to the subject of displacement in relation to these groups.
- (20) Office of the Human Rights Ombudsman, La Niñez y sus Derechos: Sistema de Seguimiento y Vigilancia.
- (21) Guiding Principles, Principle 4 (2).
- (22) [Idem.](#), Principle 13 (1).
- (23) See "Cierran Consejería y crecen desplazados", El Tiempo, December 7, 1998.
- (24) American Convention on Human Rights, Art. 3.
- (25) El Tiempo, December 31, 1997.
- (26) United States Committee for Refugees, Colombia's Silent Crisis: One Million Displaced by Violence, March 1998.
- (27) El Tiempo, September 9, 1998.
- (28) Office of the Human Rights Ombudsman, Third Annual Report of the Human Rights Ombudsman to the Congress of Colombia, 1996, p.82 [hereinafter Third Annual Report of the Human Rights Ombudsman].
- (29) Amnesty International Report, Colombia, 'Just What Do We Have to Do to Stay Alive?' Colombia's Internally Displaced: Dispossessed and Exiled in Their Own Land, October 1997.
- (30) Report of the Colombian Episcopal Conference, Derechos Humanos: Desplazados por violencia en Colombia, 1995, p. 160.
- (31) CODHES, [op. cit.](#)
- (32) Amnesty International, [op. cit.](#)
- (33) Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/95, E/CN.4/1995/50/Add.1, October 3, 1994, par. 54 [hereinafter 1994 Report of the Representative of the Secretary-General].
- (34) Third Annual Report of the Human Rights Ombudsman, pp. 28-29.
- (35) "Pushed by U.S., Colombia Plans New Chemical Attack on Coca," New York Times, June 20, 1998.
- (36) Report of the CPDIA, p. 28.
- (37) Archdiocese of Cali, [op. cit.](#), pp. 37-38.

- ([38](#)) 1994 Report of the Representative of the Secretary-General.
- ([39](#)) See Chapter IV.
- ([40](#)) CONPES is an entity of the Colombian Executive Branch composed of ministers who deal with this topic and who have authority for approving specific plans and projects submitted by the Government.
- ([41](#)) Report of the Office of the President, op. cit., p. 12.
- ([42](#)) Decree 1165 of April 28, 1997, provides that the Office of the Presidential Adviser on Integral Assistance for the Population Displaced by Violence is in charge of coordinating the implementation and operations of the National Program of Integral Assistance for the Population Displaced by Violence and of the National Information Network. The purpose of this Network is to compile and organize information on displacement.
- ([43](#)) Reply of the Minister of Agriculture before the Chamber of Representatives, cited in Report of the CPDIA, p.27.
- ([44](#)) Id., note 15.
- ([45](#)) Éxodo, op. cit.
- ([46](#)) Report of the CPDIA, p. 96.
- ([47](#)) Third Annual Report of the Human Rights Ombudsman.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER VII

HUMAN RIGHT DEFENDERS

A. INTRODUCTION AND LEGAL FRAMEWORK

1. The member States of the Organization of American States ("OAS"), including Colombia, have generally recognized the important role which human rights defenders play in promoting greater awareness and observance of human rights and, in this manner, in safeguarding democracy and the values of the inter-American system. Throughout the world, human rights defenders work individually or in groups, institutions or non-governmental organizations on human rights issues. They may carry out educational, promotional or litigation activities in an effort to seek greater protection for human rights. Recognizing the importance of the work carried out by human rights defenders, the OAS General Assembly has, on several occasions, issued pronouncements regarding the importance it attaches to ensuring respect for and protection of human rights defenders. For example, in its Resolution AG/RES. 1044 of June 8, 1990, the General Assembly decided to reiterate its recommendation to the governments of the member States "that they provide the guarantees and facilities needed to non-governmental human rights organizations so that they may continue their efforts to promote and defend human rights, and that they respect the freedom and integrity of the members of the organizations." The United Nations Human Rights Commission recently recognized the importance of the work of human rights defenders and reaffirmed the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. (1)

2. Numerous provisions of the American Convention on Human Rights (the "Convention" or the "American Convention") are relevant for an analysis of the situation of human rights workers. Among others, the provisions of Articles 4 and 5 of the Convention, protecting the rights to life and humane treatment, apply to all persons, including human rights workers. Similarly, the rights to due process and judicial protection, set forth in Articles 8 and 25 of the Convention, provide norms for the protection of human rights workers, as well as the rest of the population.

3. Several other articles of the Convention may have particular relevance for human rights workers. Among others, Article 13 of the Convention, providing for the right to freedom of thought and expression, plays an important role in the analysis of attacks against human rights workers. Article 15, establishing the right of assembly, and Article 16, establishing the right to freedom of association, also provide protections relevant to human rights workers.

4. The new Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (the "Draft Declaration") approved by the United Nations Commission on Human

Rights also establishes certain principles which provide guidance in analyzing the rights of human rights defenders. This instrument provides that, "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."(2) For the purpose of promoting and protecting human rights, all persons have the right to meet and assemble peacefully and to form, join and participate in non-governmental organizations or to communicate with such organizations.(3) The Draft Declaration also provides that all persons have the right to make complaints regarding the policies and actions of individual officials or governmental bodies regarding human rights violations.(4)

5. Despite the existence of these protections, most international observers agree that the most basic rights of Colombia's human rights defenders have been consistently violated in recent years. The Office of the United Nations High Commissioner for Human Rights reported that, in 1997 alone, twenty members of human rights organizations were killed.(5) Several of those killed were well known domestically and internationally for their work in this field. According to information received by the Commission, human rights workers have also been subjected to other types of attacks on their rights, including threats and physical violence as well as arbitrary criminal prosecutions.

6. The recent increase in the violence and harassment directed against human rights defenders corresponds to the degradation of the conflict in the past years and even months. The legitimate work of human rights defenders, including the denunciation of the serious abuses committed by the parties to the armed conflict, has led certain actors to seek to silence them through a variety of methods.

7. As noted above, human rights defenders play a valid and productive role in society in times of conflict as well as peace. The Commission has observed directly the committed, objective and extremely positive work carried out by human rights organizations in Colombia.

8. However, with alarming frequency, members of the State security forces and paramilitary groups presume, based on human rights workers' legitimate human rights promotion and protection activities, that these individuals are involved in illegal activities or that they have become combatants and legitimate objects of attack. An individual may never be treated as a criminal or otherwise attacked based on the exercise of his rights to freedom of thought, speech, assembly, etc... Thus, for example, speech in criticism of the human rights record of the Army or the government may never result in reprisals against the speaker. Nor may expressions of sympathy with one or more of the parties to an armed conflict.

9. The Commission therefore emphatically rejects the argument of some members of paramilitary groups and their sympathizers suggesting that certain human rights defenders may be considered "parasubversives", based on their alleged support of or sympathy toward armed dissident groups, and have thus forfeited the protection due to them as civilian non-combatants. This suggestion is decidedly incompatible with the basic principles of international law.(6)

10. With these clarifications in mind, the Commission will proceed to analyze the various abuses perpetrated against human rights workers in Colombia with reference to the norms of the American Convention and other relevant instruments. The Commission will then analyze the response of the State in relation to the current situation of human rights workers.

B. THE CURRENT SITUATION OF HUMAN RIGHTS WORKERS

11. The non-governmental organization Amnesty International convened an international conference on the protection of human rights defenders in Latin American and the Caribbean in 1996. The conference was held in Bogotá from May 22 to 25, 1996.(7) The final

declaration of this conference included the following statements:

Conditions in the region are not always conducive to defending human rights; there are dangers involved in defending and promoting victims' rights, and often the defenders themselves become victims of imprisonment, torture, murder and forced disappearance.

Despite abundant government rhetoric in support of human rights, which is part of the political and social transition and the economic transformation occurring in the region, there continues to be a huge gap between discourse and reality. New forms of harassment and repression emerge, including campaigns to destroy the reputation of individuals and institutions, attempts to criminalize activities that are part of efforts to defend human rights, and legal restrictions placed in the way of acquiring the means needed to defend human rights.

These statements regarding the situation of human rights workers in general are relevant to human rights workers in Colombia.

1. Attacks on the Lives and Personal Integrity of Human Rights Workers

12. Many human rights workers in Colombia receive constant threats against their lives in reprisal for their work. These threats sometimes come in the form of anonymous phone calls and notes. In other cases, unknown individuals approach human rights workers and inform them that they must discontinue their work or suffer the consequences. These threats themselves constitute an attack on the mental integrity of the victims. The threats have a particularly strong effect, because human rights defenders know that many such threats are eventually carried out.

13. The members of the Association of Family Members of Detained and Disappeared Persons in Colombia (Asociación de Familiares de Detenidos-Desaparecidos - "ASFADDES") have received reiterated threats dating back to 1992 when a high-level officer of the Colombian Army accused the group of identifying with armed dissident groups. (8) The Commission first requested that the Colombian Government adopt precautionary measures on behalf of the president of the organization on September 20, 1994. The Commission subsequently received information denouncing renewed threats against the organization in the first part of 1997. The Commission thus reiterated its request for precautionary measures on February 25, 1997.

14. When a bomb exploded in the Medellín office of ASFADDES on June 24, 1997, the Commission petitioned the Inter-American Court of Human Rights (the "Court") for the adoption of provisional measures on behalf of 17 persons related to the organization. The President of the Court ordered the adoption of provisional measures for the protection of these persons on July 22, 1997. The Court in plenary ratified that decision on November 11, 1997. Yet, some members of the organization continued to receive threats.

15. María Eugenia Cárdenas, the regional director for ASFADDES in Riosucio, Department of Caldas, received very serious threats during this time. On one occasion, an unknown individual approached her on the street, carrying a grenade, and threatened that he would blow up the ASFADDES office in Riosucio. José María Cárdenas, Ms. Cárdenas' first cousin, was subsequently tortured and killed in the village of Bajo Pirza, in the Department of Caldas, on December 3, 1997. (9) Most recently, in July of 1998, the current General Secretary for the organization, José Daniel Alvarez, received a phone call threatening his life.

16. Physical attacks and extrajudicial executions of human rights defenders, preceded or not by threats, are common in Colombia. Several leading human rights activists were killed in 1997 and 1998. On May 19, 1997, Mario Calderón Villegas, Elsa Constanza Alvarado Chacón

and Carlos Alvarado Pantoja were killed in their Bogotá apartment. The attackers entered the victims' apartment building at 2 am to commit the murder. Mario Calderón and Elsa Alvarado were members of the Center for Investigation and Popular Education (Centro de Investigación y Educación Popular - "CINEP"). CINEP is a well-respected non-governmental organization which carries out research, writing and education on a wide variety of issues facing civil society in Colombia. Carlos Alvarado was Elsa Alvarado's father. These murders had a particularly strong impact on Colombian society, because this type of political violence previously had not often affected persons living in the capital. The Human Rights Unit of the Office of the Prosecutor General of the Nation ordered the arrest and preventive detention of several suspects in this case. The Commission has received information which indicates that the Human Rights Unit formerly named Carlos and Fidel Castaño Gil, leaders of the paramilitary group known as the Peasant Self-Defense Groups of Córdoba and Urabá (Autodefensas Campesinas de Córdoba y Urabá - "ACCU"), as suspects in the investigation. ([10](#))

17. These deaths were followed by the murder of Jesús María Valle on February 27, 1998. Mr. Valle was the president of the "Héctor Abad Gomez" Permanent Committee for the Defense of Human Rights for Antioquia (Comité Permanente para la Defensa de los Derechos Humanos de Antioquia "Héctor Abad Gomez"). He was killed in his office in Medellín at 2:30 in the afternoon. Three previous presidents of the Permanent Committee for the Defense of Human Rights in Antioquia were killed in 1987 and 1988. Mr. Valle had repeatedly denounced violence in the municipality of Ituango and other areas of the Department of Antioquia. He had alleged that paramilitary organizations and State public security forces acted in cooperation in carrying out massacres and other violent acts against the civilian population in Antioquia. Soon after Mr. Valle's death, the government offered a substantial monetary reward for information leading to the identification of the perpetrators of this murder. The Commission has received information indicating that two brothers, presumably members of a paramilitary group, were captured on September 16, 1998. One of the two brothers is suspected of direct involvement in the murder of Mr. Valle. Four additional suspects remain in detention in relation to the investigation. These four individuals are cattle ranchers from Mr. Valle's town of origin, Ituango. ([11](#))

18. Several months later, on April 18, 1998, well-known criminal defense lawyer and human rights defender, Eduardo Umaña Mendoza was also killed in Medellín. Several individuals arrived around midday at his home, where he was working, and proceeded to tie up his secretary and assassinate him. Mr. Umaña had apparently reported to authorities and friends shortly before the attack that he was aware of a plot to kill him. The murder caused a strong reaction in Colombian society. As a result, the Colombian government offered a large reward for information leading to the capture of those responsible for the murder of Mr. Umaña. The case is currently being investigated by the Human Rights Unit of the Office of the Prosecutor General of the Nation. Six suspects have been detained in relation to this crime. A preventive detention order has been issued against them.

19. Armed dissident groups have been known to attack human rights workers believed by these organizations to support other actors in the armed conflict. However, responsibility for acts of violence against non-governmental human rights workers is most frequently attributed to paramilitary groups. Many different sources also suggest that the State's security forces may cooperate with paramilitary groups in planning and executing some of the killings. The Commission reiterates that, where paramilitary groups act as State agents or with the approval, acquiescence or tolerance of State agents, the State becomes internationally responsible for the human rights violations which they commit. The attacks described above would, in those circumstances, constitute flagrant violations of Articles 4 and 5 of the American Convention. In addition, to the extent that these attacks constitute reprisals against the victims for their work in human rights, they also result in violations of the right to freedom of thought and expression guaranteed in Article 13 of the Convention. In some cases, they may also constitute violations of the right to association and freedom of

assembly, established in Articles 15 and 16 of the Convention. ([12](#)) On February 1, 1999, the "*Autodefensas Unidas de Colombia*" took responsibility for the kidnapping of John Jairo Bedoya Carvajal, Jorge Heriberto Salazar, Claudia María Tamayo and Olga Ruth Rodas, members of the Popular Institute for Training (IPC). The IACHR expressed its emphatic condemnation of these events and requested that the lives and physical integrity of the hostages be respected and that they be released immediately. ([13](#)) The hostages were eventually released in groups of two on February 8 and 18 respectively.

20. The Commission is concerned that some of the threats and violence against human rights workers in Colombia have targeted or affected individuals who have provided information to the Commission. The Commission met with Dr. Jesús María Valle on two occasions during 1997 to receive information about the human rights situation in the Department of Antioquia. The first meeting was held in February with a small special delegation of the Commission which visited Colombia to discuss the status of several cases in friendly settlement proceedings. The second meeting was arranged as part of the Commission's on-site visit in December. In addition, Dr. Valle's organization has presented several individual cases before the Commission, and its members have frequently travelled to Washington to attend hearings at the Commission.

21. The Commission has learned that another individual who met with this body during the December on-site visit was subsequently killed. While in Puerto Asis, Putumayo, the Commission met with a local human rights committee, composed of governmental and non-governmental representatives. Alcibiades Enciso Galvis, then mayor of Puerto Asis and member to the committee, expressed to the Commission that he had received threats against his life. Mr. Galvis left the mayorship at the end of 1997 and moved to Cali, Department of Valle. Unknown individuals killed him there on January 30, 1998.

22. Attorneys from the Colombian Commission of Jurists (Comisión Colombiana de Juristas) and the "José Alvear Restrepo" Lawyers' Collective (Corporación Colectivo de Abogados "José Alvear Restrepo") have also frequently received threats. Both of these non-governmental organizations have brought numerous individual petitions before the Commission and have appeared frequently in hearings before this body in Washington, D.C.

23. In the press release it issued on March 6, 1998, at the end of its 98^o session, the Commission reminded Colombia and all of the member States of the OAS that Article 59 of the Regulations of the Commission provides that, "the government shall grant the pertinent guarantees to all those who provide the Commission with information, testimony or evidence of any kind [during an on-site visit]." In relation to the safety of individuals who present information to the Commission regarding individual human rights cases, the Inter-American Court has held that, "it is the responsibility of the Government to adopt security measures for all citizens, an undertaking that is all the more crucial in the case of persons involved in proceedings before the organs of the inter-American system for the protection of human rights." ([14](#)) Similarly, the United Nations Draft Declaration provides that all individuals have the right, individually and in association with others, to communicate with intergovernmental organizations and to access and communicate with international bodies with competence to receive communications on human rights matters. ([15](#))

24. The Commission is deeply concerned that individuals who have provided the Commission with information on the general human rights situation in Colombia or on individual cases have subsequently suffered attacks in violation of their rights to freedom of expression, personal integrity and life established in the Convention.

2. Legal Actions Initiated Against Human Rights Workers

25. Human rights defenders have frequently faced legal actions. The Commission has received information indicating that some of these legal proceedings are not initiated to

determine rights and responsibilities in conformity with the law but rather to harass human rights workers.

26. Some of the legal proceedings involve slander suits brought by Army officers against human rights workers. For example, General Harold Bedoya, then commander of the Army and subsequently commander of the Military Forces, brought one such suit against Father Javier Giraldo. Father Giraldo is the director of the Intercongregational Commission for Justice and Peace (Comisión Intercongregacional de Justicia y Paz - "Justicia y Paz"), a human rights organization which has presented several cases to the Commission. ([16](#))

27. The Commission has also learned of cases where criminal proceedings have been brought against human rights defenders. In some cases, these proceedings have moved forward to advanced stages, including the detention of human rights workers. These proceedings usually charge human rights workers with the crimes of rebellion or organization of illegal groups. The Commission has received numerous credible complaints indicating that these proceedings are not based on acceptable evidence but rather form part of a strategy by some members of the State's security forces to harass and intimidate human rights defenders. One non-governmental organization estimates that such proceedings were brought against 11 human rights workers in the Department of Antioquia alone between May, 1996 and August, 1997.

28. Again, the Commission recognizes that the Colombian State has the right to prosecute any individual responsible for committing illegal acts, including acts of support for armed dissident groups which constitute crimes under domestic law. However, human rights defenders may not be presumed to have committed such illegal acts based solely on their human rights activities, including the legal defense of individuals accused of supporting armed dissident groups.

29. The Commission has received information indicating that the criminal proceedings against human rights defenders are generally initiated in reliance on reports from the military regarding the alleged involvement of these persons with armed dissident groups. However, these military reports often fail to provide any concrete evidence linking human rights defenders to armed dissident groups. The reports instead treat the human rights activities carried out by these persons as evidence of such ties.

30. Criminal proceedings must always comply with the requirements of due process, including in the case of human rights workers. However, prosecutors from the regional justice system housed in military brigades have initiated almost all of the criminal proceedings brought against human rights workers. The Commission has described in depth the lack of due process guarantees in such proceedings in Chapter V, relating to the administration of justice. In that Chapter, the Commission noted the significant control which members of the State's security forces have over investigation in the regional justice system, particularly in the initial stages.

31. The case of Jesús Ramiro Zapata provides an example of a criminal proceeding allegedly brought to harass the accused human rights defender. Mr. Zapata is coordinator for the Human Rights Committee for Segovia (Comité de Derechos Humanos de Segovia). As such, he has applied pressure to advance the investigations into massacres which took place in Segovia, Department of Antioquia in 1988 and 1996. These massacres were allegedly carried out by paramilitaries in cooperation with State security forces. ([17](#)) Mr. Zapata also belongs to the human rights organization known as "Colectivo Semillas de Libertad."

32. On May 26, 1996, just one month after the second Segovia massacre, a regional prosecutor, accompanied by members of the Bomboná Army Battalion, searched Mr. Zapata's home. The members of the search unit claimed to find items implicating Mr. Zapata in illegal activities. However, witnesses state that the soldiers planted those items when they

arrived. Similarly, on July 17, 1996, a local prosecutor detained Mr. Zapata without an arrest warrant. To justify the illegal arrest, the prosecutor decided to open a proceeding against Mr. Zapata for falsification of public documents. The prosecutor justified this action on the grounds that the photograph on his identification card "looked strange."

33. Most recently, on August 22, 1997, the regional prosecutor at the IV Brigade opened an additional investigation. The origin of this proceeding lies with a military intelligence report. That report makes broad critical statements regarding the organization "Colectivo Semillas de Libertad" to suggest that the group is linked to subversive activity. The report states that the focus of the organization's work is with the "alleged" promotion and protection of human rights. The report then notes that the organization has a division devoted to providing legal assistance to criminal defendants accused of subversive activities. The report further states that, "various State security agencies agree that the true nature of 'Colectivo Semillas de Libertad' is a façade organization for the subversion, particularly the Eln." The report also makes note of the fact that the organization has denounced "supposed human rights violations" committed by the State's security forces. The report provides no information regarding its sources. It also fails to set forth specific details or evidence regarding the charges levied against the organization, much less regarding Mr. Zapata individually.

34. The regional prosecutor's office used this report as the basis to open a criminal investigation against all of the members of "Colectivo Semillas de Libertad." At the same time, the prosecutor granted powers to the Administrative Department of Security (Departamento Administrativo de Seguridad - "DAS") to carry out further investigations into the case, including through the use of phone line intervention.

35. Another military report has led to the initiation of a criminal investigation against Alirio Uribe of the "José Alvear Restrepo" Lawyers' Collective. That military report apparently links Mr. Uribe to criminal activity on the grounds that he provides legal assistance to criminal defendants. The report states that Mr. Uribe is "dedicated to having bandits held in various jails declared 'political prisoners.'"

36. Another case involving criminal investigations into human rights defenders resulted in a strong public reaction. On May 13, 1998, several prosecutors, accompanied by 20 soldiers from the Army Special Forces unit, entered the offices of the human rights organization Justicia y Paz to carry out a search warrant. That search warrant was legally issued, and the soldiers allegedly came only to ensure the security of the search. However, members of the organization who were present stated that the soldiers mistreated them and even asked some members of the office to kneel down. The soldiers also apparently videotaped computer screens containing information about human rights cases.

37. It appears that the search was intended more to intimidate the human rights defenders at Justicia y Paz than to carry out any legitimate investigation. The warrants for the search were issued only on a vague report by the Army suggesting that the organization might be linked to the killing, on the same day as the search, of Ex-general Fernando Landazábal Reyes. Nor has the Army explained why it was necessary to send twenty soldiers from a special forces unit to an office which contains only a small number of human rights workers with no violent history. The Army could not easily allege that the office also contained dangerous persons, because the military had conducted surveillance of the office before the search. Among those present during the search was Sister Nohemí Palencia. Ms. Palencia is currently the beneficiary of an Inter-American Court decision ordering the Colombian government to adopt provisional measures for her protection.

38. Individuals accused or investigated in these criminal proceedings are sometimes subsequently extrajudicially executed. In January of 1997, the regional prosecutors at the XVII Brigade initiated an investigation of the officers of the National Association of Solidarity Assistance (Asociación Nacional de Ayuda Solidaria - "ANDAS"). The members of that

organization were named in a criminal investigation involving charges of rebellion, terrorist murder and organized crime. The security forces arrested Martha Inés Zapata Urrego, Ana Herminta Rengifo Durango and Gerardo Nieto Yantén in relation to this proceeding.

39. Several union leaders, including Eugenio Córdoba and Ramón Alberto Osorio Beltrán, were detained in connection with the same investigation. All of the suspects were released 15 days after their detention. However, on April 15, 1997, Ramón Antonio Osorio Beltrán was disappeared. No further information has been received regarding his fate. On June 23, 1997, Eugenio Córdoba was killed at 10:00 p.m. in Quibdó.

40. Military reports again served as the basis for the investigation and the detentions in the ANDAS case. The military documents submitted in the case include a letter from the commander of the XVII Brigade to the Director for Regional Prosecutors for Medellín in which the general suggests that human rights defenders serve as the political arm of the guerrilla movement by exerting pressure against the legal authorities through complaints of human rights abuses. A report from another official made use of the fact that several members of ANDAS also belong to the Communist and Patriotic Union political parties. The report by this official denounced a link between the detainees and the armed dissident movement on the grounds that the structure of the Communist Party and the ELN armed dissident group are similar.

41. In August of 1997, Ana Herminta Rengifo Durango and other officers of ANDAS were again arrested. In September of 1997, while several ANDAS members were held in detention on charges of rebellion, the president of the Cartagena section of ANDAS was shot and killed. On December 19, 1997, a new prosecutor assigned to the case decided that there were serious flaws in the evidence against Ms. Rengifo and ordered her release.

42. The Commission is extremely concerned that criminal proceedings have been utilized as a means of harassment and intimidation of human rights workers. State agents are responsible for conducting these proceedings. The State's prosecutors necessarily initiate such proceedings. As noted above, they often also act in coordination with members of the State's security forces. These proceedings appear to be arbitrary and inconsistent with the requirements of due process. As such, the State may well incur international responsibility for violation of Articles 8 and 25 of the American Convention.

43. In addition, these proceedings may rise to the level of an assault on the personal integrity of the victims, in violation of Article 5 of the Convention. Criminal proceedings are converted into a tool of harassment directed at human rights workers. As a result, the victims' right to mental and moral integrity is compromised, in violation of Article 5 of the Convention. The Commission also understands that the proceedings are sometimes used to publicly identify human rights workers considered by the State's security forces as "enemies of the State." Certain members of the State's security forces and/or members of paramilitary groups then treat these individuals as military targets. The criminal proceedings thus sometimes place in danger the physical integrity and the life of those accused, in violation of the rights set forth in Articles 4 and 5 of the Convention.

3. Intelligence-Gathering Activities Directed at Human Rights Defenders

44. Numerous human rights organizations have complained to the Commission regarding intelligence activities conducted by the State's public security forces into the activities of human rights organizations and their members. Despite repeated denials by members of the State's public security forces, ([18](#)) it is now unquestionable that these forces have targeted human rights organizations and their members for intelligence-gathering activities. As noted above, military intelligence reports regarding members of human rights organizations have been introduced in various criminal proceedings. Members of DAS have also confirmed that they have conducted intelligence activities relating to members of ASFADDES. It was publicly

acknowledged that the warrant for the search raid at the Justicia y Paz offices was granted on the basis of military intelligence reports.

45. The Commission recognizes that the State's public security forces may be required to conduct intelligence operations, pursuant to law, in order to fight crime and protect the constitutional order. However, based on the information which it has received, the Commission finds several difficulties with the intelligence operations currently carried out against human rights organizations and their members in Colombia.

46. First, the Commission is again concerned that the State security forces direct intelligence activities against human rights organizations and their members based solely on their status as such. The State security forces appear to assume automatically that human rights organizations and their members present a danger to the public order.

47. For example, when asked to explain intelligence activities directed at ASFADDES, the director of the Office of the Inspector General of DAS directed a letter to ASFADDES asserting that these actions were based on duties assigned to DAS by Decree 2100 of 1992, Article 42. That article provides that DAS should search for information "about situations, circumstances, decisions, people, events, organizations, and means that could influence, damage, alter or limit the internal public order ... or allow [DAS] to establish the characteristics and plans of organized crime or activities of foreigners in the country, when public order could be disturbed as a result."

48. This letter suggests that DAS considers ASFADDES to constitute a possible threat to public order. ([19](#)) Yet, the letter provides no explanation or evidence supporting a presumption that the organization or its members might constitute such a threat. Nor does the letter set forth reasons for believing that the organization might be utilized, by its members or others, to stage an attack on the public order. It must be assumed, therefore, that DAS targeted ASFADDES based on the organization's connection to human rights work.

49. Second, the Commission has received complaints regarding the manner in which intelligence information about human rights workers and their organizations is gathered. This information indicates that members of the State's security forces obtain financial and other private documents without proper authorization. The Commission has received information indicating that the State's security forces have also engaged in telephone line intervention, secretly taping conversations, without judicial orders.

50. One case of telephone line intervention received public attention when a member of the Colombian Senate announced publicly that he possessed transcripts of phone conversations sustained with members of MINGA (Association for Alternative Social Promotion - Asociación para la Promoción Social Alternativa). The senator claimed that military intelligence cassette recordings of intercepted telephone conversations proved his claim that the human rights organization worked with armed dissident groups. Members of the Office of the Prosecutor General of the Nation subsequently confirmed that their Office had issued no order permitting the phone tapping which took place.

51. When State security forces carry out these types of secret and intrusive intelligence activities without proper authority, they violate Colombian domestic law as well as the right to privacy set forth in the American Convention. The Colombian Constitution provides that "correspondence and other private forms of communication are inviolable. They may only be intercepted or inspected pursuant to a judicial order, in those cases allowed by law, with the proper formalities." ([20](#)) Article 11 of the Convention provides that nobody may be the object of "arbitrary or intrusive interference with his private life, his family, his home, or his correspondence." ([21](#))

52. The Commission has also received complaints indicating that the State's public security forces sometimes undertake intelligence activities in a manner calculated to harass or intimidate the human rights workers subjected to intelligence-gathering operations. For example, agents of the public security forces sometimes request detailed personal information regarding individuals which, if revealed, might place these persons in danger. The Commission has received complaints indicating that agents of the State's security forces sometimes make requests for this information through repeated personal visits or telephone calls. When those requesting the information are asked to identify themselves or to make their requests in writing, they sometimes fail to do so. The State's public security forces sometimes also conduct surveillance operations in which human rights workers constantly observe unknown individuals, sometimes armed, following them during their daily activities.

53. Human rights workers are aware that many individuals who have been killed have reported receiving threatening phone calls or being followed shortly before their deaths. The intelligence-gathering techniques of the State's security forces thus often cause extreme consternation in human rights workers in the context of the violence in Colombia. Certain intelligence-gathering techniques may even lead to violations of the right to mental integrity, protected in Article 5 of the Convention.

54. Third, the Commission is concerned about the use which is made of intelligence information. The Commission understands that the majority of intelligence information is not utilized to aid in the prosecution of human rights workers through incorporation into judicial proceedings. Rather, the State's security forces apparently maintain intelligence files largely for their own use. The Commission believes that legitimate intelligence information should be used to facilitate criminal prosecution or legal military operations. The Commission considers that intelligence files should not be maintained as a means of maintaining control over general information regarding the citizenry.

55. The Commission is also extremely concerned about reports which indicate that military intelligence is sometimes used to facilitate extrajudicial executions of human rights workers by members of the State's security forces or paramilitary groups acting with the approval or acquiescence of State agents. Such executions of course result in State responsibility for flagrant violations of the right to life protected in Article 4 of the American Convention.

56. Finally, the Commission has received information and complaints regarding access to intelligence information gathered by the State's public security forces. The Colombian Constitution provides that all persons "have the right to access, update and collect information about them which has been gathered in the data banks and archives of public and private entities." ([22](#)) Colombian law thus provides that individuals may access information about themselves in government files. The Commission does not perceive any reason why military intelligence files would be excluded, as a rule, from this requirement.

57. However, the State's public security forces have traditionally refused to allow individuals to learn the content of intelligence files. During its on-site visit, the Commission asked several of the State entities which gather intelligence whether an individual might request to be shown intelligence information pertaining to that person. These entities replied that there does not exist a mechanism whereby individuals who believe they have been the objects of intelligence gathering may request to see the intelligence files relating to them. That information is made available only if a judicial proceeding is subsequently initiated against the individual involved. He is then allowed, as part of his right to prepare a defense, to review the intelligence information which becomes part of the judicial file.

58. Yet, individuals have a right to know about the intelligence information which has been gathered about them even when they are not faced with a criminal proceeding based on that information. Without access to such information, individuals cannot correct any information which is erroneous. This point was underlined when then Minister of Defense, Gilberto

Echeverri Mejia, announced after the Justicia y Paz raid that any person "who knows with certainty that there are reports containing false information in the archives" should inform the Ministry of Defense so that the appropriate corrections might be made. (23) It is patently impossible for persons to come forward to inform the military of inaccuracies in the records about them if they do not have access to those records. The right to privacy also guarantees individuals the right simply to learn that the State has decided to gather information about them even where that information does not contain any errors.

59. The Commission believes that there may exist some limited cases in which the State security forces could not be required to reveal intelligence information to individuals, for example, where the release of such information might endanger national security. However, the security forces cannot make the decision regarding the release of intelligence information without any external control. Appropriate independent authorities must have the ability to access intelligence information and to decide whether it may be held in confidentiality. Such independent control is also necessary to ensure that the security forces have acted within their competence and according to proper procedures in obtaining intelligence information.

60. In the past, however, civilian State agents were not authorized access to intelligence information gathered by the State's security forces. After the death of human rights defender Eduardo Umaña, then President Samper announced that the Procurator General of the Nation would review the military's intelligence files. This decision was made in response to repeated petitions from non-governmental organizations who believe that their members may be referred to as members of armed dissident groups in the intelligence files.

61. The Commission considers this decision to be one of utmost importance. The Commission considers that the Procurator General should conduct its review of intelligence files with a view to determining which files should be released to individuals mentioned therein. In addition, the Procurator General should review materials which do not relate to any individual, but rather to entire organizations. Although individuals may not be able to demand access to this information pursuant to current law, the Procurator General should nonetheless analyze the appropriateness of the information included in these intelligence files and the methods utilized to obtain this information.

62. The Commission will continue to closely follow the issue of access to intelligence files regarding human rights organizations and their members. The Commission is confident that the Procurator General will assume the new task of reviewing intelligence files with the utmost seriousness and that the State's security forces will fully and openly cooperate by providing all intelligence files regarding human rights organizations and their members to the Procurator General.

4. The Consequences of the Violence and Harassment Directed at Human Rights Organizations and their Members

63. The attacks on human rights organizations and their members, including violent attacks as well as legal and other forms of harassment and intimidation, have serious consequences for human rights defenders. The attacks are often intended to eliminate directly human rights workers who are seen by the armed actors as enemies in the internal armed conflict. They also often seek to silence the opinions of human rights defenders, including the criticisms and complaints which these persons may level against the State's security forces, the government or others. In order to achieve this objective, the attacks often aim to cause the complete disintegration of human rights organizations.

64. The experience of the Civic Human Rights Committee for Meta (Comité Cívico de los Derechos Humanos del Meta) illustrates such a coordinated effort to destroy individual members and eventually force the disintegration of a human rights organization. The

Department of Meta has suffered greatly as a result of the political violence in Colombia.

65. In 1991, the Civic Human Rights Committee for Meta was founded. The new organization brought together 35 labor, peasant, medical and other organizations to work with individuals who denounced violations of their human rights in the context of the political violence. Soon after the organization was founded, however, members of the State's security forces began to request information from its members and to follow them to their homes. Some members also began to receive threats.

66. The next attack on the organization came when several members of a medical organization which worked with the Civic Human Rights Committee were killed. Over the years, other members were killed, threatened and forced to flee. As a result, in 1995, the organization decided to close its doors. At that time, four members had been killed, three disappeared and 25 displaced. The majority of the members had withdrawn from the organization for fear of being killed or disappeared. A few remaining individuals decided to continue to carry out the work of the organization.

67. On November 22, 1995, the Commission requested the Colombian State to adopt precautionary measures to protect the lives and physical integrity of these remaining individuals who labored under consistent threats. On October 13, 1996, one of the persons protected by the Commission's measures, Josué Giraldo, was assassinated. As a result, on October 18, 1996, the Commission requested that the Court order the Colombian State to adopt provisional measures to protect Mr. Giraldo's family members and the few persons who continued to work with the organization. ([24](#)) On October 29, 1996, the President of the Court adopted provisional measures. The Court ratified the President's decision ordering the adoption of provisional measures on February 7, 1997.

68. However, even after the adoption of provisional measures by the Court, the crime against Mr. Giraldo has not been resolved and the threats against the remaining members of the Civic Human Rights Committee have continued. One of the members, Sister Noemí Palencia, was moved by her religious community to Bogotá to protect her safety. Another member, Gonzalo Zárate, felt it necessary to renounce his human rights work to provide himself with a margin of safety. The Civic Human Rights Committee effectively no longer exists as a result of the constant attacks which it has suffered.

69. In cases such as that of the Civic Human Rights Committee, a wide range of rights which should be enjoyed by human rights defenders are infringed. Many human rights workers who are not killed must nonetheless leave Colombia or at least the area in which they have lived and worked in order to protect themselves.

70. Human rights organizations are also frequently required to cease their activities as a result of attacks. In the last several years, ASFADDES, Amnesty International, the Civic Human Rights Committee of Meta and the Committee for Solidarity with Political Prisoners (Comité de Solidaridad con los Presos Políticos - "CSPP") have closed down some or all of their offices in Colombia in response to harassment or danger. Individual human rights defenders are also often forced to abandon their work in the defense of human rights in order to obtain some measure of safety.

71. Those who attack human rights workers and their organizations are allowed to achieve their illegitimate goals when they remove and/or silence human rights defenders in this manner. In turn, the victims suffer violations of numerous rights which, at times, lead to State responsibility. Those who are internally displaced suffer a violation of their right to freedom of movement and residence, guaranteed in Article 22 of the Convention. They may also suffer violations of a series of other rights in their condition as internally displaced

persons. ([25](#))

72. When human rights organizations are forced to close their offices, the attacks interfere with the rights of members of human rights organizations to assembly and to freedom of association, in violation of Articles 14 and 15 of the Convention.

73. When individual members are forced to abandon their activities, they also suffer violations of their right to freedom of association. They will also generally suffer a violation of the right to freedom of thought and expression protected in Article 16 of the Convention. Some of these individuals, who have chosen to exercise their profession or occupation with human rights organizations, may be forced to halt such exercise and choose a new profession or a new direction for their work. The United Nations Draft Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms condemns this type of persecution of human rights workers. That instrument establishes the right of all individuals "to the lawful exercise of his or her occupation or profession." ([26](#))

C. THE RESPONSE OF THE COLOMBIAN STATE TO THE SITUATION FACED BY HUMAN RIGHTS WORKERS

74. The response of the entities of the Colombian State to the grave situation faced by human rights workers has shown some improvement in recent years but has, nonetheless, not always been adequate. As noted in Chapter IV, the Colombian Government and the State's public security forces have stepped up education and training in human rights with some favorable results.

75. However, some high level officials of the State have shown through their public statements a lack of commitment to the work of human rights organizations and the protection of human rights workers. Some of these statements may even increase the danger for human rights workers. The statements sometimes suggest that non-governmental human rights organizations collaborate with armed dissident groups or plan campaigns against the State's security forces. In the context of the political violence in Colombia, some members of the State's security forces or members of paramilitary groups might understand these statements to constitute a license to attack members of non-governmental human rights organizations.

76. Ex-President Samper made statements on several occasions indicating that human rights workers acted inappropriately in criticizing the Army. In an October 11, 1995 speech he announced that he would rather have military leaders fighting subversives in the mountains than in tribunals, being forced to respond to unfounded allegations from their enemies.

77. Several important military commanders have criticized human rights work more directly. Several months before the killings of CINEP members Mario Calderón and Elsa Constanza Alvarado, then Army Commander and subsequently Military Forces Commander Manuel José Bonett stated that the work of human rights groups "has done much harm [to the Army]." He specifically mentioned the work of CINEP and indicated that the accusations which the organization makes regarding human rights abuses form part of a campaign to discredit the Army. ([27](#))

78. Several retired military officials who continue to enjoy significant influence over Colombian society have also made statements calling into question the work of human rights organizations. For example, in October, 1997, a group of influential retired generals began circulating a report on non-governmental human rights organizations. The report suggests that non-governmental human rights organizations have "decided to support the subversive process in Colombia through a systematic attack on the state of law and, at the same time,

through direct or indirect support of the political and military war which is taking place."([28](#)). Neither the President nor other high-level officials in the Colombian Government have responded to these statements by reasserting the importance of human rights work before the Colombian public.

79. After the death of CINEP members Mario Calderón and Elsa Constanza Alvarado, Presidential Directive No. 11 was issued in July 1997 to all government authorities, including the public security forces. The directive reaffirmed the government's support for non-governmental human rights organizations and commanded all representatives of the State to recognize the legitimacy of their work. The directive also ordered all public servants to, "abstain from formulating false accusations or acting in a way which would undermine the right to defense, the due process of law and the honor of those being accused."

80. The Commission applauds the decision to issue this directive. Public and formal recognition of the legitimacy of human rights groups by high-level government officials may be one of the most effective means of protecting human rights workers.

81. Unfortunately, State entities may not have taken adequate steps to ensure effective observance of the directive. Some of the serious violent attacks as well as arbitrary criminal proceedings against human rights workers mentioned above occurred shortly after the directive was issued. The Commission nonetheless is confident that the entities of the Colombian State will strive to ensure its effective implementation in the future.

82. The Colombian State has also made important strides in the immediate protection of human rights workers who have received threats or who are otherwise believed to be in danger. In the past, such workers had no real means of petitioning for protection and support from the Colombian State when they faced danger. State entities sometimes tried to find methods for protecting these workers through established programs for the protection of witnesses in criminal proceedings or for the protection of demobilized guerrillas. However, these programs were not designed to meet the needs or to protect the rights of threatened human rights workers.

83. For example, the program for the protection of witnesses, operated through the Office of the Prosecutor General of the Nation, was directed toward providing protection for witnesses who had provided information about former colleagues in drug-trafficking, corruption and terrorism cases. In general, the threats were received from organized criminal organizations rather than from members of the State's own security forces or paramilitary groups, as is often the case with human rights workers.

84. This program also generally requires participants to leave their traditional place of residence and even to change their identities. The Commission has consistently maintained the position, in the various provisional measures proceedings taking place before the Inter-American Court, that human rights defenders should not be required to leave their work and their homes, families and friends in order to obtain protection. The Commission has expressed its belief that such a requirement allows those responsible for attacking human rights workers to succeed in removing or silencing human rights workers. The Commission has thus always firmly held that the State should provide protection to human rights defenders in their current communities adequate to allow them to continue their work in human rights.

85. Most of the protection programs also placed emphasis on personal protection in the form of armed bodyguards. These programs sought to assign members of the State's security forces to serve as bodyguards for human rights workers. The Commission found this solution to be unsatisfactory as well. Many human rights workers have a justified lack of trust in members of the State's security forces. In provisional measures proceedings before the Court, the Colombian State recognized that there exists a situation of tension between the

public security forces and human rights workers which derives from situations in which members of the security forces have, upon occasion, committed abuses against human rights defenders.

86. In addition, human rights workers who seek protection often denounce that they are being subjected to threats or intimidation from members of the State's public security forces or from paramilitary groups acting in cooperation with the public security forces. In these cases, human rights workers understandably do not want to receive protection from the State entities which they believe to be persecuting them. This reluctance to accept members of the security forces as armed escorts receives further support in the fact that the bodyguards will, in that capacity, obtain access to personal information about the human rights workers they are assigned to protect. Access to this information by members of the State's security forces may compromise the safety of the protected human rights defenders.

87. For example, in the case of the Civic Committee for Human Rights for Meta, the State assigned armed bodyguards from the public security forces to protect Islena Rey Rodriguez. Ms. Rey complained that the guards followed her throughout the day and thus learned detailed information about her schedule, her meetings and her acquaintances. Yet, the guards did not appear to react when, on several occasions, unknown armed individuals approached her or her offices. The Civic Committee for Human Rights for Meta always asserted that members of the State's security forces in Villavicencio, working in cooperation with paramilitary groups, had executed Josué Giraldo and other members of the human rights organization. Ms. Rey thus felt that constant accompaniment by members of those security forces placed not only her, but also her acquaintances, in even greater danger.

88. In addition to pointing out difficulties with the forms of protection initially offered to human rights workers by the Colombian State, the Commission strongly suggested that the State develop and implement the alternative human rights defenders protection program set to be administered by the Ministry of the Interior. Law 199 of 1995 had provided for the establishment of a General Direction Special Administrative Unit for Human Rights (Dirección General Unidad Administrativa Especial para los Derechos Humanos) in that Ministry which would oversee several programs including a Program for the Protection of Witnesses and Persons Threatened in relation to Cases of Human Rights Violations (Programa de Protección a Testigos y Personas amenazadas en casos de violación de los derechos humanos). The necessary implementing regulations were approved in 1996.

89. However, the Program did not actually begin to operate until mid-1997. Even then, representatives of the Colombian State recognized that the program could not operate fully because it was underfunded and understaffed. The Program was forced to depend almost exclusively on other State entities and existing protection programs to obtain the necessary funds and protection devices, such as bulletproof vests. Non-governmental human rights organizations also had doubts about the types of programs which were planned.

90. Finally, in 1998, the Program has begun to serve as an effective tool for the protection of human rights workers. The Program has received new infusions of State funding. In addition, the Committee for Evaluation of Risks (Comité de Evaluación de Riesgos), created pursuant to the Program's implementing legislation, has begun to provide a rapid response mechanism for cases of danger involving human rights workers.

91. The Committee for Evaluation of Risks includes representatives of various State offices as well as several delegates for civil society. The committee is responsible for evaluating requests for protection assistance from human rights workers and others. Where the committee determines that a significant risk does exist, it proceeds to take actions to provide the necessary protection. In general, the committee must await a formal risk evaluation from the State's security forces in order to grant protection. However, in urgent cases, this requirement may be waived and protection may be provided pending the final risk

evaluation.

92. The Commission has found that, in cases of threats and harassment which have come to its attention in recent months, the committee has provided a quick and useful response. The Commission understands that the committee has immediately taken up most, if not all, of the cases in which the Commission has recently requested the State to adopt precautionary measures.

93. The committee has provided information regarding the protection which it has arranged between August, 1997 and February, 1998. According to that information, the committee has issued 45 bulletproof vests and 10 cellular phones to be used for contacting designated officials in the case of emergency. The committee has also purchased and installed physical protection devices for the offices of human rights organizations. These devices include closed-circuit televisions, bulletproof doors, alarms, additional lighting, etc... These devices have been provided for eight offices belonging to four different human rights organizations. The committee has also offered safety-training courses for 50 persons.

94. Some of the difficulties, which originally arose as the committee sought to adopt protection programs, are now being worked out as well. For example, members of the State's security forces generally conduct risk evaluations, which serve as the basis for the assignment of protection. However, proper risk evaluations require human rights workers to provide detailed information about many aspects of their lives. As noted above, human rights workers frequently do not trust members of the State's security forces and are extremely reluctant to provide them with personal information for safety reasons. The committee has thus tried to accommodate the preferences of the persons to be protected regarding the entity which will carry out the risk evaluations. In at least one case, the committee arranged for members of the Technical Investigation Corps (Cuerpo Técnico de Investigaciones - "CTI") of the Office of the Prosecutor General of the Nation, rather than any of the public security forces, to conduct the risk evaluation.

95. On April 23, 1998, after the killing of human rights activist Eduardo Umaña, the Colombian Government took the additional step of agreeing to allow human rights workers to name their own bodyguards where armed personal protection is necessary. The individuals selected by human rights defenders to serve as their bodyguards will be formally hired and trained by the State for that purpose. The Government also announced at this juncture its decision to request review of military intelligence files by the Office of the Procurator General.

96. The Commission considers these steps taken in favor of protecting human rights defenders to be extremely positive. The Commission congratulates the Colombian State on its initiative in this regard and expresses its hope that these measures will lead to improvements in the human rights situation of human rights defenders.

97. The Commission nonetheless deems it necessary to make several observations regarding the State's reaction to the situation of human rights defenders. First, the State acted very slowly in adopting these concrete measures to protect human rights workers. Non-governmental human rights organizations petitioned repeatedly for the adoption of many of these measures for a period of years. These petitions were presented even more vigorously and insistently after the murders of Mario Calderón and Elsa Alvarado in May of 1997. Yet, the State did not adopt most of the important measures, such as the review of intelligence files, until one year later. Several important human rights defenders, including Jesús María Valle and Eduardo Umaña, were killed before the State acted.

98. In addition, many of the recent government proposals for addressing the situation of danger faced by human rights workers fail to place emphasis on the adequate criminal investigation of attacks against human rights workers and the sanction of the perpetrators. As the Inter-American Court has repeatedly noted in provisional measures proceedings, these

investigations play a crucial role in protecting individuals in danger against attack.

99. As long as the perpetrators of violations against human rights defenders continue to act with impunity, human rights activists will continue to face a serious threat to their lives and physical integrity. To date, very few criminal investigations into acts of violence committed against human rights workers have reached successful conclusions. For example, the criminal proceeding relating to the murder of Civic Committee for Human Rights activist Josué Giraldo, while under the protection of the Commission's precautionary measures, has not advanced. Two years after the crime occurred, no formal suspects have been named and the criminal investigation has not moved past the preliminary investigation stage.

D. ATTACKS AGAINST STATE HUMAN RIGHTS OFFICIALS

100. State agents who work on the issue of human rights have themselves come under attack upon occasion. At the national level, members of the Unit for Human Rights of the Office of the Prosecutor General of the Nation have received threats. The Commission made reference in Chapter V to specific threats made against some of the members of this Unit. In addition, the Commission has received information indicating that functionaries at the Ministry of the Interior who work with displaced persons and other human rights issues have also been threatened. Some State human rights workers at the national levels have been forced to leave their positions or even to leave the country as a result of threats.

101. State agents involved in human rights work at the local level are even more vulnerable to attack. Local representatives of the Office of the Human Rights Ombudsman and local government liaisons ("personeros") have frequently been subjected to serious attacks on their lives and physical integrity.

102. Local representatives of the Office of the Human Rights Ombudsman receive complaints regarding human rights violations and carry out work for the protection and promotion of human rights throughout the country. Many of these representatives have been threatened. For example, local representatives of the Office have been threatened in the Urabá region of Antioquia and in Villavicencio, Department of Meta.

103. The *personeros* are local government officials charged with serving as the most immediate liaison between the government and the people. They are thus responsible, for example, for receiving from the population complaints regarding human rights abuses and channeling those complaints to the appropriate authorities

104. Between 1992 and March of 1996, eight *personeros* were killed. Since March 1996, at least five more *personeros* have been killed. Many other *personeros* have received threats. For example, on July 13, 1997, the *personero* for the municipality of San Calixto, Department of Norte de Santander, received a hand-written death threat. A paramilitary group calling itself Catatumbo Self-Defense Groups (Autodefensas del Catatumbo) signed the threat. The threat stated: "Personero: you have exactly eight days to leave Norte de Santander and especially San Calixto. Catatumbo Self-Defense Groups. Death to guerrilla supporters and collaborators, after you, many more will follow." Eight *personeros* in Antioquia have resigned out of fear for their lives.

105. In some areas of the country, the *personeros* serve as the only representative of the State. This is common, for example, in the Ariari region of the Department of Meta. In the municipality of Lejanías in this region, even the local police left after their headquarters were destroyed in a guerrilla attack. In these areas abandoned by the State, armed dissident groups have obtained significant control over some municipalities. Recently, paramilitary groups have more and more frequently obtained control over other areas. This battle for control over small regions and municipalities make the *personeros* vulnerable to attacks from

both paramilitary groups and armed dissident groups. This conflict situation is aggravated even further by the fact that many local government officials in these areas, including *personeros*, belong to alternative political parties, such as the Patriotic Union. Members of the Patriotic Union have been treated by some members of the State's security forces and paramilitary groups as the political branch of the guerrilla movement. Members of the Patriotic Union have thus constantly been subjected to violent attacks.

106. In addition, because of the traditional control by armed dissident groups over many towns, members of the State's security forces often see the local *personeros* as representatives of the armed dissident groups. The *personeros* thus fear attacks from the State security forces as well. For example, the State's security forces have suggested that the local *personero* and members of the city council for Lejanías participated in the attack by armed dissident groups on the local police station in that town. After the police left the town, a local Army unit was installed. The commander of this Army unit stated publicly that, "the subversion is ahead of us because it has become involved in the very town."

107. The State has refused to provide protection for the *personero* for Lejanías, even in these circumstances. In response to a request from the Office of the Procurator General to provide protection for the *personero*, the DAS responded that, "it is humanly impossible to send missions of this nature [protection] . . . when it would be necessary to place DAS agents from this division in serious danger, because of the serious and permanent disturbance in the public order in the region."([29](#))

108. The prior *personero* for the municipality of El Castillo, in the Ariari region of Meta, was killed as part of this political conflict, and the current *personero* believes that her life is in danger. The continuing situation of danger faced by the *personeros* in this region is so great that they find it difficult to obtain life insurance policies.

109. Since 1995, the Office of the Prosecutor General of the Nation has been asked to transfer some or all of the cases involving murders of *personeros* to the Unit of Human Rights to allow for more effective investigation of the serious pattern of violence against these government representatives. The Commission understands that no decision has yet been taken as to whether this request will be granted.

110. The information possessed by the Commission indicates that State agents, particularly members of the State's security forces, are responsible for some of these attacks on the life and personal integrity of governmental human rights workers. The Commission has also received information indicating that paramilitary groups, acting in cooperation with State agents, have committed some of the attacks. In these cases, the State becomes responsible for extremely serious violations of Articles 4 and 5 of the Convention to the detriment of its own human rights functionalities.

111. In other cases, private actors and members of armed dissident groups have been responsible for threats and acts of violence against the State's human rights workers. However, the State may face some responsibility even in those cases. The State has not acted adequately to defend and protect its human rights workers. To the knowledge of the Commission, high-level officials have not spoken-out aggressively in support of the State's threatened functionalities.([30](#)) The State has also failed, in most cases, to complete effective investigations into the threats and attacks on State human rights workers.

E. RECOMMENDATIONS

Based on the foregoing, the Commission makes the following recommendations to the Colombian State:

1. The State should continue and intensify education and dissemination efforts in order to impress upon all State agents and all members of the Colombian citizenry the importance and validity of the work of human rights defenders and human rights organizations. To this end, the State should widely disseminate the new United Nations Draft Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms.
2. The State should take measures to ensure that its security forces understand that human rights activists and organizations may not be presumed to participate in illegal and/or dissident activities based solely on their activities for the promotion and protection of human rights. The State should ensure, in this context, that its security forces fully understand that they may not presume that human rights workers or organizations have engaged in criminal activity or have directly participated in the armed conflict based on the exercise of their protected rights to freedom of speech, assembly, etc....
3. The State should take all measures necessary to guarantee the safety of human rights workers. The State should conduct serious, impartial and effective criminal investigations into incidents of violence directed at human rights workers, sanctioning the perpetrators, as a crucial means of preventing further violent incidents.
4. State agents should refrain from initiating legal proceedings intended to harass human rights activists. Such actions are arbitrary and constitute abuses of power and legal process.
5. The State should review the justifications and revise the procedures for intelligence-gathering activities targeted at human rights defenders and their organizations based on the analysis contained in this Chapter.
6. The State should provide a procedure for granting individuals access to intelligence information gathered about them. This procedure should include a mechanism for independent review by civilian authorities of decisions made by the security forces to deny access to that information.
7. The Procurator General of the Nation should carefully review the intelligence files made available to him to ensure the appropriateness and accuracy of the information as well as to exercise supervision over the methods utilized to obtain the information. The State's security forces should cooperate fully with the Procurator General as he carries out his review of intelligence files.
8. The State should continue to fully fund and implement its Program for the Protection of witnesses and persons threatened in relation to cases of human rights violations operating within the Ministry of the Interior.
9. State officials should refrain from making statements which suggest that non-governmental human rights organizations and their members act improperly or illegally when they engage in activities for the protection and promotion of human rights. High-level State officials might consider the possibility of making clear and unequivocal statements confirming the legitimacy and importance of the work of non-governmental human rights defenders and their organizations.
10. The State should take special measures to ensure the safety of its own State functionaries who work in the area of human rights. These measures should include public statements of support for State human rights workers by the appropriate State authorities and the adequate investigation and sanction of the perpetrators of attacks against them.

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(1) Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted on December 9, 1998.

(2) Draft Declaration, Art. 1.

(3) *See id.*, Art. 5.

(4) *See id.*, Art. 9(3).

(5) Report of the United Nations High Commissioner for Human Rights, E/CN.4/1998/16, March 9, 1998, par. 113.

(6) The competent State agencies have the right and the duty to prosecute individuals who participate in illegal activities. However, the Commission wishes to emphasize that the involvement of individuals in human rights work cannot alone serve as a basis for prosecuting them. Even if some of these persons were involved in illegal activities - outside of the context of their human rights work and the armed conflict - they could not be subjected to acts of violence under any circumstances.

(7) Amnesty International subsequently held several follow-up conferences in other countries.

(8) The Commission processes the case relating to threats and harassment of members of ASFADDES under number 11.764. The reference to this case in the present Chapter in no way constitutes a prejudgment of its admissibility or merits.

(9) Based on these incidents, the Commission asked the Court to extend the provisional measures that it had ordered to include Ms. Cárdenas specifically. The President of the Court granted that petition on December 22, 1997. The Court in plenary ratified that decision on January 21, 1998. The State has provided information indicating that the National Police is currently providing protection to Ms. Cárdenas.

(10) "Los Castaño vinculados al caso CINEP," *El Tiempo*, September 23, 1998.

(11) "Los 'paras' implicados en crimen de Jesús M. Valle," *El Tiempo*, September 17, 1998.

(12) The Commission has previously held that where individuals suffer reprisals for the exercise of a right, a violation of that right occurs. *See* IACHR, Report No. 3/98, Case 11.221 (Colombia), April 7, 1998, par. 76; IACHR, Report No. 32/96 (Guatemala), October 16, 1996, par. 62.

(13) *Press communique 2/99* of February 4, 1999. The Commission also urged the State to intervene decidedly and take all necessary steps to find these persons and protect their personal integrity as well as to investigate and prosecute those responsible. International law protects the right to personal integrity of every person and prohibits summary executions and hostage taking under any circumstance, both in times of peace and armed conflict. The mere political, professional or institutional affiliation of these human rights defenders in no way can justify depriving them of their life or liberty.

(14) Order of the President of the Inter-American Court of Human Rights of April 24, 1996, Provisional Measures Requested by the Inter-American Commission on Human Rights, *Serech y Saquic Case*, ratified by the plenary of the Court in Order of the Inter-American Court of Human Rights of June 28, 1996, Provisional Measures Requested by the Inter-American Commission on Human Rights, *Serech and Saquic Case*.

(15) Draft Declaration, Arts. 5(c), 9(4).

(16) The Commission shares the opinion of the Colombian State that all persons, including members of the military, have the right to initiate legal actions. However, the Commission's concern relates to the fact that, in some cases, members of the military and other State agents have initiated legal actions for the illegitimate purpose of intimidating, harassing human rights defenders. Such actions would constitute violations of human rights. According to complaints received by the Commission, the legal action initiated by General Bedoya is one of those cases. The State makes assurances that its domestic courts will administer justice and will sanction, if necessary, frivolous complaints. However, the Commission has received information indicating that the courts do not always act in this way when the complainants are high-level State officials and the defendants are human rights defenders.

(17) These massacres are referenced in Chapter IV of this Report.

(18) In the meeting held with high-level officials of the Colombian Armed Forces, including the commanders of the Army and of the Military Forces, during its on-site visit, the Commission asked these officials whether the Military Forces maintained intelligence files on human rights organizations. The Commission received a negative reply.

(19) DAS provided a follow-up letter which sought to explain the invocation of this decree. In that letter, DAS suggested that it was necessary to carry out intelligence activities as a means of protection for the organization as well.

(20) Political Constitution of Colombia, Art. 15.

(21) The European Court of Human Rights has held that the similar provision set forth in the European Convention of Human Rights extends to telephone conversations, even though they are not expressly mentioned. The European Court also held that secret intelligence activities generally may not be carried out unless authorized by a judge, except in special circumstances where there exist other adequate mechanisms of control, which act independently from the security forces which seek to carry out the intelligence activities. *See* ECHR, *Klass and others v. Germany*, Judgment of September 6, 1978, Series A, vol. 28.

(22) Political Constitution of Colombia, art. 15.

(23) "La version oficial," *El Tiempo*, May 15, 1998.

(24) At this time, the Commission also opened case number 11.690. The reference to the case in this Chapter in no way constitutes a prejudgment of its admissibility or merits.

(25) The violations suffered by displaced persons are discussed further in Chapter VI.

(26) *See* Draft Declaration, Article 11.

(27) *El Espectador*, February 23, 1997.

(28) Manuel Guerrero, Juan Salcedo and Adolfo Clavijo, *Evaluación del Conflicto Interno Colombiano, Organizaciones No Gubernamentales y Derechos Humanos*, October 1997, p. 10.

(29) *See* Letter from Lieutenant Colonel Miguel Evan Cure, Sectional Director of DAS for the Department of Meta, to Jesús Orlando Gómez López, Office of the Procurator General of the Nation, April 16, 1997.

(30) In this connection, the State points out that Presidential Directive 07, of June 10, 1997, established that public pronouncements on this subject could only be issued by the Ministries of the Interior, Foreign Affairs and Justice and the Office of the Presidential Adviser for Human Rights. The purpose of this Directive was to introduce clarity and coherence into the governmental pronouncements regarding this issue. However, the existence of this Directive does not relieve the State, or perhaps more specifically the named entities, of the responsibility to make the relevant statements.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER VIII

THE RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION

A. INTRODUCTION

1. The right to freedom of thought and expression is essential for the development of democracy and for the full exercise of human rights. The organs of the inter-American system have consistently highlighted the importance of this right. In one of its pronouncements in this respect, the Inter-American Commission on Human Rights (the "Commission," the "IACHR" or the "Inter-American Commission") held:

Freedom of expression is universal and contains within it the idea of the juridical right which pertains to persons, individual or collectively considered, to express, transmit and diffuse their thoughts; in a parallel and correlative way, freedom of information is also universal and embodies the collective rights of everyone to receive information without any interference or distortion. ([1](#))

2. For its part, the Inter-American Court of Human Rights (the "Court") has stated:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free. ([2](#))

3. In 1997, the IACHR created a Special Rapporteurship on Freedom of Expression, in order to strengthen the activities carried out under the jurisdiction conferred upon it, among others, by Articles 13 and 41 of the American Convention (the "Convention" or the "American Convention"). During its 98th session, the Commission defined the mandate of the Rapporteurship on Freedom of Expression and decided to designate a "Special Rapporteur of the IACHR on Freedom of Expression." The Commission has established and defined the mandate of the rapporteurship in the belief that this mechanism will contribute to the promotion and protection of freedom of expression, which is considered key for the development of democracy in the Hemisphere. ([3](#))

4. The situation of the right to freedom of thought and expression in the Americas has also been analyzed by the Commission in the individual case system provided for before the organs of the inter-American human rights system, and in its on-site visits and general and special reports. In addition, the Commission has held special hearings at its headquarters on freedom of expression, with the participation of sectors interested and specialized in the

subject.

B. THE LEGAL FRAMEWORK

1. International provisions

5. The American Declaration on the Rights and Duties of Man (the "Declaration"), whose 50th anniversary is celebrated in 1998, provides at Article IV: "Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever." The right to freedom of thought and expression is guaranteed by the American Convention, at Article 13, in the following terms:

1. Everyone has the right to freedom of thought and expression. This right includes the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights or reputations of others; or

b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainment may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

2. Domestic provisions

6. The Constitution of Colombia guarantees the right to freedom of expression at Article 20, which provides:

All persons are guaranteed the freedom to express and disseminate their thought and opinions, to report and receive accurate and impartial information, and to found mass communications media.

Such media are free and have a social responsibility. The right to rectification on equitable terms is guaranteed. There shall be no censorship.

7. Despite the international and domestic law provisions in force in Colombia protecting the rights analyzed here, the IACHR continues to receive information and complaints regarding attacks and grave acts of violence committed in Colombia against journalists, human rights

defenders, and members of social organizations. Such acts are committed, at least in part, in reprisal for the exercise of the right to freedom of thought and expression.

C. ACTS OF HARASSMENT OF AND VIOLENCE AGAINST JOURNALISTS

8. In 1997 the Colombian press included 32 newspapers with a total circulation of 1,853,000 copies. In the same period, the country had 857 radio stations and 52 television stations. The strength and independence of the media in Colombia has turned them into prominent political actors. In effect, the Commission has received information according to which Colombians trust the media more than the justice system, politicians, the police, private businesses, or the Church. (4)

9. Unfortunately, this importance has brought with it a sustained increase in harassment of journalists by the various actors in the violence that is taking its toll on Colombia. The attacks against journalists are aimed at keeping them from carrying out their mission of informing. Consequently, the Commission considers that these acts constitute violations of the right of journalists to exercise their right to freedom of expression, and of society's right to have free access to such information. (5)

10. The Commission has continued to receive complaints about grave incidents of harassment and violence committed against journalists in Colombia. Upon concluding its most recent on-site visit to Colombia, the IACHR expressed its concern for this grave situation. (6) Colombia is among the leading countries in Latin America in terms of the complaints regarding attacks on the members of the press. In fact, the Commission has been informed that in the past 10 years 122 journalists were assassinated in Colombia. (7) During the same period, 37 journalists were kidnapped in Colombia, and 162 were victims of attacks on their physical integrity. (8) The Office of the United Nations High Commissioner for Human Rights in Colombia reports that the Office received complaints regarding murders of at least four journalists in reprisal for their work during 1997. That office also reported that many other journalists have also been kidnapped or threatened. Some of them have been forced to leave the country as a result. (9)

11. The vast majority of these cases remain unsolved, and the persons responsible continue to enjoy impunity. During its on-site visit, the Commission met on December 6, 1997, in Bogotá with a group of journalists, including Hollman Morriss ("Noticiero AM/PM"), Ignacio Gómez ("El Espectador"), and Hernando Corral ("Noticiero de las 7"). Among other things, they indicated that only one of the 134 cases of violations of the right to life of journalists committed since 1978 had been partially resolved. These media representatives considered that the impunity in these crimes is an incentive for those who commit them, and at the same time becomes a deterrent to journalists who wish to maintain an independent and critical posture.

12. Of special concern are the murders of several journalists in 1997. On March 18, Freddy Elles Ahumada, a photographer who worked for three newspapers, was murdered in Cartagena. According to information received by the IACHR, the way in which he was killed suggests that it was not a common crime, as initially thought, but rather a reprisal for his journalism work. The corpse of Mr. Elles Ahumada, who also worked as a taxi driver at night, was found in his vehicle, with stab wounds, handcuffed, and on his knees. He had taken photographs of armed bands and of incidents of police brutality. The Colombian State has informed the Commission that two suspects have been detained in relation to this case. The State suggests that the death resulted from a common crime, in which those responsible sought to steal the victim's photographic equipment. The Commission will continue to follow the progress of the case, since the pertinent investigations have not yet concluded.

13. The Commission was also informed that Gerardo Bedoya, editorial writer for the newspaper El País of Cali, was murdered by someone who shot him five times. The accounts

suggest that the murderer was contracted by drug traffickers, since the crime took place three days after the publication of a column by Mr. Bedoya in which he spoke out in favor of extraditing Colombian drug traffickers to the United States.

14. The escalation of violence against journalists continued in late 1997, with three murders in less than one month. On October 31, the mutilated corpse of Alejandro Jaramillo, a director of the *Diario del Sur*, was found in the city of Pasto. On November 8, the director of Radio Majagual, Francisco Castro Menco, was killed by gunfire in his home. The third victim in this series of murders was Jairo Elías Marques, director of the satirical news weekly "El Marqués," published in Armenia, the capital of Quindío. On November 20, Mr. Marques was shot dead by two men on a motorcycle. The investigation into the death of Mr. Marques has been reassigned to the Human Rights Unit of the Office of the Prosecutor General of the Nation.

15. The Commission has received information with respect to other types of attacks on journalists and press outlets committed in 1997 by various actors in the violence and the armed conflict, which continued the trend initiated in the 1980s. For example, the IACHR learned that cameraman Richard Vélez, of the news program "Noticiero 12:30" was forced to leave Colombia on October 8, 1997, with the help of the International Committee of the Red Cross ("ICRC"). Mr. Vélez had received numerous death threats, the most recent one three days before he left. On that occasion, a man armed with a revolver threatened him in the street. According to the information received by the Commission, Mr. Vélez had filmed scenes of abuses committed by members of the Colombian Army during a strike by coca growers in Caquetá. On this same occasion, according to the information brought before the Commission, military personnel beat him, resulting in injuries which required his hospitalization. The Colombian authorities are investigating the possible connection between the threats and the complaint he lodged against the military in relation to this incident.

16. Among the acts committed by the guerrilla organizations, mention should be made of two bombs that went off at the cable television station in Bucaramanga, on April 12, 1997. The National Liberation Army (Ejército de Liberación Nacional - "ELN"), carried out the attack, which injured two technical staff. On July 3, 1997, the ELN forced the radio station "Voz del Yopal," in the Casanare oil-producing region, to broadcast its communiqués. The situation of the journalists who work with that radio station, like those of the entire region, is particularly delicate, as they were also threatened by paramilitary groups not to provide any collaboration with the guerrillas. The police also attributed to the ELN the attack, with two bombs, on the offices of Radio Cadena Nacional and Radio Monumental, both in the city of Cúcuta. That attack caused the death of a radio technician and injuries to an announcer.

17. On June 23, 1997, the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia - "FARC") announced that they considered journalists to be "military objectives" since they were, in its view, apologists for the Colombian military. The FARC also threatened the press in the Department of Huila, in southern Colombia, warning them not to report on candidates to elected posts, as part of its campaign to sabotage the elections.

18. Another grave form of attack on freedom of thought and expression in Colombia is the kidnapping of journalists. For example, in early December 1997, during the IACHR's on-site visit to Colombia, the guerrilla group "Movimiento Jaime Bateman Cayón" kidnapped two press persons, the press secretary of the Office of the President, William Parra, and Luis Eduardo Maldonado, a journalist with the national radio network Radio Cadena Nacional ("RCN"). Both were deprived of their liberty with a view to using them as messengers of a "peace proposal to the Colombians" by that guerrilla organization.

19. In addition, information has been received regarding a series of incidents in which paramilitary groups have harassed journalists. According to information received by the

Commission, in August 1997, journalist Alfredo Molano was threatened by paramilitary groups, who suggested that he was a subversive who had infiltrated the Colombian Government, due to his work with the Office of the High Commissioner for Peace of Colombia. ([10](#))

20. Rounding out the reference to the principal actors in the violence in Colombia, it has been noted that the group known as the "Extraditables" ([11](#)) issued a press release on September 30, 1997, which included death threats to journalists and members of Congress who were in favor of extradition. The press release specifically mentioned Enrique Santos Calderón, a director of the newspaper El Tiempo, whose September 21 column had called into question the position of the Colombian Executive and Congress on extradition.

21. The specific facts set forth in the foregoing paragraphs are in no way intended to provide a complete overview of the attacks against journalists and press outlets in Colombia; nor do they set forth all of the complaints and information received by the IACHR on this matter. They are, rather, a series of examples chosen with a view to illustrating the grave situation facing the press in Colombia. Finally, it should be noted that the Commission is analyzing, through its individual petition jurisdiction, several complaints regarding violence against and harassment of journalists in Colombia.

22. For example, the Commission is currently processing a petition relating to the murder of Guillermo Cano Isaza on December 17, 1986. Mr. Cano was a journalist and director of the Colombian newspaper El Espectador. ([12](#)) Members of the Medellín drug cartel apparently killed him in reprisal for his denouncement of drug trafficking and for the newspaper's stance in favor of the extradition of drug traffickers to the United States. The petitioners allege that the State did not comply with its duty to investigate and sanction the persons responsible for the murder. They argue that the criminal proceeding was ineffective, because the judges acted negligently and accepted bribes.

23. The Commission is also processing a petition relating to the death of Carlos Lajud Catalán, a journalist and columnist in Barranquilla. Mr. Catalán was killed on April 19, 1993, presumably in reprisal for the criticism which the journalist leveled against corruption in government. ([13](#)) The petitioners allege that the criminal proceeding initiated in relation to the murder resulted in a denial of justice. They allege that the superficial proceeding resulted in the conviction of three individuals who are not responsible for having committed the crime. They further allege that the criminal proceeding did not bring about effective investigations to identify the intellectual author. The petitioners also complain that the investigation was blocked by the cover-up actions of public officials. The Colombian State has informed the Commission that the investigation in this case has been reassigned to the Human Rights Unit of the Office of the Prosecutor General of the Nation.

24. With respect to the facts analyzed in this section, the Commission notes that journalists cannot be considered military objectives; consequently, they enjoy protection from attacks by the parties to the armed conflict, under the rules of international humanitarian law. In addition, the IACHR emphasizes that the State is internationally liable under the American Convention and other applicable instruments in those cases in which it is established that such attacks were committed directly by the agents of said State, or with their tolerance or assistance. The same is true when the State fails to carry out its obligation to prevent such incidents and to carry out serious, impartial and exhaustive investigations into all complaints regarding crimes of this nature.

25. The Commission is pleased to receive information from the Colombian State indicating that it has taken concrete measures to protect the lives of journalists. According to this information, more than a dozen journalists are currently receiving protection coordinated by the Administrative Department of Security ("DAS" – Departamento Administrativo de Seguridad). The State has also informed the Commission that the following actions will be

taken in relation to the investigations into the deaths of journalists: 1) Formation of a working group to strengthen the investigations; 2) Visits to regional and local prosecutor offices with the objective of verifying the procedural status of the different investigations; 3) Preparation of a detailed report on the procedural status of the investigations and the entities which are processing them. The Commission will continue to follow with interest the actions taken by the Government in this area.

26. The Commission calls to mind that, in addition to protecting the right to carry out journalistic activities, the right to freedom of thought and expression also guarantees the rights of those who wish to receive information from the press or elsewhere. The State's international responsibility may be engaged if it fails to ensure this right. In the report which it published in the case of Tarcisio Medina Charry, the Commission found that members of the National Police disappeared the victim, at least in part because he carried with him a copy of "La Voz," a communist newspaper, when he was detained in an operation to check documents. The Commission thus decided that Mr. Medina suffered a violation of his right to seek, receive and impart information and ideas, protected by Article 13 of the Convention. [\(14\)](#)

D. LIMITATIONS ON JOURNALISTIC ACTIVITY

27. Constitutional protection for the right to freedom of thought and expression has been subjected to regulatory provisions adopted by various organs of the Colombian State. The Commission will analyze the situation of two provisions governing the press in Colombia which some sectors have characterized as limitations on the free and full exercise of journalism.

1. Statute on Journalists

28. In Colombia the exercise of journalism is protected by the Constitution. Article 73 provides that "journalistic activity shall enjoy protection so as to guarantee its freedom and professional independence." In this context, the IACHR has closely followed the debate on the so-called "journalist's card," which was required in order to exercise the profession in Colombia, leading to a proceeding challenging the constitutionality of this requirement before the Constitutional Court. As part of this proceeding, the Minister of Communications, José Fernando Bautista, stated that the Government did not support the journalist's card requirement, because it could become a limitation on the freedom of information.

29. The Inter-American Press Association ("IAPA") set forth its position on the issue in a statement issued March 14, 1998, in Puerto Rico. The IAPA resolved "to urge the highest constitutional court of Colombia to derogate the requirement to have a professional card, a requirement which undermines guiding principles relating to freedom of expression, and is at odds with the very essence of journalism."

30. The decision of the Constitutional Court, adopted on March 18, 1998, was to declare the unconstitutionality of the entire law that established the journalist's card, Law 51 of 1975, known as the Statute on Journalists. In explaining their decision, the members of the Court invoked the importance of full protection for the right to freedom of expression.

31. The IACHR observes, however, that some Colombian journalists' organizations stated their concern at the outcome. They noted that the claim of unconstitutionality did not refer to the Statute on Journalists in its entirety, but specifically to the requirement of possessing a card in order to exercise the profession. The apprehensive response is due mainly to the fact that Article 11 of the Statute on Journalists, which was derogated as unconstitutional, guaranteed professional secrecy. Pursuant to the rule of professional secrecy, no journalist may be required to reveal his or her sources. [\(15 \)](#) Questions were also raised about the

Constitutional Court's nullification of other provisions that protect journalistic activity, such as access to public documents and preference in exercising the right to petition. Critics suggested that these changes could endanger the very existence of the schools of social communication and journalism.

32. With respect to the questions raised, the President of the Constitutional Court of Colombia, Vladimiro Naranjo, declared as follows:

The decision of the Court does not imply that the schools of journalism are going to end in Colombia, nor that they will suffer a harsh blow, because the judgment does not affect them directly.... What can be noted is that their graduates will have to compete in equal conditions with persons from other professions, because from now on there will no obligation for one engaged in journalism to possess a card accrediting him or her as a journalist.

...

The conditions for the exercise of journalism are not affected, because constitutional provisions protect them. The ruling does away with the obligation to carry a card as a condition for working as a journalist, but not the provisions that protect the exercise of the profession.

...

All persons are free to exercise journalism, but no official accreditation is required to do so. It will be the media themselves who should determine this, based on the rule that all persons are free to found communications media. ([16](#))

33. The Inter-American Court of Human Rights issued an advisory opinion, at the request of the Government of Costa Rica, on the requirement of compulsory membership in an association prescribed by law for the practice of journalism. The Inter-American Court stated:

The Court concludes, therefore, that reasons of public order that may be valid to justify compulsory licensing of other professions cannot be invoked in the case of journalism because they would have the effect of permanently depriving those who are not members of the right to make full use of the rights that Article 13 of the Convention grants to each individual. Hence, it would violate the basic principles of a democratic public order on which the Convention itself is based.

...

[A] law licensing journalists, which does not allow those who are not members of the "colegio" to practice journalism and limits access to the "colegio" to university graduates who have specialized in certain fields, is not compatible with the Convention. Such a law would contain restrictions to freedom of expression that are not authorized by Article 13(2) of the Convention and would consequently be in violation not only the right of each individual to seek and impart information and ideas through any means of his choice, but also the right of the public at large to receive information without any interference. ([17](#))

34. Mindful of all of the foregoing, the Commission notes as positive the above-mentioned decision of the Constitutional Court, as well as the position of the Government of Colombia favorable to effective observance of the right to freedom of thought and expression. The IACHR shall continue to evaluate closely the development of possible statutory provisions and judicial interpretations on this issue in Colombia, in light of the provisions of Article 13 of the American Convention, the case law of the inter-American human rights system and other

applicable international norms.

2. Law on Television

35. The Constitution of Colombia, at Article 75, defines the electromagnetic spectrum as "an inalienable and unprescribable public good, subject to the administration and control of the state." That same provision guarantees equal opportunity to make use of it "in the terms prescribed by law." The Colombian Constitution further provides that the State shall intervene, pursuant to the law, to guarantee pluralism of information and competition, and to "prevent monopolistic practices in the use of the electromagnetic spectrum." Articles 76 and 77 of the Constitution provide that State intervention in this activity will be entrusted to a public entity, which will implement television policy "without detriment to the liberties set forth in this Constitution."

36. On July 29, 1997, the Constitutional Court declared Article 25 of Act No. 336, known as the "Television Act" ("*Ley de Televisión*"), unconstitutional. ([18](#)) ([19](#)) This provision established a number of requirements for the evaluation of contracts for news and opinion programs –such as informational balance, veracity, impartiality and objectivity, social responsibility and predominance of public over private interest— with a view to rating the programs or even nullifying the contracts. In its observations to the present Report, the State noted the position of the Office of the Procurator General of the Nation in this matter. This entity considered that the criteria established in Article 25 allowed for the imposition of sanctions that were not suited to journalistic activity and therefore affected the right to freedom of expression and information enshrined in Articles 20 and 93 of the Constitution as well as some international treaties ratified by Colombia.

37. The Commission considers that the decision of the Constitutional Court is consistent with the right to freedom of expression enshrined in the American Convention and other international instruments. It also wishes to highlight the positive role of the Office of the Procurator General of the Nation in the process. The Commission shall continue observing the evolution of the laws regulating the media in Colombia.

E. HUMAN RIGHTS DEFENDERS AND SOCIAL ORGANIZATIONS

38. The IACHR has received several complaints of acts committed in Colombia to intimidate members of human rights organizations, and of social organizations, which are analyzed in Chapter VII of this Report. Such acts are committed, at least in part, in reprisal for the information reported by the defenders, and consequently constitute a limitation on the right to freedom of thought and expression, in violation of Article 13 of the American Convention.

F. RECOMMENDATIONS

Based on the foregoing, the Commission makes the following recommendations to the Colombian State:

1. The State should take immediate and forceful measures to halt the violent attacks against journalists and all others exercising their right to freedom of expression. These measures should include serious, impartial and effective criminal investigations into cases of violence against journalists and the sanction of the perpetrators.
2. The State should undertake educational and other activities to promote awareness of the central role that freedom of expression plays in a democratic state.
3. The State should continue to adopt and implement measures intended to remove barriers to the exercise of the right to freedom of expression, such as licensing requirements for journalists and content control of television programs.

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- (1) Annual Report of the Inter-American Commission on Human Rights, 1980-81, OEA/Ser.L/V/II, at 121.
- (2) I/A Court H.R., "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29, American Convention on Human Rights)", Advisory Opinion OC-5/85, November 13, 1985, par. 70.
- (3) Democracy is intimately linked to the right to freedom of thought and expression, as the Inter-American Court has also understood:
The concept of rights and freedoms as well as that of their guarantees cannot be divorced from the system of values and principles that inspire it. In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law form a triad. Each component thereof defines itself, complements and depends on the others for its meaning.
I/A Court H.R., "Habeas Corpus in Emergency Situations (Articles 27(2), 25(1), and 7(6), American Convention on Human Rights)", Advisory Opinion OC-8/87, January 30, 1987, par. 26.
Along the same lines, the General Secretariat of the United Nations has considered freedom of expression and of opinion, together, as the "touchstone of all the freedoms to which the United Nations is devoted." Annotations to the text of the draft International Covenant on Human Rights (prepared by the Secretary General), 10 U.N. GAOR, Annexes (Item 28 on the agenda) 50, UN Doc. A/2929 (1955).0
- (4) Cambio 16, No. 158, July 24-31, 1996, at 9; Data from a research project on the violent conduct of Colombians by the Ministry of Health.
- (5) The Inter-American Court has established that:
[F]reedom of expression includes imparting and receiving information and has a double dimension, individual and collective. The Court believes ... that the freedom and independence of journalists is an asset that must be protected and guaranteed. Inter-American Court of Human Rights, OC-5/85, pars. 75 and 79, respectively.
- (6) On that occasion, the Commission stated as follows:
Also of concern to the Commission are the complaints made by organizations of journalists about acts of violence, including assassinations, committed against members of that profession. The Commission attaches the greatest importance to such complaints, considering that freedom of expression and of information is a prerequisite and a fundamental pillar of democratic existence.
IACHR, Press Release No. 20/97, December 8, 1997, par. 44.
- (7) Reporters sans Frontières, Press Communiqué, November 28, 1997.
- (8) Inter-American Press Association, 1998 Annual Freedom of the Press Report, at 90-92.
- (9) Report of the United Nations High Commissioner for Human Rights, E/CN.4/1998/16, March 9, 1998, par. 55.
- (10) Human Rights Watch, World Report 1998, December 1997, p. 101.
- (11) The "Extraditables" appeared in Colombia in the mid-1980s, and have been accused of committing murders of politicians and journalists, as well as kidnappings and terrorist attacks, as a means of expressing their views against the extradition of drug traffickers to the United States.
- (12) The Commission is processing this case under the number 11.728. The reference to the petition in this Chapter in no manner constitutes a prejudgment as to its admissibility or merits.
- (13) The Commission is processing this case under the number 11.731. The reference to the petition in this Chapter in no manner constitutes a prejudgment as to its admissibility or merits.
- (14) IACHR, Report No. 3/98, Case 11.221 (Colombia), April 7, 1998, pars. 72-77.
- (15) That provision regulated Article 74 of the Colombian Constitution, which sets forth the inviolability of professional secrecy.
- (16) "Vale o no el título; "Los derechos;" "Y la identidad?," El Tiempo, March 20, 1998.
- (17) I/A Court H.R., OC-5/85, pars. 76 and 81 respectively.
- (18) See Constitutional Court, Sentence C-350, July 29, 1997.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER IX

FREEDOM OF ASSOCIATION AND POLITICAL RIGHTS

A. LEGAL FRAMEWORK

1. In this Chapter, the Inter-American Commission on Human Rights (the "Commission," the "IACHR" or the "Inter-American Commission") will discuss several selected issues relating to the right to freedom of association and the right to participation in government. The Commission will first address the situation of labor union members and the right to freedom of association and will then look at the special case of teachers. The Commission will then proceed to examine the situation of elected officials and the various electoral processes, which took place in 1997 and 1998, in the context of the right to participate in government. Finally, the Commission will discuss the situation of those political parties that serve as an alternative to the two traditional parties. Their situation involves both the right to freedom of association and the right to participate in government.

2. Article 16 of the American Convention on Human Rights (the "Convention" or the "American Convention") provides for the right to freedom of association. This article establishes that, "[e]veryone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes." The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") provides more specific provisions regarding the right to freedom of association of labor union members. Article 8 of the Protocol establishes that the States Parties shall ensure 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." Colombia has adhered to this Protocol, although it has not yet entered into force. The Commission nonetheless considers that this instrument provides a useful interpretative tool for analyzing the right to freedom of association established in the Convention.

3. Article 23 of the Convention sets forth the right to participate in government. The right to participate in government includes the right of every individual to "take part in the conduct of public affairs, directly or through freely chosen representatives," as well as the right "to vote and to be elected in genuine periodic elections."

B. LABOR UNION ACTIVISTS

4. The Commission has received detailed and credible information regarding violence directed at persons who engage in labor union activities. Labor union members have frequently been stigmatized because of their labor related activities, as well as for their social and political ideologies. They have frequently been labeled as guerrilla sympathizers or collaborators, placing them in a vulnerable situation vis-à-vis the parties to the armed conflict.

5. Between 1991 and 1997, 1,071 labor union members were killed in Colombia. In June 1997, the International Confederation of Free Trade Unions ("ICFTU") issued a report on attacks against trade unionists throughout the world. According to the report, of every 100 trade unionists killed in the world during 1996, approximately 40 of these were Colombian. ([1](#)) Since 1991, the greatest number of killings of labor union members occurs each year in the Department of Antioquia. The education and agricultural workers labor unions have experienced the greatest number of murders of their members. Unionized miners also suffer significant attacks. The members of the Unitary Workers Center (Central Unitaria de Trabajadores - "CUT") have consistently been subjected to acts of violence over the years. ([2](#))

6. The Commission has received information indicating that, in 1997 alone, 144 unionized workers were killed, including 37 labor union leaders. Nine additional unionized workers were disappeared.

7. One of the murdered union leaders, Victor Julio Garzon, served before his death as General Secretary for the National Unitary Labor Union for Agricultural and Cattle Workers (Federación Nacional Sindical Unitaria Agropecuaria - "FENSUAGRO"), one of the most important unions in the country. Mr. Garzón was killed on March 7, 1997 in Bogotá. He had participated in a commission established for monitoring agreements between peasant farmers from the coca-producing regions in the south of the country and representatives of the government that was reached following large-scale demonstrations by coca growers in 1996. As noted in other sections of this Report, these coca growers have been labeled by the State's security forces as collaborators of the armed dissident groups and have been subjected to violence. The Human Rights Unit of the Office of the Prosecutor General of the Nation is investigating the death of Mr. Garzon.

8. The recent murder of Jorge Ortega, another important labor union leader, caused great consternation in Colombia. Mr. Ortega, vice-president of the CUT union, was killed on October 20, 1998. At the time of his murder, the CUT union was involved in difficult negotiations with the Colombian Government. Mr. Ortega was killed in the residential complex where he lived as he returned home from work at approximately 7:30 p.m. The Colombian Government condemned his murder and offered an award for information regarding the whereabouts of the individual responsible for the murder.

9. The violence against labor union members has not been limited to violations of the right to life. Labor union members also receive constant threats in many areas of the country. The physical violence and threats have also led to the forced displacement of a great number of labor union members. Between January and November of 1997, 342 unionized workers were forcibly displaced from their normal places of residence. Of those displaced unionists, 43 were labor union leaders. ([3](#)) In addition, the Commission has received information regarding attacks with explosives on labor union offices. Labor union members have also been the targets of kidnappings.

10. The Commission found it necessary in several cases in 1997 to request that the Colombian State adopt precautionary measures on behalf of labor union members. On April 24, 1997, the Commission requested the adoption of such measures to protect the life and physical integrity of Sergio Jaramillo Pulgarín, co-founder and ex-Secretary of the labor union formed by the workers at the Porce II Consortium plant in Amalfi, Antioquia. A month before the Commission requested these measures, the labor union's president had been killed by armed men who had pulled him from a vehicle carrying several other workers, making reference to a list in their possession which included his name. Afterwards, unknown men had appeared at Mr. Jaramillo's house asking for him by name.

11. The Commission also requested the adoption of precautionary measures to protect the life and physical integrity of Domingo Rafael Tovar Arrieta, member of the Executive

Committee of CUT. Mr. Tovar had been attacked and threatened on several occasions. In May 1997, an attempt on his life was made. He left the country for a time and, upon his return at the end of September 1997, the threats were renewed. The Commission requested the adoption of precautionary measures on his behalf on November 21, 1997. The Commission lifted these precautionary measures on January 29, 1997 after receiving information indicating that Mr. Tovar had decided to again leave the country for safety reasons.

12. The Commission has received information indicating that armed dissident groups sometimes threaten or attack labor union members. For example, on May 21, 1997, the National Liberation Army (Ejército de Liberación Nacional - "ELN"), issued a declaration over the radio threatening oil company workers with reprisals if they continued with their employment. These threats were issued in the municipality of Yopal in the Department of Casanare. Armed dissident groups have also attacked unionized banana workers in the Urabá region of the Department of Antioquia with some frequency. (4) When armed dissident groups attack labor union members, they act in a manner incompatible with the rules for protection of civilians established in international humanitarian law.

13. The information available to the Commission indicates, however, that acts of violence against labor union members are most frequently committed by paramilitary groups. The Commission has obtained copies of several written threats against labor union members signed by different paramilitary groups. These groups identify themselves as "social cleansing entities" and refer to labor union leaders as members of the urban units of armed dissident groups. One of these notes names specific members of the Good-Year labor union and is signed by "Colombia without War" (Colombia sin Guerra - "COLSINGUE"), a well-known paramilitary group believed to be responsible for killings of labor union leaders and human rights defenders in the past.

14. The Commission has also received complaints regarding State involvement in intimidation of and/or attacks against labor union members. To support their allegations, these complaints point to a convergence of violent attacks by paramilitary organizations and State-initiated criminal proceedings against labor union members. The case of the petroleum workers union, the Workers' Labor Union (Unión Sindical Obrera - "USO"), provides a particularly clear example of this convergence.

15. Members of the USO have frequently been the objects of threats and attacks. The USO has fought to prevent privatization of the State oil company, ECOPETROL. During this political struggle, the USO has seen more than 70 of its members and leaders murdered over the past decade. On October 9, 1995, a fax arrived at the headquarters of the CUT threatening 24 union leaders. The fax was signed by the "Henry Pérez Association of Self Defense Groups of the Middle Magdalena Region." In addition to listing the names of the threatened individuals, the fax included their places of residence and the guerrilla organizations with which they were allegedly involved. Nineteen members of the USO were listed in the fax.

16. At the same time that the USO has suffered these threats and acts of violence, legal proceedings have been initiated against many members of the organization in the regional justice system. These proceedings led to the detention, on December 5, 1996, of fourteen leaders and workers of the USO on charges of rebellion and terrorism. It was later discovered that prosecutors had manipulated this proceeding by duplicating the testimony of one anonymous witness to make it appear that various witnesses had provided similar incriminating information against the members of the labor union. That testimony had provided the basis for the detention of the labor union members.

17. The persons detained in this proceeding included former USO president César Carrillo. Mr. Carrillo also appeared on the list of threatened union members sent to CUT in October of 1995. The discovery of the manipulated testimony eventually led to his release.

18. The apparent convergence of interests between the paramilitary groups which attack labor unions and official persecution lends credence to allegations that State agents are either directly involved in the violent attacks against labor union members or encourage and support such attacks. It is suggested that, at a minimum, the initiation of criminal proceedings against union members serves to identify them as "enemies of the State" or guerrilla collaborators and encourages their treatment as targets by paramilitary groups. It is also suggested that paramilitary groups receive intelligence information necessary to carry out attacks against union member targets from the State's security forces. These allegations are further supported by the fact that the State's security forces have in fact prepared intelligence reports, sometimes made public or used in criminal proceedings in the regional justice system, which identify labor union leaders as guerrilla collaborators based on their union work.

19. The Commission also understands that the labor unions have generally denounced the threats and violent attacks against their membership before the competent authorities. However, the Commission has not been informed of any convictions of individuals responsible for murdering labor union members.

20. Based on this information, the Commission must conclude that the State is internationally responsible for at least some of the crimes against labor union members committed by paramilitary groups, through its acquiescence or tolerance if not active involvement. The State is thus responsible for violation of the rights to life and physical integrity of these union members, as well as the right to freedom of association protected in Article 16 of the Convention. The right to association, particularly when viewed in light of the Protocol of San Salvador, clearly includes the right to form and participate in labor unions. The Commission has previously noted that, where the legitimate exercise of a right protected in the Convention provokes attacks, reprisals or sanctions, that right is violated. ([5](#))

21. The Commission notes that civilian authorities have taken some steps to protect labor union members. The Committee for Evaluation of Risks (Comité de Evaluación de Riesgos) of the Protection Program in the Ministry of the Interior has acted to provide some protection to labor union members. For example, after the death of Mr. Garzón, General Secretary of FENSUAGRO, the Committee arranged personal security for several other threatened leaders of the organization, including the assignment of bodyguards and a vehicle.

22. In May of 1997, then President Samper issued a decree establishing an interinstitutional commission for the promotion and protection of workers. ([6](#)) The commission included representatives of various offices of the Government and was headed by the Minister of Labor and Social Security. The commission also included five labor union representatives as well as representatives from various non-governmental human rights organizations. The commission was asked to study the various criminal proceedings initiated in cases of violence against labor union members and to make recommendations regarding the protection and promotion of workers.

23. However, until now, the measures taken by the State have not been sufficient to combat the seriousness of the situation. The Commission is extremely concerned by the violence against unionized workers and calls upon the Colombian State to ensure the life and physical integrity of labor union members as well as their right to freedom of association.

A. THE SITUATION FACED BY TEACHERS

24. Teachers, as an occupational group, exemplify the effects of the widespread violence that prevails in Colombia today on the right to freedom of association as well as on the effective enjoyment of economic, social and cultural rights. Teachers are subject to acts of intimidation, often ending in death or displacement. In this context, the deterioration in the

security situation, the maintenance of which is an essential obligation of the State, directly affects the right to association, specifically the right to participate in trade unions, as well as several economic, social and cultural rights, including the right to work and the right to public education.

25. Teachers affiliated with the Colombian Teachers Federation (Federación Colombiana de Educadores – "FECODE") have been among the preferred targets of violence. In 1997 alone, at least 56 teachers who were FECODE members were assassinated, and four more were disappeared. The Inter-American Court of Human Rights (the "Court") has already held Colombia liable for the forced disappearance of one teacher, Isidro Caballero Delgado. ([7](#)) Recently, the Commission decided to send the Court an additional case regarding the extrajudicial execution of a teacher from Las Palmeras, in the municipality of Mocoa, Department of Putumayo. The senseless violence against teachers is such that the Commission has received information indicating that the causes of the deaths of and threats against teachers range from the stigma attached to trade union activity, the treatment of teachers as allies of the subversives and the placement of schools in areas affected by very serious armed combat, to problems associated with internal conflicts within the schools or even grades.

26. Threats have forced many teachers to request transfers to other schools. From 1995 to 1997, in the Department of Antioquia alone, 686 teachers were forced to abandon their work posts to be relocated elsewhere. As a result, according to information available to the Commission, there is a lack of teaching personnel in some especially violent areas due to the displacement of teachers who were working in those areas.

27. The situation for teachers reached the point that on October 9, 1992 the President of Colombia issued Decree 1645/92, to establish mechanisms for resolving the situation of teaching personnel who were directly threatened. That decree sought specifically to provide the means to expeditiously relocate teaching personnel to places where their lives would be safeguarded. Especially important was the creation of the Special Committee for Threatened Persons, whose main purpose was to implement measures aimed at guaranteeing the lives and personal integrity of teachers facing threats.

28. The auspicious goals which led to the creation of that Committee have not produced the expected results, especially in Antioquia, where teachers have been most threatened. According to information received by the Commission, at least 12 threatened teachers did not receive adequate attention from the Committee. Another 48 were relocated, with a diminution in their labor rights and the loss of premiums and bonuses, in remote areas, thereby destroying their family unity, or in the same geographic area where the threat took place. At least 15 teachers were sanctioned for not abiding by the Committee's decision on relocation, even when that decision would not guarantee their safety or would diminish their labor rights. The seriousness of the situation led the Office of the Regional Human Rights Ombudsman to make a public statement maintaining that the Departmental Committee for Threatened Persons and the Departmental Board of Education take actions without regard for the law, the Constitution, or international treaties. ([8](#))

29. The Commission recommends that the State adopt forceful measures to investigate and punish the persons responsible for acts of violence against teachers, especially in the Department of Antioquia. In addition, so long as this situation persists, the State should adopt the measures necessary to ensure that departmental authorities bring their conduct into line with the letter and spirit of Decree 1645/92.

30. Beyond the provisions of this decree, the Commission believes that the State has a central non-derogable obligation to provide education in every region of the country. While the situation of violence persists, the State must take as many measures as necessary to ensure that teachers can practice their profession without being exposed to threats that

endanger their lives or physical integrity. The displacement and relocation of teachers is a short-term stop-gap measure, but it cannot serve as the complete or final response of the State. The State's general obligations to guarantee and protect rights and to prevent violations of those rights require it to take measures to prevent acts of violence against teachers, and to investigate and punish the persons responsible for those acts which take place. The State must guarantee the teachers' ability to carry out their educational work freely and safely while, at the same time, comply with its obligation to provide a free education to all inhabitants of the country, independent of the region in which they live.

D. RECENT ELECTORAL PROCESSES AND THE RIGHT TO POLITICAL PARTICIPATION

31. Participation in government and in electoral processes in Colombia is a dangerous endeavor. According to a report prepared by the Ministry of the Interior, during the first eight months of 1997, 196 crimes were committed against local candidates for election and active mayors and city council members. These crimes included 78 kidnappings, 72 murders, 33 terrorist acts, 21 attacks and 4 disappearances. ([9](#))

32. In 1997 and 1998, Colombia celebrated three important elections. On October 26, 1997, the Colombian people elected mayors, local council members and other local officials. Members of the Colombian Congress were elected on March 8, 1998. Finally, the first round of the presidential elections took place on May 31, 1998, followed by the second and final round on June 21.

33. Throughout this entire electoral period, and particularly in the months leading up to the October 1997 elections, armed dissident and paramilitary groups attempted to interfere with the electoral process. In the month of April 1997, various armed dissident factions operating in Colombia announced their intention to boycott the October elections. These groups interfered by attacking candidates and announcing a prohibition on political proselytizing by candidates. Members of armed dissident groups also kidnapped numerous candidates to give them the message that they must propose certain platforms or resign. Armed dissident groups also insisted that all passenger and cargo transportation be suspended throughout the country in the days before the elections.

34. A particularly serious incident occurred on October 23, 1997. On that day, members of the ELN captured two elections observers sent by the Organization of American States ("OAS") along with a departmental government official, in the outskirts of the municipality of Granada, in the Department of Antioquia. Numerous local and international organizations, including the Commission, issued press releases condemning this act. ([10](#)) The kidnapped OAS observers were not released until November 1, 1997.

35. By these kind of acts, the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia - "FARC") dissident group forced 80% of the candidates for local election in southern Colombia to withdraw their candidacies. The violence and threats by armed dissident groups led to the resignation, before the October election, of a total of 10% of the candidates for mayor throughout the country. In 22 municipalities, the massive withdrawal of candidates was such that there remained no candidates either for mayor or for city council. The threats led to the withdrawal of all candidates for mayor in 97 municipalities. ([11](#))

36. At the same time, paramilitary groups threatened certain candidates and warned residents in certain areas of the country that they should not vote or otherwise take part in the elections. The influence of the paramilitaries in the elections was most significant in the Atlantic Coast region, particularly in Urabá, Córdoba, Magdalena and the south of the Department of Cesar. The interference by paramilitary groups prevented almost entirely the inscription of leftist parties in the elections in the Urabá region. In prior years, members of alternative parties such as the Patriotic Union had succeeded in gaining notable political

influence in this area.

37. After the October elections, the armed dissident groups took a less aggressive role in the remaining two elections. Several days before the presidential elections, the FARC announced that they would not boycott the elections but would simply call on the citizenry to abstain from voting.

38. The acts of violence carried out by armed dissident groups and paramilitary groups against electoral candidates are inconsistent with the rules for the protection of civilians set forth pursuant to international humanitarian law. As the Commission explained in Chapter IV of this Report, political candidates and elected officials may not be treated as legitimate military targets based on their mere participation in the electoral process. In addition, many of the kidnappings would constitute hostage takings, which are expressly prohibited under international humanitarian law in all cases. Finally, as the Commission pointed out in its press release issued at the time of the ELN kidnapping of OAS election observers, these acts by armed dissident groups interfere with the free exercise of the right of Colombians to vote and to participate in politics. The Commission reiterates its condemnation of all acts that interfere with this important right guaranteed in Article 23 of the American Convention.

39. The Commission notes that the Colombian State took measures to ensure that each of the elections would go forward. The Government implemented a strategy referred to as "Plan Democracy" and called upon the State's public security forces to preserve the public order during the elections. These efforts enjoyed significant success. The disturbances on each of the election days were relatively minor, although armed combat did prevent access to the polls in some areas and armed dissident groups destroyed some polling areas. Other polling areas had to be moved or eliminated, because residents named to work at the polls refused to appear after receiving threats from armed dissident groups.

40. Ex-President Samper also ordered local police units to provide protection, and even lodging, to threatened candidates. The Commission nonetheless received numerous complaints indicating that the State did not provide adequate protection for the candidates and electoral officials in the period leading up to the elections, particularly the October election. The Commission believes that the importance of the right to political participation, set forth in Article 23 of the American Convention, places upon the State a special obligation to act affirmatively to do everything feasible to ensure that candidates for election are protected and that elections may go forward without interference.

41. As a positive element in the elections, the Commission notes that the Government resisted calls to declare a state of emergency for the electoral period. The President instead limited special actions to the issuance of Decree 2007 of 1997, which ordered governors and mayors to keep local security councils and public order committees in session and active. The Commission did, nonetheless, receive a few complaints indicating that local officials had acted illegitimately to limit rights during the electoral period. For example, residents of Puerto Asís, Department of Putumayo complained about a communication sent from the commander of the XXIV Brigade to the mayor of Puerto Asís. In that communication, the commander ordered the cancellation of a manifestation which had been scheduled in Puerto Asís to petition for the postponement of the October elections.

42. In the end, the efforts by various armed groups to interfere with the elections failed to achieve their broadest objectives. The Commission congratulates the Colombian State on its success in holding elections with high participation in the face of significant efforts to derail the electoral process. Each of the three elections enjoyed strong voter participation, with higher turnouts than in previous elections in recent years.

43. Almost 50% of registered voters went to the polls in the October elections. As the OAS observer mission final report noted, in relation to the October elections, that "[d]espite the

fact that voting is not mandatory and the repeated intimidation by insurgent forces, citizens demonstrated their political will exercising a right indispensable for the survival and the consolidation of democracy."([12](#))

44. As is traditional, the rate of voter abstention was higher for the congressional elections in March 1998. Approximately 30 to 35% of all registered voters participated in that election.

45. Voter participation was again strong for the presidential elections. Approximately 52% of registered voters, or 10,900,000 individuals, cast their ballots in the first round. Voter participation in the second round was even greater, reaching 12,000,000 votes. Andrés Pastrana obtained the presidency with 50.3% of these votes.

46. The Commission notes that, even after the elections, elected officials, particularly at the local level, have continued to be the victims of threats, kidnappings and other attacks. The responsibility for most of these attacks has been attributed to armed dissident groups. Less than a week after the mayors assumed their positions in January of 1998, the new mayor of Colosó, Department of Sucre, was killed by the FARC. Armed dissident groups kidnapped mayors repeatedly after the October elections. The mayors were frequently sent back with political messages for the President or for other local officials.

47. These incidents follow a pattern of violence against elected officials in Colombia. Official sources estimate that, between 1995 and 1997, 28 mayors were killed. In 1995, 18 mayors were kidnapped and, in 1996, 23 were kidnapped. Between November 1996 and September 1997, 41 mayors were kidnapped and 40 were victims of threats or attacks.([13](#)) Between January 1995 and July 1997, 140 local city council members were killed.([14](#))

48. The Commission is extremely concerned that these consistent attacks, in violation of international humanitarian law, may eventually lead to a situation in which the Colombian citizenry does not have effective access to the right to vote and direct or representative political participation. The Commission calls upon the State to take all measures necessary to ensure that these rights to political participation are protected in order to ensure that Colombia remains a fully democratic State.

E. ALTERNATIVE POLITICAL PARTIES

49. The first report of the Office of the High Commissioner for Human Rights in Colombia noted that political activity in Colombia "is characterized by a high degree of intolerance in relation to opposition parties and movements."([15](#)) The most dramatic example of violence against alternative political parties is the case of the Patriotic Union political party ("UP").

50. The Patriotic Union was formed as a political party on May 28, 1985 as a result of peace negotiations between the FARC and the State of Colombia presided over by President Belisario Betancur Cuartas. The Patriotic Union was not conceived as a political party in the strictest sense of the term, but more as a political alternative to the traditional power structure that would serve as a vehicle for the various manifestations of civil and popular protest. The Patriotic Union was also envisioned as the political vehicle of the FARC for possible reassimilation into civilian life.

51. The newly established party received support from opposition left-leaning political movements, such as the Communist Party, and quickly obtained significant electoral success in elections in 1986 and 1988. However, members of the party soon began to be the objects of violent attacks.

52. The Commission described the mass killings against members of the Patriotic Union political party in its "Second Report on the Situation of Human Rights in Colombia" as well as

in the report on Colombia included in the 1996 Annual Report of the Inter-American Commission on Human Rights. More than 1500 members of the Patriotic Union political party have allegedly been killed since the party's formation in 1985.([16](#)) In its 1996 Annual Report, the Commission noted that the leadership of the Patriotic Union political party estimates that, in 1996, "a member of the party was killed every two days."([17](#)) That year, Pedro Malagón, a UP member of Congress from the Department of Meta, was killed. Josué Giraldo, also a UP member and member of the Civic Committee for Human Rights for Meta, was killed that same year.([18](#))

53. Almost all of the members of this party who have been elected to important positions, such as in the Congress, have been killed. The murder of Senator Manuel Cepeda constitutes one of the most well-known killings of Patriotic Union members. Other members have been forced to abandon their political positions and flee the country to live in exile. For example, Aida Abella, UP president and ex-member of the Bogotá City Council, was almost killed in an attack on April 1996. As a result, she was forced to flee to Switzerland. In October of 1997, UP Senator Hernán Motta Motta, was forced to leave his post in the Senate and flee the country as a result of threats against him and his family.

54. The Commission has declared admissible a petition regarding the persecution of the Patriotic Union political party.([19](#))([20](#)) That petition alleges that members of the Colombian State security forces have committed some of the acts of persecution carried out against the members of the Patriotic Union. The petitioners also allege that the State of Colombia has tolerated or acquiesced in the persecution of the political party through its failure to adequately investigate and sanction the crimes committed against its members and its failure to take other effective measures to prevent these crimes.

55. In its decision on admissibility, the Commission held that the petitioners had set forth facts which, if proven, would tend to establish violations of the American Convention. Specifically, sufficient facts were alleged to allow the Commission to analyze possible violations of the right to freedom of association and the right to participate in government, set forth in Articles 16 and 23 of the Convention, as well as the right to juridical personality, the right to life, the right to humane treatment, the right to liberty and the right to a fair trial and judicial protection.

56. The Commission has placed itself at the disposition of the parties for the purpose of arriving at a friendly settlement of the case relating to the Patriotic Union political party. The Colombian State and the petitioners have begun to discuss the possibilities relating to such a friendly settlement.

F. RECOMMENDATIONS

Based on the foregoing, the Commission makes the following recommendations to the Colombian State:

1. The State should take immediate and effective steps to protect the life and physical integrity of labor union members. These steps should include, as a crucial means of providing protection, the investigation and sanction of the perpetrators of attacks against labor union activists.
2. The State should take all necessary measures to guarantee the safety of teachers throughout the country.
3. The State should take all measures necessary to ensure respect for the right of the citizenry to political participation. In this regard, the State should do everything feasible to ensure that candidates for election are protected and that elections may go forward without interference.
4. The State should take immediate and effective steps to protect the life and physical integrity of elected officials. These steps should include, as a crucial means of

providing protection, the investigation and sanction of the perpetrators of attacks against elected officials.

5. The State should take effective measures to ensure that political parties, which serve as an alternative to the two traditional parties, may freely and fully participate in electoral politics.

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(1) El Espectador, June 14, 1997.

(2) National Labor Union School, Human Rights Situation of the Colombian Workers in 1997, at 3 [hereinafter Labor Union School Report].

(3) *Id.*, Annex 1.

(4) Some of these attacks are described in Chapter IV of this Report.

(5) IACHR, Report 32/96, Case No. 10.553 (Guatemala), October 16, 1996, par. 63; Application to the Inter-American Court of Human Rights, Baena, et al Case (Panama), January 16, 1998, at 49.

(6) Decree No. 1413, May 27, 1997.

(7) *See* I/A Court H.R., Case of Caballero Delgado and Santana, Judgment of December 8, 1995.

(8) Note from the Office of the Human Rights Ombudsman, Medellín, October 15, 1997.

(9) *See* Report of the United Nations High Commissioner for Human Rights, E/CN.4/1998/16, March 9, 1998, par. 56.

(10) *See* IACHR, Press Release, No. 16/97.

(11) *See* Republic of Colombia, Electoral Organization, National Civil Status Registry, Public Order Report, October 16, 1997.

(12) Report of the General Secretariat on the Mission of Solidarity with Colombian Democracy, OEA/Ser.G, CP/doc. 3066/98, May 20, 1998, at 26.

(13) *See* "Alcalde en Colombia, profesión peligro," El Tiempo, January 29, 1998.

(14) Letter signed by the National Federation of Councils (Federación Nacional de Concejos), July 16, 1997.

(15) Report of the United Nations High Commissioner for Human Rights, par. 58.

(16) *See id.*, par. 56.

(17) 1996 Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, at 663.

(18) These killings are described in other relevant Chapters of this Report.

(19) *See* Report No. 5/97, On Admissibility, Case 11.227 (Colombia), March 12, 1997.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER X

THE RIGHTS OF INDIGENOUS PEOPLES

A. INTRODUCTION AND LEGAL FRAMEWORK

1. In its "Second Report on the Situation of Human Rights in Colombia," published in 1993, the Commission (the "Commission," the "IACHR" or the "Inter-American Commission") analyzed the situation of the 600,000 Colombians who are indigenous. According to the 1991 Political Constitution of Colombia, the indigenous communities are considered to be an invaluable national resource and a major cultural and social asset. These Colombian citizens are organized in 81 ethnic groups, speak 75 different languages, and occupy 25% of the national territory.
2. In its 1993 report, the Commission also analyzed the wide-ranging set of constitutional provisions that recognize and protect indigenous rights in Colombia, and in particular their rights to ethnic and cultural diversity, respect for their languages, bilingual education, respect for their cultural identity, special status for their community and *resguardo* lands, and their cultural heritage. In an important advance, the 1991 Constitution recognizes the right of the authorities of the indigenous peoples to exercise judicial functions within their territories, in accordance with their own rules and procedures.
3. The Constitution also provides for important rights to political participation, as exercised nationally and through local self-government. Nationally, two Senate seats have been set aside for legislators representing the indigenous peoples, and up to five seats in the lower chamber of the National Congress, by Constitutional provision.
4. At this time there exist predominantly indigenous organizations and political parties (including the Movimiento Indígena, the Alianza Social Indígena ("ASI"), and the Movimiento de Autoridades Indígenas), which have been elected to seats in the Congress and as mayors.
5. Law 21 of 1991 regulates the rights of the Colombian indigenous peoples, and ratifies and incorporates into domestic law International Labour Organization ("ILO") Convention 169, "Concerning Indigenous and Tribal Peoples in Independent Countries." At present several other laws and decrees to protect the indigenous peoples are in force. ([1](#))
6. The globalization of communications, the recognition of the value of the ecosystem in large geographic areas of Colombia, such as the Amazon basin and the biogeographic Chocó, and the increase in international trade all impact on the process whereby social, economic, and political relations are becoming internationalized. At the same time, these trends influence the law, giving rise to a growing body of legislation regulating international relations. The indigenous peoples of Colombia are also affected by these trends. They themselves form alliances and federations that transcend the limits of the national state, they negotiate with

international corporations (e.g. Monsanto Pharmaceuticals Corporation), and they form entities to support international development agencies (such as the project advisory councils, for example, in the case of the Panamanian-Colombian Darién). (2)

B. RECENT ADVANCES IN THE RECOGNITION AND DEVELOPMENT OF THE HUMAN RIGHTS OF THE INDIGENOUS PEOPLES

7. The Colombian Government informed the Commission (3) that Government policy, as set forth in the 1994-1998 National Development Plan, "The Social Leap Forward," was geared to consolidating the rights of indigenous peoples, guaranteeing their participation in national life, articulating existing institutions and spaces of coordination, and creating opportunities needed for attaining respect for their social and cultural particularities as well as for their unique organizational forms.

8. In developing this plan, on April 5, 1995, the National Council for Economic and Social Planning ("CONPES") approved the "Program for Ethnic Support and Strengthening of the Indigenous Peoples of Colombia 1995-1998," whose strategies involve: legal developments in terms of indigenous rights; recognition of their own systems of control and social regulation, including improvement in the dialogue between the indigenous jurisdiction and the national judicial system; adoption of territorial and sectoral support programs, with the indigenous communities; formation of the Indigenous Territorial Entities ("ETI"); continuation of the legalization and issuance of clear titles for indigenous territories; encouragement of knowledge and understanding by the state entities of indigenous values, uses, and customs; and the linkage of indigenous communities to government economic and social development programs.

9. The Commission calls attention to the broad reach granted by the Colombian Government to some of the rights included in the Commission's Proposed American Declaration on the Rights of Indigenous Peoples. (4) The Proposed Declaration should be understood to provide guiding principles for inter-American progress in the area of indigenous rights. The Government of Colombia noted the scope that it assigns to some of these rights pursuant to its legal regime as follows:

- The right to an identity as an indigenous people, which involves the right to be different and to be free from discrimination in relations with the State and society.
- The right to territory, understood as sufficient habitat and space to reproduce culturally as a people.
- The right to autonomy in the various spheres of life as a people, i.e. government, justice, education, health, social and economic reproduction, etc., in order to regulate ethnic reproduction and cultural changes.
- The right to participation, in the various spheres of national life, and the right to prior consultation on the measures, plans, programs, and projects that may affect their ethnic identity, their territories, or the natural resources situated therein.
- The right to development, in the sense of future development of their social groups, their culture, and improvement of their own quality of life, in accordance with their cultural and social systems and the life plans they devise or carry out as peoples, and their own development in terms of their intercultural relationship with national development.

10. In order to implement these principles, the Government of Colombia adopted a variety of legal instruments. These include Decree 1396/1996, creating the Commission on Human Rights of the Indigenous Peoples (under the Ministry of Interior), with broad representation of State agencies and indigenous organizations.

11. This decree calls on the ILO, the IACHR and the Bishops' Conference of Colombia to participate, pursuant to their mandates, on said Commission, which has broad powers to ensure the protection and promotion of the human rights of the indigenous communities and their members, and especially their rights to life, humane treatment, and liberty. One of the first initiatives of this new entity occurred in the wake of the massacre of 13 Coreguaje Indian teachers, in August of 1997, and the latent threats to the Coreguaje by the forces participating in the internal armed conflict. The IACHR notes that, until now, the efforts at cooperation between it and the Commission on Human Rights of the Indigenous Peoples has not been fluid, largely because the IACHR has not received timely and complete information regarding the issues to be treated by the indigenous rights commission and the meetings which take place. The IACHR expresses its strong interest in collaborating with the Commission on Human Rights of the Indigenous Peoples in the future.

12. Government policy in favor of indigenous rights is being implemented in regards to educational issues through Act 115 of 1996, by which the Ministry of Education develops a "National Ethnic Education Program," establishing the framework for teaching the languages and cultures of the various ethnic groups in their territories.

13. Plans begun in the early 1990s to facilitate the training of indigenous professionals are beginning to bear fruit. A total of 176 indigenous persons are currently enrolled at the National University in Bogotá. Other universities, such as those of Los Andes, Amazonía, Cauca, and Antioquia, have initiated specific programs on indigenous cultures and languages.

14. The Department of Indigenous Affairs of the Ministry of Interior has also carried out a program to support and ethnically strengthen the indigenous peoples of Colombia in the 1995-1998 period, covering ethnic education, improvement of health services, including traditional medicine, and the allocation of lands to the communities whose lands had not yet been recognized. The program also aims to protect the ecosystems and forests situated in indigenous territories.

15. The Colombian State has informed the Commission that the Government of President Pastrana has developed policies to address many of the problems faced by indigenous communities. Those policies are included in its National Development Plan 1998-2002. The plan relating to indigenous persons includes a commitment to promote traditional indigenous forms of conflict resolution and to expand the coverage of the special jurisdiction granted to indigenous communities in their territories. The Government has also made a commitment to clarify the respective authority of the State and the indigenous communities in relation to natural resources and the environment with an emphasis on prior consultation with the communities regarding exploration and exploitation of natural resources.

C. RECOGNITION BY THE STATE OF INDIGENOUS LANDS

16. Over the last several years, the Colombian State has taken steps toward the recognition of indigenous rights in relation to their traditional territories. The State has established policies and programs to allow for the formal recognition and registration of indigenous lands deserving of special protection, known as *resguardos* and *reservas*.

17. In 1993, there were 302 *resguardos*, totalling 26 million hectares, corresponding to 310,000 indigenous persons. In 1996, the number of *resguardos* had increased to 408, with a total area of almost 28 million hectares, corresponding to 80% of the indigenous population

and covering 25% of the national territory. Of these lands, 73% are in the Amazon region. There are also 19 *reservas indígenas* which are home to 1,535 families.

18. In the Amazon region, 77.8% of the indigenous population has received legal recognition of their territories, in the Orinoco basin 85.6% have received recognition, and in the Pacific Coast region, 63%. In these three regions, 84,115 persons from indigenous communities have received property titles to 18,724,540 hectares. ([5](#))

19. Many of these transfers are effectuated through collective land grants of undeveloped lands. As several Colombian laws have recognized that the indigenous peoples had the right to have the State recognize their full ownership over such areas, not as a discretionary act of the State but rather as an obligation, these proceedings do not constitute mere transfers but rather should be seen as a process of "production of evidence establishing the prior ownership of the communities." ([6](#))

20. Decree 1397 of 1996 created the National Commission on Indigenous Territories (under the Ministry of Agriculture and Rural Development), with broad state and indigenous representation, primarily to "coordinate the programming of the annual actions of constituting, expanding, restructuring, and securing clear title to *resguardos*, and the conversion of indigenous reserves as required, based on the needs of the indigenous communities."

D. DIFFICULTIES INVOLVED IN TITLING NEW LANDS

21. At this time, some 5 million hectares are in the process of being claimed by indigenous communities. The Commission has received information indicating that the general success in the recognition of indigenous lands is currently being hindered by a State bureaucratic problem. There are 80 cases in which the procedures for demarcating and assigning indigenous lands have been brought to a standstill by the demand for a Certificate of Preservation of the Environment, which is a legal requirement. The State itself fails to provide the certificate to the indigenous communities that are the petitioners in these claims. Since the Colombian Institute for Agrarian Reform ("INCORA" - the government institution in charge of land reform and adjudicating both collective and individual parcels) cannot complete its allocations without this certificate, the conveyances have been brought to a halt.

22. An additional problem is the existence of settlers and non-indigenous farms that have established themselves on indigenous lands, or lands claimed by indigenous groups, by de facto occupation or by titles that are forged or obtained by controversial means. Such land conflicts are often linked to the activities of paramilitary groups that seek to appropriate *resguardo* lands or lands in the process of being claimed. The penetration of indigenous lands by landowners or peasants from outside is aggravated by the fumigation of the coca crops, which leads growers to leave their lands and penetrate indigenous lands.

23. While some 30 million hectares of indigenous lands have been recognized, these claims and even the possession of lands already recognized are hindered and opposed in some cases by threats, harassment, and violence. Various actors are responsible for these acts of violence and threats, but frequently they are carried out by large landowners acting in cooperation with paramilitary groups and, in many cases, members or units of the Colombian State public security forces.

24. One case in point relates to the *resguardo* belonging to the Zenú indigenous community in San Andrés de Sotavento, in the Departments of Córdoba and Sucre. The Zenú community has waged a 70-year struggle for rights to territory, consisting of 83,000 hectares, granted to the community by the Spanish Crown in 1773. INCORA has been purchasing land from landowners, totalling 15,000 hectares to date. However, the landowners in the area have

sought to maintain control over the land through violent attacks. Paramilitary groups are often utilized to carry out these aggressions. According to members of the indigenous community, the attacks by the paramilitaries are often permitted by the security forces in the area. For example, vehicles with tinted windows which are recognized by all as belonging to paramilitaries in the region pass by police posts without difficulty.

25. In 1994 the chief community leader, or *cacique*, was assassinated along with three other indigenous leaders. In 1996 one indigenous leader, the secretary of the Cabildo Mayor (local indigenous government) and three other members of the indigenous community, were also killed. These last three were taken from their homes and shot in the town square. On June 3, 1996, the Junta Central, or governing board, for the Cabildo of San Andrés de Sotavento received death threats. Three months later Alberto Chito Malo, a leader of that cabildo and a civil engineer, was assassinated; he had been looking into the death of his brother two years earlier, as well as irregularities in the transfer of monies from the national treasury to the Zenú *resguardo*.

26. The National Indigenous Organization of Colombia ("ONIC") attributes these assassinations to paramilitary groups in the area who seek to stop the restitution of the *resguardo* to its indigenous owners. The Office of the Human Rights Ombudsman has also confirmed that the indigenous community has been the object of attacks by paramilitary groups. Indigenous leaders and one national senator blame "landowners and the political leaders in the area."([7](#))

27. In 1996 and 1997, the IACHR asked government authorities to adopt precautionary measures on behalf of the Zenú indigenous leaders. Nonetheless, the attacks and threats against the Zenú indigenous community continued, as well as forced searches of their homes and interruption of their ceremonies by paramilitary forces and other persons who identified themselves as members of the Colombian police and army. On November 3, 1997, the corpses of two leaders who had been kidnapped a few days earlier were found. A third member of the community was disappeared at the end of 1997. As a result of the continued violence, the Commission was forced to petition the Inter-American Court of Human Rights for the adoption of provisional measures to force the Colombian State to protect the leaders of the Zenú indigenous community. The Court ordered the adoption of provisional measures on June 19, 1998.([8](#))

E. NATURAL RESOURCES AND INDIGENOUS TERRITORIAL RIGHTS

28. Colombian legislation guarantees the indigenous communities the right to the usufruct of the renewable natural resources found in their territories. With the participation and agreement of each community, indigenous inspectors of the natural resources have been appointed in the *resguardos* since 1987.

29. The rights of the indigenous peoples over their lands are limited by various constitutional principles, in particular with respect to the resources in the subsoil, which are owned by the State. However, consultation with the indigenous peoples must be carried out before any exploitation of those resources takes place, as provided by ILO Convention 169 and Colombian law.

30. The Colombian Constitution provides that "the exploitation of natural resources in the indigenous territories shall be without detriment to the cultural, social, and economic integrity of the indigenous communities. In the decisions adopted with respect to that exploitation, the Government shall encourage the participation of the representatives of the respective communities."([9](#))

31. In Colombia, the mineral resources of the subsoil belong to the Nation, but the area of

the *resguardos* is considered an indigenous mining reserve (*reserva minera indígena*). (10) The indigenous peoples can enter into agreements with third persons regarding the development of activities involving the exploration and exploitation of mineral resources, and their authorities have the right to indicate, within the indigenous mining zones, places that may not be subject to exploration or exploitation because of their social or religious significance. (11)

32. The Commission has received complaints alleging that the provisions regarding natural resources and indigenous territorial rights are not always fully respected. The Commission is currently processing an individual petition regarding the rights of the U´wa indigenous community in relation to exploration which international oil companies, in cooperation with the Colombian State oil company (ECOPETROL), seek to carry out on their traditional lands. (12) The indigenous community alleges that it was not properly consulted when ECOPETROL granted a license to the international oil companies to begin exploration of the area with a view to oil drilling in the near future. The community also alleges that, if proper consultations were carried out, it would become clear that oil drilling cannot take place on their land without causing irreparable damage to their religious, economic and cultural identity and rights. The case has become more complicated as a result of serious delays in the process for defining the status of the traditional U´wa territories. These delays are apparently related, at least in part, to the debate over oil exploitation on the U´wa land. Both the Colombian State and the petitioners have made known to the Commission their interest in seeking a friendly settlement of this case.

F. MEGAPROJECTS AND THEIR IMPACT ON INDIGENOUS LANDS AND CULTURES

33. According to indigenous leaders, (13) the magnitude of several megaprojects which are planned and which would affect indigenous territories poses a special problem. These megaprojects place at risk the great natural wealth contained in indigenous territories. Of the 30 million hectares of indigenous lands, approximately 6 million are rich in minerals, oil, and timber forests, many of them in fragile jungle lands and marshlands. Infrastructure megaprojects such as those being planned for the Chocó, the Darién, and the inter-oceanic canal entail hazards that could prove fatal to the survival of the indigenous peoples that live in those areas.

34. In this context, the indigenous leaders pointed out the importance of the successful effort to halt temporarily the opening of a highway between Colombia and Panama that would complete the Pan American Highway at a great cost to the environment and the native indigenous and Afro-American populations that inhabit the area. However, the indigenous leaders indicated to the Commission that they believed that this and other projects continue to pose a serious potential risk to indigenous lands and peoples.

35. In the Colombian Amazon, where the indigenous peoples cover one-third of the area, i.e. a basin of 406,000 square kilometers (and where 180,000 square kilometers have been transferred to them in recent years), they must contend not only with the fragile plant life ecology in the face of these large-scale infrastructure and development projects, but also with their own low population density. In the Colombian Amazon, 54% of the 52 ethnic groups have a population of less than 500, only 28% a population greater than 1,000 members, and only six ethnic groups with a population of over 5,000.

G. THE IMPACT OF POLITICAL VIOLENCE ON THE INDIGENOUS COMMUNITIES

36. Indigenous communities and families are particularly hard-hit by the violence afflicting Colombia. More than 500 indigenous leaders were assassinated in the last 25 years for political reasons. Non-governmental organizations reported that 25 indigenous persons were killed between October, 1996 and September, 1997 alone. This violence comes from the State´s public security forces, paramilitary groups, armed dissident groups, drug traffickers

and common criminals. Threats and illegal attempts by armed dissident groups and paramilitaries to recruit indigenous youths into armed service are also common. (14) Political violence in Colombia is concentrated in the rural areas, particularly those which are most distant, which is generally where the indigenous *resguardos* are to be found.

37. The attacks tend to displace the indigenous populations from their settlements, leading them to increase the numbers of internal refugees. Villages, peoples, and groups of families have been displaced from their lands, oftentimes losing their cultural and social integrity and their habitat. As a result of this violence, some indigenous groups have sought to declare their neutrality and their unwillingness to collaborate with any of the armed actors, including the Army. This, too, has caused violent reprisals. In the words of indigenous leaders:

we are facing these five fronts, and neutrality doesn't always work. We tell all of the groups 'no' to recruitment. So long as we are autonomous we can make ourselves respected, but we don't have the strength to impede the action of illegal groups.

38. Indigenous leaders are also assassinated for the purpose of intimidating the indigenous communities and taking over their lands. From 1990 to 1996, more than 87 indigenous leaders have been assassinated. The violence is particularly tragic in the Urabá region, in the Departments of Chocó and Antioquia.

39. The indigenous leaders argue that, of these actions, the most devastating are those of the paramilitary groups, since not only do the paramilitaries attack the indigenous communities accusing them of supporting or trading with the guerrillas, but they are also interested in taking their lands. In the Department of Córdoba, approximately 30 indigenous leaders were murdered in the 1995-1996 period, apparently killed by paramilitary groups to appropriate their lands. The relation, sometimes close, between paramilitary groups and State public security forces is analyzed in Chapter IV of this Report.

40. According to information received by the Commission, in May 1997 Misael Domico, and in October 1997 Edgar Domico, Mario Domingo Domico, and David Domico, leaders and teachers in the Embera Katío community of Aguas Claras, in the municipality of Mutatá, Department of Antioquia, were kidnapped by members of the paramilitary organization Autodefensas Campesinas de Córdoba y Urabá ("ACCU"). To date there has been no news as to their whereabouts. (15)

41. The Commission has also received information indicating that paramilitary groups have made known their presence in Caloto and other municipalities in the north of the Department of Cauca. They have threatened members of the Paez indigenous community residing in that area. The presence of the paramilitary groups was denounced in an official report prepared by the National Police. However, the authorities, particularly from the Office of the Governor of the Department, have refused to act, arguing that there does not exist adequate proof of the presence of the paramilitary groups. The Commission wishes to highlight the fact that this situation is taking place in an area very near the scene of the massacre known as "Caloto" or "El Nilo". That massacre was carried out by paramilitaries in coordination with State security forces. The Colombian State has accepted its international responsibility in relation to that massacre in the context of a procedure for friendly settlement of the case processed by the Commission under the number 11.101. Based on its analysis of the new incidents, on January 7, 1998, the Commission requested that the State adopt precautionary measures to protect 12 members of the Paez community in Caloto.

42. The civilian population of the municipality of El Carmen de Atrato, Department of Chocó, was subjected to threats by paramilitary groups who accused them of collaborating with the guerrillas. As a result, several were murdered and many were forced to flee their lands and

seek refuge.

43. In the Department of Guaviare, in the Amazon region, the nomadic Nukak-Makú in recent years saw half of their population wiped out, with only 370 survivors alive today.

44. In addition, the indigenous communities suffer the infiltration of guerrillas onto their lands, placing them at risk, whether due to their own presence and action, or due to military and paramilitary actions against them. The guerrillas are also a cause of direct violations.

45. Credible information received by the Commission indicates that on August 19, 1996, the "Cacique Calarcá Guerrilla Front" of the National Liberation Army ("ELN") guerrilla group assassinated and took credit for the death of an indigenous mayor, accusing him of financing paramilitary groups. The victim had previously assured and demonstrated to the municipal council that these accusations were false. This case is that of the assassination of Marden Arnulfo Betacur Conda, mayor and leader of the Paez indigenous community, former governor of the *resguardo* of Jambaló, and a director of the Regional Indigenous Council of the Cauca ("CRIC").([16](#))

46. The Commission discussed, in Chapter IV of this Report, the international responsibilities of the different actors for these types of violent acts, pursuant to human rights and international humanitarian law. The Commission nonetheless considers it important to repeat here that the State incurs responsibility for violations of the right to life and the right to physical integrity, guaranteed in Articles 4 and 5 of the American Convention, when State agents or paramilitary groups acting with the assistance or tolerance of State agents commit these acts. These attacks against civilians also constitute violations of humanitarian law when committed by any of the actors in the armed conflict.

47. The Commission notes that the indigenous peoples can and want to be part of any peace process. In fact, in some cases indigenous organizations have protested that they have been left out of conversations between the Government and armed dissident groups, even when they address, in part, regions with indigenous territories, and in which the indigenous peoples have developed projects and plans of their own to facilitate local peace.

H. THE CREATION OF "SPECIAL PUBLIC ORDER ZONES" AND HUMAN RIGHTS

48. In its struggle against drug trafficking and armed dissident groups, the Colombian State has used the measure of establishing "special public order zones" for the stated purpose of facilitating necessary police and military operations. The creation of these "zones" has facilitated violations that affect indigenous communities.([17](#))

49. One striking case involves several members of the community of Arhuaca, accused of supporting the ELN guerrillas, who were kidnapped, tortured, and three of them assassinated by State public security forces. While the administrative investigations pointed clearly to State agents as the perpetrators, the officers and soldiers responsible for these violations were given the option of retiring from the military. The accused were declared innocent in the criminal courts.([18](#))

I. ILLICIT CROPS AND THEIR IMPACT ON THE INDIGENOUS PEOPLES

50. For the indigenous peoples of Colombia, law enforcement activities against illicit crops (especially coca, poppy, and marijuana) and their trafficking has special consequences entailing increased violence, invasion of indigenous territories by settlers who grow coca, and the loss of cultural identity and deterioration of their unique organizations and authorities. The impact is accentuated in Colombia, as the production of illicit crops is not an extension of

ancestral indigenous commercial practices, but rather a relatively new phenomenon.

51. The Commission has received information indicating that although some indigenous persons appear to be involved directly with illicit crops (e.g. poppy in Cauca, coca in the Orinoco basin and middle Amazon region), in other cases the drug trade affects them more than it involves them. One study found that "41.12% of the [Colombian] indigenous are affected by such crops, and in some cases involved in them."([19](#)) A total of 17.01% of the illicit crops in Colombia are located in indigenous *resguardos* or *reservas*, i.e. within legally-recognized indigenous territories: 18.95% of the poppy crops; 71.43% of the marijuana crops; and 10.8% of the coca crops.([20](#))

52. The Commission recognizes that the State has full rights to combat the production and trafficking of narcotics. However, the Commission is concerned that, according to information provided by indigenous groups, the actions taken in this struggle have an adverse effect on the Colombian indigenous population. The Commission has received complaints which allege that chemical fumigation of illicit crops has caused harm to the physical health of the indigenous population, as well as to animals and legitimate crops. It has also been alleged that the agents aboard aircraft used in the fumigation efforts often fire indiscriminately before flying down to the level necessary for the dispersion of the chemicals. On the other hand, the indigenous groups have denounced the lack of programs and assistance which would allow for the development of alternative legal crops.

53. The indigenous communities have also alleged that the fight against drugs has resulted in the militarization of many areas where illegal crops are grown and where significant indigenous populations also reside. This militarization creates an environment propitious for violations of the human rights of the indigenous inhabitants. This problem is aggravated by the fact that the Colombian government and military associate the production and trafficking of narcotics with the guerrilla movement. As a result, the areas where illegal crops are grown have been converted into war zones. This situation affects negatively the indigenous persons who reside in these areas, including those who produce narcotics as well as those who do not. These persons are frequently accused of collaborating with armed dissident groups.

54. In its visit to Puerto Asís, Department of Putumayo, the Commission had the opportunity to interview indigenous leaders and members of the indigenous communities in that area who state that they are especially exposed to the different types of violence since the economy of the region is based primarily on drug-trafficking.

55. The Commission also received a situation report from the Regional Indigenous Organization for Putumayo (Organización Zonal Indígena de Putumayo - "OZIP") that included the same types of complaints as those noted by the indigenous in the rest of the country, but in addition reflected the particularly severe internal displacement of the indigenous population to other areas, due to the growing invasion of settlers, especially those involved in growing illicit crops, guerrilla activities and the repression against those activities.

56. The Commission received reports of leaders, who were accused of collaborating with the guerrillas, being threatened and tortured by paramilitary groups and State security forces. The reports indicate that such repression involves troops from both sides of the border, since Puerto Asís is very close to the border between Colombia and Ecuador.

57. The Commission was able to confirm the profound uncertainty and risks to which the indigenous who live in the areas with extensive illicit crops are exposed, due to the prevalent and uncontrolled violence that occurs in relation to economies of this type, and to the parallel incursions of guerrilla and paramilitary forces pursuing their own aims, which take advantage of the special situation in these areas. The Commission is concerned that the special rights of indigenous persons, as well as basic human rights such as the right to life and physical

integrity, are not receiving full protection under these circumstances.

J. RECOMMENDATIONS

Based on the foregoing, the Commission makes the following recommendations to the Colombian State:

1. The State should continue to take special measures to protect the life and physical integrity of indigenous persons. These measures should include the investigation and sanction of the perpetrators of acts of violence against indigenous persons.
2. The State should take appropriate measures to ensure that the process of legal demarcation, recognition and granting title to land and use of natural resources to indigenous communities is not hindered or delayed by bureaucratic difficulties.
3. The State should ensure that indigenous communities enjoy effective control over lands and territories designated as indigenous territories, resguardos or other community lands without interference by individuals who seek to maintain or to take control over these territories through violence or any other means in detriment of the rights of the indigenous peoples.
4. The State should ensure that the exploitation of natural resources found at indigenous lands should be preceded by appropriate consultations with and, to the extent legally required, consent from the affected indigenous communities. The State should also ensure that such exploitation does not cause irreparable harm to the religious, economic or cultural identity and rights of the indigenous communities.
5. The State should ensure that major development projects in or near indigenous lands or areas of indigenous population, carried out after complying with the requirements of the law, do not cause irreparable harm to the religious, economic or cultural identity and rights of indigenous communities.
6. The State should take special measures, in connection with its actions against illicit drug trafficking and production, to ensure the physical safety of indigenous persons and to respect their other rights, land, property, culture and organization.

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(1) In the above-noted 1993 report, the Commission develops its analysis of the legislation and institutions that recognize and protect indigenous rights, as well as the difficulties in ensuring the compatibility of the powers of the territorial indigenous authorities and of the indigenous "cabildos" (local indigenous government) with the municipal authorities elected through the political party structure.

(2) Julio Tresierra, *Derechos de los Pueblos Indígenas sobre los recursos naturales del bosque tropical*, Report to the Inter-American Development Bank, 1997, at 7.

(3) Note No. 1353 from the Ministry of Foreign Relations, December 30, 1997.

(4) Adopted by the IACHR in February 1997. The text of the draft declaration is included in Chapter IV of the Annual Report of the Inter-American Commission on Human Rights 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997.

(5) Tresierra, at 8.

(6) Roque Roldán, *El problema de la legalidad de la Tenencia de la Tierra y el Manejo de los Recursos en Regiones de la selva Tropical de Sudamérica*, 1993, *cited by* Tresierra.

(7) Comisión Colombiana de Juristas, *Colombia, Derechos Humanos y Derechos Humanitario: 1996*, at 26.

(8) The individual case in relation to the Zenú indigenous community is processed by the Commission under the number 11.858. The reference to the case in this Chapter in no manner implies a prejudgment of its admissibility or merits.

(9) Political Constitution of Colombia, Art. 330.

(10) Decree 710 of 1990, Art. 1.

(11) *Id.*, art. 130; Tresierra, at. 13.

(12) This petition is being processed by the Commission as Case No. 11.754. The reference to the case in this Chapter in no manner constitutes a prejudgment of the admissibility or the merits of the petition.

(13) Interview with ONIC leaders, December 17, 1997.

(14) The Commission notes that the law in Colombia provides that members of indigenous communities are not required to serve in the military.

(15) Amnesty International, May 30 and October 27, 1997.

(16) Letters from CRIC, the Cabildos Indígenas of northern Cauca, and the Alianza Social Indígena, August 20, 1996 and September 10, 1996; *Comunicado* from the Frente Cacique Calarcá, Ejército de Liberación Nacional, undated.

(17) United Nations Commission on Human Rights, Report of the Rapporteur for the Mission in Colombia on Implementation of the Program of Action for the third decade of the struggle against racism and racial segregation, E/CN.4/1997/71, ADD 1. I.2.

([18](#)) United Nations Human Rights Committee, Decision 612/1995, CCPR/C/60/D/612/1995.

([19](#)) C.S. Perafan-Simmonds, Impacto de cultivos ilícitos en Pueblos Indígenas de Colombia, Indigenous Peoples and Community Development Unit, Department of Social Programs and Sustainable Development, Inter-American Development Bank, November 17, 1997.

([20](#)) Id.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER XI

THE RIGHTS OF BLACK COMMUNITIES

A. INTRODUCTION

1. Black slavery was introduced into New Granada practically with the arrival of the earliest European conquerors and settlers. It was first licensed by the Spanish Crown in 1510 and its evolution from household slavery to plantation chattel slavery changed in keeping with economic development in Colombia, primarily in agriculture along the two ocean coasts of the country over the ensuing centuries. (1) Estimates vary regarding the number of slaves brought from Africa or of African origin. One source places the number at 54,000 by the end of the 18th century while another calculates their numbers at between 130,000 to 180,000 by the time of the French Revolution. (2) The primary port of entry was Cartagena and the slaves came from a variety of African regions and linguistic and ethnic groups.

2. In 1812 Cartagena prohibited the further importation of slaves, and further, abolished slavery in Antioquia in 1816. Simon Bolivar promised to abolish slavery nationally in 1816 and the Congress of Angostura in 1819 established the goal of total but gradual emancipation. (3) In any event, slavery continued to exist, although in diminishing numbers, until it was definitively abolished on January 1, 1852. (4)

3. In practice, however, black slavery disappeared more gradually over time. The attendant conditions of legal and economic inequality and discrimination, nevertheless, have persisted for another century and a half and these are the subjects of this Chapter.

B. LEGAL FRAMEWORK

4. International human rights instruments, in the inter-American and the universal system, contain numerous provisions which are relevant for an analysis of the situation of black communities. In fact, the right to equal protection and enjoyment of rights for all is one of the underlying tenants of the international law of human rights. Non-discrimination on the basis of race lies at the heart of human rights law.

1. International Provisions

5. Article I of the American Convention on Human Rights (the "Convention" or the "American Convention") provides that the States Parties to it, "undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, ..." Also, Article 3 of the American Convention guarantees: "Every person has the right to recognition as a person before the law." Article 24 of the Convention stipulates: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to

equal protection of the law."

6. The American Declaration on the Rights and Duties of Man provides:

Article II: All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed of any other factor.

Article XVII. Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

7. The International Covenant on Civil and Political Rights provides at Article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion...

2. Domestic Legal Provisions

8. Article 2 of the Constitution of Colombia of 1991 in its second paragraph declares:

The authorities of the Republic exist to protect the lives, honor, property, beliefs and other rights and liberties of all persons residing in Colombia and to ensure compliance with the social obligations of the State and private persons.

9. Article 5 states:

The State recognizes, without any discrimination, the primacy of the inalienable rights of human beings and supports the family as the basic institution of society.

10. Article 7 states:

The State recognizes and protects the cultural and ethnic diversity of the Colombian nation.

11. Article 8 holds:

It is the obligation of the State and individuals to protect the cultural and natural wealth of the Nation.

12. Article 10 provides:

Spanish is the official language of Colombia. The languages and dialects of the different ethnic groups are also official in their territories. The education provided to communities with their own linguistic traditions will be bilingual.

13. Article 13 states:

All persons born free and equal before the law, will receive the same treatment and protection from the authorities and will enjoy the same rights, freedoms and opportunities without discrimination of any kind on the basis of sex, race, national origin, or family language, religion, political or philosophical opinion.

14. Article 17 asserts:

Slavery, servitude and the sale of human beings are prohibited in all their forms.

15. Transitory Article 55 says:

During the two years subsequent to the date on which the Constitution enters into force, the Congress will issue, after study by a special commission to be created by the government a law which grants to the black communities that have occupied undeveloped lands in the rural riparian areas alongside the rivers of the Cuenca and Pacific, in conformity with their traditional systems for production, the right to own as collective property those areas which the law designates.

Representatives elected by the involved communities will participate in the special commission established in the preceding paragraph.

The properties recognized in this manner will be inalienable, pursuant to the provisions of the law.

The same law will establish mechanisms for the protection of the cultural identity and the rights of these communities and for the support of their economic and social development.

16. Finally, in order to implement Transitory Article 55, Congress enacted Law 70/93 "Law of Black Communities", which will be examined more fully below.

C. NEGROES IN COLOMBIA – 1998

17. Maurice Glele – Ahanhanzo, Special Rapporteur of the United Nations on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in his 1997 report entitled "Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination" estimates that of a national population, persons of African or mixed African descent total six million individuals and constitute about 16 percent of the whole Colombian population. ([5](#)) Afro-Colombians, a term employed more and more frequently by black or partly black Colombians themselves, live primarily along the Pacific and Atlantic coasts and form majorities or sizeable minorities in a number of large and medium sized cities, including Cartagena, Buenaventura, Cali, Turbo, Barranquilla, Medellín and Quibdó. ([6](#))

18. The Colombian Government has published, on the basis of a 1993 census, a much smaller estimate of the number of black and native Colombians—some 930,000 or 2.75 percent of the whole. In its Action Plan for the Afro-Colombian and Indigenous Population, a Government agency reported that together these populations constitute roughly 3.2 percent of the national population—some 1.1 million persons in all. Finally, the consulting group, Cowater International Inc., in a 1996 study commissioned by the Inter-American Development Bank, using a broader definition of the term afro-Colombian, estimated that black Colombians constitute some 30 percent of the national population. ([7](#))

D. DISCRIMINATION

19. Irrespective of the number of persons of African descent, partial or pure blooded, it is beyond dispute that black and mestizo black persons form the largest minority group in the Colombian nation. Furthermore, there has been in recent years a most welcome recognition by the State at all levels, and by and large, by society as a whole that afro-Colombians have suffered racial discrimination and that such discrimination persists to the present. ([8](#)) In fairness, however it should be pointed out that such discrimination does not constitute a conscious policy of the State.

20. During its on-site visit to Colombia in December, 1997 the Inter-American Commission on Human Rights (the "Commission," the "IACHR" or the "Inter-American Commission") heard numerous testimonies evidencing active and passive discrimination by State and private actors alike. It is important to point out that complaints made by black Colombian citizens and corroborated in various sociological studies in recent years, refer to both a pattern of official as well as unofficial, discrimination. With respect to the latter, offensive stereotypes in the media, the arts and popular culture tend to perpetuate negative attitudes towards blacks and these often unconscious views are commonly reflected in public policy when governments at all levels distribute limited State resources. ([9](#))

E. SOCIO-ECONOMIC CONDITIONS

21. Hence, the Commission has received ample documentation demonstrating that black Colombians have, perhaps with the exception of the Colombian indigenous population, the lowest per capita income, extremely high rates of illiteracy in both urban and rural areas, very high indices of infant mortality and serious diseases including malaria, dengue fever and gastrointestinal and respiratory infections. The causes of this situation include the frequent lack of potable water, electricity and medical facilities. ([10](#))

22. The employment picture for black Colombians is likewise bleak. Urban blacks, the majority of afro-Colombians, far more often find themselves in domestic service, day work construction job and street vendor activities in the so-called informal sector than their white fellow citizens.

23. In rural areas black Colombians frequently labor on tiny farms or as workers on large ranches and plantations. Yeoman fishing on a subsistence level also provides employment to a considerable number of blacks. ([11](#))

24. In contrast with this reality, there is a marked dearth of black Colombians in middle and high level government and private sector positions. Blacks are rarely commissioned as officers in the military forces, and aside from some cities and towns where they enjoy an electoral majority they are underrepresented in elected and appointed positions in government. A similar generalization can be made regarding the paucity of blacks in other branches of government as well as the civil and diplomatic services. It has also been observed that the Catholic Church, the predominant religion in Colombia, also has relatively few priests and nuns of color and fewer yet within the ecclesiastical hierarchy. The same phenomenon is observed in business and the media where the absence of blacks is the general rule. White collar jobs in the liberal professions of medicine, dentistry, law, the natural and social sciences and education at all levels, have historically been closed to blacks except the lucky and persistent few. ([12](#))

25. Not surprisingly, government investment in infrastructure, health, education, housing and general welfare have been very low in areas inhabited primarily by afro-Colombians.

F. VIOLENCE AND BLACK COLOMBIANS

26. Large numbers of afro-Colombians reside in some of the most conflictive areas of the national territory. While this subject has been examined at length in previous Chapters of this Report, it is safe to generalize that terror and violence as practiced by all of the contending forces in Colombia have taken their greatest toll on the Colombians living in extreme poverty—a disproportionate number of whom are black citizens. For example, the Commission in its visit to Turbo and Apartadó, in the Urabá region of the Department of Antioquia, learned of the ferocious consequences of the struggle among armed dissident groups, mainly the Revolutionary Armed Forces of Colombia (Fuerzas Revolucionarias Armadas de Colombia - "FARC"), and paramilitaries commanded by the Castaños as well as

the active and at times passive role of the Army in repressing local populations. The Commission was able to observe that the majority of the internally displaced persons populations residing in shelters and camps in the area consisted of black persons.

27. The Commission has also been told of instances of apparent "social cleansing" in which black prostitutes and street *gamines* have been assassinated. In some of these incidents, the victims may have been targeted, at least in part, on the basis of their color.

G. GOVERNMENT ACTION

28. In adopting the 1991 Constitution, and in particular, in sanctioning Transitory Article 55, cited above, the Colombian State took a positive step to begin redressing the historical ill-treatment of black persons in Colombia. In 1993, Congress enacted and the Executive signed Law 70/93 which established within its National Development Plan the Plan for Afro-Colombian Development (the "Plan").

29. One of the most salient features of Law 70/93 includes the creation of a special constituency to assure two seats in the National Congress to black communities. In addition, the Law recognizes the right of black communities to collective ownership of some riparian lands on the Pacific coast. Further, the Law recognizes subsoil rights thereon and the need to provide further resources to fulfill the constitutional guarantee of education for all citizens.

30. To implement the Plan, Law 70/93 contemplates the formation of autonomous territorial planning councils and regional assemblies. Community involvement and participation by those whose interests are at stake are important ingredients in the Plan. Thus, community organizations have the possibility of making their views heard and taken into account through this arrangement.

31. While there has been criticism of the definition of an afro-Colombian as provided in the Plan, thereby explaining perhaps the discrepancies in the demographic data referred to earlier in this chapter, greater discontent stems from its slow implementation and its as yet negligible impact on the lives of those intended to benefit from the Law.

32. Be that as it may, the formal recognition of centuries-old injustices and the establishment of mechanisms to fix goals and monitor fulfillment of the Plan are singularly important steps in a process. Even the most optimistic recognize that this process includes very ambitious goals that will require a long time to realize.

33. The State has informed the Commission that the National Development Plan 1998-2002 proposed by the Government of President Pastrana provides for special consideration of the needs of the black communities. According to the State, the efforts of the Government will be directed toward overcoming the obstacles that impede the full integration of the members of these communities into Colombian national life. They will also be directed at those obstacles that prevent the black communities from raising their standard of living.

H. RECOMMENDATIONS

Based on the foregoing, the Commission makes the following recommendations to the Colombian State:

1. The State should accelerate the implementation of the Afro-Colombian Development Plan, particularly in the demarcation of collective community lands with the corresponding protection of the timber, flora, fauna and mineral resources found therein.
2. The State should enact a law defining and providing legal remedies for acts of public

- and private racial discrimination.
3. The State should enhance, among the general population and among those in public service, particularly in the police and Military Forces, awareness of racism and its effects and to provide necessary educational programs and training for this purpose.
 4. The State should take special measures to assure equal access to positions in public service to persons of all complexions.
 5. The State should assign more fairly State resources to areas populated primarily by black Colombians with emphasis on such basic goods and services as roads, potable water systems, electrical power, health facilities and educational institutions.
 6. The State should vigorously investigate, prosecute and punish those, who for racial motives, commit crimes against persons of color.

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(1) Robert H. Davis, editor, Historical Dictionary of Colombia, second edition, Latin America Historical Dictionaries, No. 23, 1993, at 49.

(2) *Id.* at 49.

(3) *Id.*

(4) Barbara A. Tennembaum, editor in chief, Encyclopedia of Latin American Culture, vol. 5, at 137.

(5) Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination, Economic and Social Council of United Nations, Commission on Human Rights, E/CN.4/1997/71/Add.1, 13 January 1997 [hereinafter Implementation].

(6) The expression "afro-colombian" is employed in Colombian legislation. For example, Law 70/93 as well as by a growing number of national and international non-governmental organizations such as "Cimarrón-Movimiento Nacional por los Derechos Humanos de las Comunidades Afrocolombianas" and "La Fundación Afroamérica" use the term.

(7) Cowater International Inc., Sánchez and Franklin, editors, Comunidades de Ancestría Africana, Chapter 8, "Diagnóstico de las Comunidades Negras de Colombia," 1997, at 127 [hereinafter Cowater Report].

(8) *See* Directorate for Black Communities Issues, Ministry of the Interior, Visión, Gestión y Proyección, 1997, at 14 et. seq. [hereinafter Directorate for Black Communities Report].

(9) Implementation, at 9, *citing* CIMARRÓN.

(10) Directorate for Black Communities Report, at 14.

(11) Cowater Report, at 129-130.

(12) *Id.*, at 129.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER XII

THE RIGHTS OF WOMEN

A. INTRODUCTION

1. The principles of equality and non-discrimination are essential to democratic government under the rule of law and a fundamental condition for the full observance of human rights. For this reason, the Inter-American Commission on Human Rights (the "Commission," the "IACHR" or the "Inter-American Commission") assigns special importance to the rights of women in the hemisphere, as reflected in the designation of a special rapporteurship for women's rights. The "Report on the status of women in the hemisphere" was submitted by the Special Rapporteur and approved during the 98th session of the IACHR. It should be noted that the Colombian State submitted an extensive and detailed document, in response to the questionnaire that was sent out as part of the preparation of this report on the status of women. The document submitted by the State will be cited, as appropriate, in this Chapter.

2. The IACHR notes that major strides have been made in the observance of women's rights in Colombia. Nonetheless, despite the constitutional provisions and the legislation in force, information has been received that indicates that gender-based discrimination continues to affect women, resulting in the diminution of the full enjoyment of their human rights.

3. During its on-site visit, the Commission received complaints that indicate that women are in a difficult situation in Colombia, as they suffer particularly serious effects of the violence that affects the entire country, and of one of its consequences, internal forced displacement. This Report will also analyze the problems of domestic violence and the lack of adequate access to reproductive health programs, with respect to which it is alleged that women do not receive adequate protection from the State.

B. LEGAL FRAMEWORK

1. International Provisions

4. As was noted in previous Chapters of this Report, the American Declaration on the Rights and Duties of Man provides:

Article II: All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.

Article XVII: Every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights.

5. In a similar vein, Article 1 of the American Convention on Human Rights (the "Convention" or the "American Convention") provides that the States Parties to it, "undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex..." Also, Article 3 of the American Convention guarantees: "Every person has the right to recognition as a person before the law." Article 24 of the American Convention stipulates: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."

6. The United Nations International Covenant on Civil and Political Rights provides at Article 26:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion....

7. The Convention on the Elimination of All Forms of Discrimination Against Women has been ratified by Colombia, incorporated into its legislation by Law 041/81 and regulated by Decree 1398/90. Article 2 of that Convention indicates that:

States Parties condemn discrimination against women in all its forms [and] agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

8. In addition, the Colombian State has ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará"), which has been incorporated into the national legislation by law 248/95. Article 1 of that Convention provides that:

[V]iolence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

2. Domestic Legal Provisions

9. The 1991 Colombian Constitution recognizes the full equality of women and men. Article 13 provides:

All persons are born free and equal before the law, shall receive the same protection and treatment from the authorities, and shall enjoy the same rights, liberties, and opportunities with no discrimination on grounds of sex, race, national or family origin, religion, political opinion, or philosophy.

10. Article 43 of the 1991 Constitution provides that:

Women and men have equal rights and opportunities. Women may not be subjected to any kind of discrimination. During pregnancy and after childbirth, women shall enjoy special assistance and protection from the State, and shall receive an allowance from the State if unemployed or without support.

11. The trend towards equality between women and men in Colombia began in 1932, when Law 28 derogated certain provisions in the Civil Code that had limited the legal capacity of women. That law ended the legal incapacity of married women, granting them full civil capacity. The law maintained the notion of conjugal society while, at the same time,

terminating the husband's exclusive right to administrate common property. By virtue of legislative act No. 3 of 1954 and by Decree 2820 of 1974, women acquired full political rights, as well as equality of rights and obligations with respect to men.

C. DISCRIMINATION

12. The IACHR has been informed that sex-based discrimination persists in Colombia in various spheres of life, such as employment, education, and participation in public affairs. The situation of each of these spheres has evolved in different ways. The Commission will thus consider each separately.

1. Education

13. The figures indicate that education has been one of the areas in which the greatest strides have been made towards equality between women and men in Colombia. An increase in the average number of years of schooling for women has been reported. For example, women 24 years and older had an average of almost 4 years of primary education in 1978; this figure increased to almost 6 years in 1993. Illiteracy among women has diminished significantly (from 40.2% in 1951 to 11.6% in 1993), bringing female illiteracy very close to male illiteracy levels (which declined from 35% to 10.7% in the same period). ([1](#)) Among the advances, the following can also be noted: continuance of the trend toward greater women's enrollment in the various levels of education, which is currently approximately 50%; fewer female drop-outs at the various levels of formal education; greater participation of women among teaching personnel at the various levels of the educational system (although this participation declines at the higher levels of education). ([2](#))

14. During the 1990s, major efforts have been undertaken to develop the constitutional mandates regarding universal access to basic education, and regarding the participation of civil society in education. It should be noted that the Ten-Year Education Plan for 1996-2005 defined as an objective the challenge of overcoming all situations of sex-based discrimination or isolation, in terms of women's access to and ability to remain in the educational system.

15. Despite the advances and achievements, motives for concern persist as to specific issues, such as illiteracy. Women 24 years and older, who are part of the economically active population, continue to receive less education than men in the same population group. This situation has a detrimental effect on access to employment, as women are in a worse position than men as regards their training to perform competitively.

16. According to data received by the IACHR, 51.7% of the university population in Colombia is made up of women. Nonetheless, it should also be observed that a high proportion of the students enrolled in certain programs of study considered "traditionally female" are still women. For example, in 1992, 65.3% of the education students were women, compared to 27.6% of those enrolled in engineering. ([3](#)) In addition, there is a considerable decline in the number of women as higher levels of instruction are reached: the percentage of women among those who choose pre-school teaching is 96.3%; primary, 76%; secondary, 44.2%; and higher education, 22.6%. ([4](#))

17. In Colombia, the Office of the Presidential Adviser for Women, Youth, and the Family and the Ministry of Education have initiated a series of activities to promote gender equality in education. Of special note among these is a research project supported by the United Nations Children's Fund ("UNICEF") entitled "Producing textbooks from a gender-equity perspective." This research project studies the representation of the genders in textbooks, which are analyzed for discrimination based on both the manner and number of times persons of different sexes appear in the text and illustrations. Based on this experience, a manual for raising awareness was designed and has been used in the training of teachers, school

officials, and textbook publishing companies. ([5](#)) The State has also announced plans for coordinated work between the Ministry of Education and the National Directorate for Equality for Women (Dirección Nacional de Equidad para las Mujeres) toward the creation of a culture of true equality in education, in quantitative as well as qualitative terms.

18. The Commission considers that stereotypes regarding the traditional social roles of men and women help perpetuate gender-based discrimination. For this reason, the IACHR values the positive initiatives undertaken by the Colombian State to eliminate those stereotypes. The Commission will continue to follow closely the development of policies and programs that address the remaining challenges to equal access to education between men and women in Colombia.

2. The Workplace

19. The Convention on the Elimination of All Forms of Discrimination Against Women, which now forms part of the domestic law of Colombia, provides as follows, at Article 11(1):

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

. . .

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment.

20. Colombian legislation includes several provisions aimed at eliminating discrimination against women in the workplace. These provisions include Law 13 of 1972, which prohibits segregation of citizens in obtaining employment. They also include Decree 1398 of 1990, regulating Law 51 of 1981, which approved the Convention on the Elimination of All Forms of Discrimination Against Women. This decree provides:

There shall be no discrimination against women in relation to employment. Consequently, women shall be accorded equal treatment as men in all aspects related to work, employment, and social security.

21. Despite the constitutional and statutory provisions, and the country's economic strength, the status of women in the labor market has not improved in recent years. The Commission has received information that indicates that unemployment for women in September 1995 stood at 12.6%, compared to 6.5% for men. One way to explain this situation has to do with women's lower educational levels, and with employers' preference to hire men instead of women, given equal qualifications, for certain types of work. ([6](#))

22. The Commission also has received information suggesting that women from urban areas continue to have access only to positions and areas of activity that enjoy less socioeconomic prestige, lower income, and fewer labor guarantees. This situation would explain the increased participation of women in positions such as non-remunerated workers and domestic workers, as well as the increase in the number of women working in the urban informal sector. Also meriting special mention is the lack of correspondence between women's educational levels and the type of positions to which they gain access. ([7](#))

23. Women rural workers are in an even more disadvantaged situation, not only vis-à-vis men, but also as compared to urban women. According to data received by the IACHR,

women rural workers have a higher rate of poverty, face greater workplace burdens in exchange for less remuneration, have low levels of job training, are affected to a greater extent by unemployment, and are among the most vulnerable social sectors in the situation of agrarian crisis, violence, and armed conflict affecting the country.([8](#))

24. The Constitutional Court issued several important decisions regarding women's rights in the workplace in 1997. The Constitutional Court held that the provisions regarding equal protection required that pregnant women be granted special treatment in the workplace. On these grounds, the Court held that pregnant women could not be dismissed during the term of their pregnancy nor during the three months following childbirth.([9](#)) In another decision, the Court struck down legislation which prohibited women from working during the night, also on equal protection grounds.

25. The Commission finds this new jurisprudence to be extremely positive. The IACHR is nonetheless concerned about the situation of discrimination that affects women in relation to work in Colombia, and thus considers it necessary for the State to pay special attention to effective enforcement of the provisions in force in this area. The State has recognized the critical situation of women in the labor market. In this regard, the State has pointed to the fact that the Ministry of Labor and the National Directorate for Equality for Women work to gain equal access for women to State programs, such as the Development Ministry's Plan to Support Small and Medium-Sized Businesses and other similar programs.

3. Participation in Public Affairs

26. The American Convention, at Article 23(c), guarantees access for all citizens, in equal conditions, to public service in their country. Article 40 of the Colombian Constitution provides that the State shall "guarantee the adequate and effective participation of women in the decision-making levels of the public administration."

27. Another legislative initiative is Law 188 of 1994, which created the National Bureau for Women's Equity (Dirección Nacional para la Equidad de la Mujer), a permanent State office that is in charge of State policy on women. It is now fully operational, and members of Colombia's women's movement are participating in the capacity of advisers.

28. Women make up 50.4% of the population of Colombia. Nonetheless, women's participation in national politics is not commensurate with that figure. For example, in the last two presidential elections, there were five women out of a total of 30 candidates; only one received more than 1% of the vote. The official figures indicate that of all the governors and mayors in 1994, only 6% were women. In the 1994-1998 period, 12.2% of the members of the Chamber of Representatives are women, reflecting an increase of 7.8% over the previous period. In the Senate, 93.2% of the seats are held by men, and 6.8% for women, showing a slight decline from the respective figures of 92% and 8% for the 1990-1994 period.

29. In the central administration, women have a high level of representation, with 59% of all posts, but that figure diminishes in the case of positions of power and decision-making posts. At the level of directorships, the proportion is 19% women and 81% men; among the advisers, the difference is less marked, with 43% women and 57% men. Finally, the most favorable ratios are found in implementing and operational posts, in which women account for 74% of the total.([10](#)) Despite all the foregoing, the Commission emphasizes that two highly important ministerial positions, the Ministry of Foreign Affairs and the Ministry of Justice, were entrusted to women at the time of its on-site visit of December 1997.

30. Women are involved at almost every level of the Colombian justice system. In addition, however, women's participation in the judiciary is uneven. Upon analyzing the distribution of

posts, one finds that in 1993, 42% of the civil, labor, and family judges in Bogotá were women. When this figure is broken down, however, half were in the family courts, 38.2% in the civil courts, and just 11.8% in the labor courts.([11](#)) Despite some notable involvement in the judiciary, it must be observed that women are not represented in the higher echelons of this branch of government.

31. The figures mentioned above reflect a significant disproportion to the detriment of women, especially in qualitative terms. This observation is made with the full awareness that, compared to other countries in Latin America, this disproportion is less accentuated in Colombia.

32. The legal regime in Colombia contains very clear provisions with respect to the equality of men and women. Although this does not guarantee the end of discrimination, it does make it possible to give impetus to the reforms needed in society to attain the full enjoyment of rights for both sexes, in equal conditions. In this regard, the IACHR trusts that the Colombian State will continue implementing the policies needed to overcome the current situation, in the framework of its obligations under international and domestic law.

D. VIOLENCE AND ITS EFFECTS

33. The large number of acts of violence against women in the Americas has awakened the interest of the States, resulting in support for the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará"). This instrument came into force on March 5, 1995, and to date has been ratified by 27 states, including Colombia. Article 2 of that Convention states:

Violence against women shall be understood to include physical, sexual and psychological violence:

a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;

b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and

c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

34. Colombia incorporated the Convention of Belém do Pará into its domestic law by Law 248 of 1995. Later, the Constitutional Court of Colombia, in the exercise of its constitutional review powers, declared that law constitutional on September 4, 1996, in Decision C-408/96. Also noteworthy are the partial steps taken through Law 294 of 1996 to prevent, remediate, and punish family violence. Despite legislative progress, the Commission's analysis of various sources leads it to consider that violence against women in Colombia persists and is worsening. Following is an analysis of the main contexts in which such acts of violence are detected.

1. Internal Armed Conflict

35. According to information received by the IACHR during its on-site visit to Colombia, in addition to the serious problem of the increase in the number of displaced women as a result of the internal armed conflict, there are numerous complaints regarding murders, injuries, unlawful deprivation of liberty, and intimidation by the various armed actors. At the same

time, it has been denounced that the women who lead organizing efforts in different parts of the country are victims of intimidation intended to force them to abandon a given region or to cease in their organizational activities.([12](#))

36. In the respective Chapter of this Report, the Commission has analyzed the situation of women as a group specially impacted by internal forced displacement. The data compiled by the Office of the Human Rights Ombudsman reveals that:

approximately 34,125 Colombian women are the heads of an equal number of homes displaced by the violence, with the responsibility of feeding, educating, and raising more than 170,000 boys and girls, and 74.60% of them are widows or were abandoned during the process of displacement.([13](#))

37. The increase in the number of women-headed households among rural homes has forced women to assume responsibility for meeting the basic needs and ensuring the very survival of the family group. These changes must be faced in extreme circumstances, such as threats to the lives of members of the family group.

38. The figures reflect an alarming reality: every two days a woman dies in Colombia for political reasons. Based on the information received by the Commission, from October 1995 to September 1996, 172 women were killed as a result of political violence, 12 were victims of forced disappearance, 35 were tortured, and 33 suffered threats and assassination attempts. In addition, it has been reported that, in the same period, the Army, Police, and other security forces were responsible for the deaths of 15 women, and for the forced disappearances of two women. According to this information, paramilitary groups killed 47 women and disappeared seven. The data also shows that 33 women were killed by armed dissident groups.([14](#))

39. The Commission views the situation of women in Colombia, as victims of the violence generated by the armed conflict, with great concern. By virtue of its domestic legislation and the international human rights commitments it has adopted, the Colombian State is under an obligation to adopt initiatives to reduce the impact of this situation, until it is finally eradicated. The IACHR will observe the development of such measures, pursuant to the functions entrusted to it by the instruments of the inter-American system and other applicable international norms.

2. Domestic and Sexual Violence

40. In general, the victims of domestic violence are women, and Colombia is no exception. The Commission notes that domestic violence generates responsibility for the State when the State fails to comply with its obligation of due diligence under the Convention of Belém do Pará and the American Convention. That obligation comprises the implementation by the State of reasonable preventive measures, as well as an adequate response to acts of domestic violence.([15](#)) In this section, the Commission will analyze the problems related to domestic violence and acts of sexual violence against women in Colombia.

41. Law 294/96 on family violence provides at Article 20 that the police authorities have an obligation to assist victims of family abuse in order "to hinder the repetition of the acts, remediate the physical and psychological sequelae, and prevent retaliation for such acts." To this end, it prescribes specific measures that should be adopted by the authorities, such as accompanying the victim to the nearest assistance center, her home, or some safe place; providing advice with respect to preserving the evidence of the acts of violence, and in terms of the victim's rights and the government services available in such circumstances. The same law prescribes precautionary measures, such as eviction of the assailant, and the requirement that the assailant undergo counseling and therapy and make reparation out of

his own funds for the harm caused.

42. The Commission notes the adoption of this law is a positive step towards the observance, in Colombia, of the human rights that tend to be undermined by domestic violence. The Colombian State was consulted by the Commission's Special Rapporteur for Women's Rights regarding the practical obstacles to obtaining access to the protection afforded by the law. In its response, the State first clarified that Law 294/96 is still new legislation. The State then stated:

[I]t is important to highlight the efforts that the Government entities are making to implement the law to make accessible certain services, such as providing therapeutic support for the assailants and shelters to serve as temporary homes to the victims of violence, and instituting the departmental and municipal Family Protection Councils. ([16](#))

43. Despite legislative progress and the efforts of the public and private sectors, the official figures reveal that violence against women in Colombia continues to occur at alarming levels, with a tendency to worsen. Such is the case that, in 1993, the Institute of Legal Medicine of Colombia issued reports on 15,503 cases of non-fatal injuries due to family violence, reported in the departmental capitals. This figure climbed to 19,706 in 1994, and 23,288 in 1995.

44. In Colombia, as in many other countries, most acts of domestic violence are still considered to be a private matter. Consequently, they are not reported, and it is not possible to determine the full extent of the problem. ([17](#)) According to information received by the Commission, less than half of battered women seek assistance, and only 9% of the women lodge a complaint with the authorities. ([18](#)) The Commission also received information according to which neither the State nor society is sufficiently sensitive to the need to tackle the problem of domestic violence. Impunity for the perpetrators of acts of domestic violence against women is practically 100%. ([19](#))

45. Sexual violence in Colombia is also a matter of special concern to the IACHR. In 1995, the Institute of Legal Medicine of Colombia issued 11,970 opinions in investigations of sexual crimes nationwide. Of the victims, 88% were women, for a rate of 34 women per 100,000 population. ([20](#)) According to the information received, it is estimated that there are some 775 rapes of adolescents annually, and that the rate of rape for this age group is 3.5 per 1,000 women. Nonetheless, only 17% of the victims denounce such acts. It should be noted that of all such attacks on women over 20 years of age, 47% are by relatives. ([21](#))

46. The Commission should emphasize that, as in other cases, the Colombian State has proceeded to update its domestic legislation to address the problematic situation described. Under a recent change in Colombian legislation, the punishments for crimes against sexual liberty and human dignity have been increased. These crimes currently include the categories of rape, sexual abuse and statutory rape. The crime of violent sexual intercourse (*acceso carnal violento*) is titled rape and is punishable by four to 10 years in prison. In a positive move, Law 360/97 repealed the Criminal Code provision by which the criminal action for all of the offenses mentioned was extinguished if the perpetrator married the victim.

3. Reproductive Health

47. The information provided to the IACHR indicates that in general terms the health status of Colombian females has improved in recent decades. In effect, life expectancy at birth for women has increased from 52 years, in the 1950s, to 72 years in the 1990s. This significant progress is attributed to the improvement in the quality of life, increased education levels, the spacing of births, and the expanded supply of services. ([22](#))

48. The Colombian Constitution recognizes that health is a public service, and that the State is responsible for guaranteeing everyone access to health services. Article 42 of the Constitution, complemented by Resolution 08514/86 of the Health Ministry, recognizes the right of every couple and of every individual to decide responsibly the number of children they will have, and the opportunity to do it. For its part, Law 100 of 1993 establishes family planning as part of mandatory basic health services which must be made available on a free and universal basis.

49. Notwithstanding what is mentioned in the previous paragraph, the Commission considers it necessary to refer to abortion, as it constitutes a very serious problem for Colombian women, not only from a health perspective, but also considering their rights as women, which include the rights to personal integrity and to privacy.

50. The Criminal Code in force in Colombia, at Chapter III, defines abortion as a crime against life and personal integrity. The penalty established at Article 343 of the Criminal Code is one to three years in prison for a woman who performs an abortion on herself or has someone else perform it. The IACHR observes that abortion is even criminalized in those cases in which a woman has become pregnant as the result of rape or non-consensual artificial insemination (Article 345 of the Criminal Code on "Specific Circumstances").

51. According to the information provided to the IACHR, despite the provisions cited, in Colombia some 450,000 abortions are performed annually. ([23](#)) The criminalization of abortion, together with the inadequate techniques and unhygienic conditions in which abortions are performed, make it the second leading cause of maternal mortality in Colombia. ([24](#)) According to statistics provided by the State, 23% of maternal deaths in Colombia result from poorly administered abortions. ([25](#))

52. The Commission has been able to perceive the reality of Colombian women through various sources of information, including from official sources, international agencies, and non-governmental organizations, as well as the testimony of the victims themselves. The situation of women in Colombia as victims of several types of violence is particularly worrisome for the Commission. The Commission thus reiterates its concern, echoing various organs of the international community, ([26](#)) and calls on the Colombian State to adopt effective measures to redress the current situation.

E. RECOMMENDATIONS

Based on the foregoing, the Commission formulates the following recommendations to the Colombian State:

1. The State should adopt additional measures to disseminate information regarding the Convention of Belém do Pará, the rights protected by it, as well as the mechanisms of supervision.
2. The State should ensure the full and effective implementation of national legislation that protects women against violence, assigning for this purpose resources which will allow it to carry out training programs relating to that legislation.
3. The State should guarantee the availability and promptness of the special measures provided for in the national legislation to protect the mental and physical integrity of women subjected to the threat of violence.
4. The State should study the mechanisms and procedures in force in terms of judicial proceedings to obtain protection and reparation for sexual crimes, so as to establish effective guarantees that will allow the victims to file complaints against the perpetrators.
5. The State should develop training programs for police and judicial staff, regarding the causes and consequences of gender violence.
6. The State should adopt the necessary measures to prevent, punish and eradicate acts

of rape, sexual abuse, and other forms of torture and inhuman treatment committed by State agents. Specifically regarding detained women, such measures should include treatment compatible with human dignity, judicial supervision of the causes of detention, access to legal counsel, to family members, and to health services, and the proper safeguards for bodily inspections of the detainees and their relatives.

7. The State should exercise due diligence in all cases of gender violence, so that they may be subject to prompt, complete and impartial investigative measures, resulting in the adequate sanction of the perpetrators and reparation for the victims.
8. The State should provide information to the population on the basic norms regarding reproductive health.
9. The State should adopt additional measures to fully incorporate gender perspective into the design and implementation of its public policies.
10. The State should develop systems for the compilation of statistics necessary to formulate adequate policies relating to gender issues.
11. The State should adopt the actions necessary to allow civil society to be represented in the process of formulating and adopting policies and programs for women's rights.
12. The State should seek additional funding, so that the human and material resources dedicated to advancing the role of women in Colombian society may be compatible with the priority nature of this task.
13. The State should implement, as a part of its strategy to combat illiteracy, programs targeted to reducing that problem in less advantaged areas, where the rate of illiteracy is higher for girls and women.
14. The State should design and implement educational initiatives for persons of all ages, with a view to changing attitudes and stereotypes and to begin modifying practices, based on the idea of inferiority or subordination of women.

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(1) Comisión Colombiana de Juristas, Colombia, derechos humanos y derecho humanitario: 1996, July 1997, at 160 [hereinafter 1996 Comisión Colombiana Report].

(2) Inter-American Commission of Women, National Report on Colombia, XXVIII Assembly of Delegates, November 11-15, 1996, Washington, D.C., OEA/Ser.L/II.28, CIM/doc.36/96, November 6, 1996, at 7-8.

(3) Office of the Presidency, Colombia paga la deuda social a sus mujeres, Informe del Gobierno de Colombia en la IV Conferencia Mundial sobre la Mujer, September 1995, at 28.

(4) Presidential Adviser for Youth, Women, and the Family, National Report on Colombia, *cited by* Olga Amparo Sánchez G., Las mujeres en la década 1985-1995, Movimiento Social de Mujeres, 1994, at 55.

(5) The Status of Women in the Americas - Colombia (document submitted by the Colombian Government in response to the questionnaire from the Inter-American Commission's Special Rapporteur for Women's Rights), January 1997, at 127 [hereinafter The Status of Women].

(6) 1996 Comisión Colombiana Report, at 162.

(7) Inter-American Commission of Women, at 12-13.

(8) *Id.* at 13.

(9) Constitutional Court Decision C-470, 1997.

(10) IACHR, The Status of Women, at 113-115.

(11) 1996 Comisión Colombiana Report, at 168.

(12) Asociación Nacional de Mujeres Campesinas, Indígenas y Negras de Colombia ("ANMUCIC"), Corporación Casa de la Mujer, and Red Nacional de Mujeres - Bogotá Regional Office, Continúa la violencia contra las mujeres colombianas (report submitted to the IACHR during its on-site visit to Colombia, December 1997), at 2 [hereinafter Continúa la violencia].

(13) Office of the Human Rights Ombudsman, Fourth Annual Report of the Human Rights Ombudsman to the Congress of Colombia, 1997, at 69.

(14) 1996 Comisión Colombiana Report, at 23-24.

(15) *See* Rhonda Copelon, Intimate Terror: Understanding Domestic Violence as Torture, *in* Rebecca J. Cook, ed., Human Rights of Women: National and International Perspectives, republished by the Asociación Probienestar de la Familia Colombiana ("PROFAMILIA"), 1997, at 132.

(16) The Status of Women, at 25.

(17) The Institute of Legal Medicine of Colombia itself refers to "underreporting," as it makes it clear that the figures do not represent all such injuries that occurred in the country.

(18) Olga Amparo Sánchez G., *cited by* the 1996 Comisión Colombiana Report, at 167.

(19) Information provided to the IACHR by sociologist Norma Enríquez Riascos, from the organization Casa de la Mujer, during the meeting held December 6, 1997, in Bogotá.

(20) Institute of Legal Medicine of Colombia, Bulletin No. 8, March 1996.

(21) Exploratory study in Bogotá by Prada Salas Helena et al., University of the Andes, 1995, cited by Continúa la violencia, at 14.

(22) Legal Center for Reproductive Rights and Public Policy (Centro Legal para Derechos Reproductivos y Políticas Públicas - "CRLP") and DEMUS Women's Rights Law Office, Mujeres del Mundo: Leyes y Políticas que afectan sus vidas reproductivas - América Latina y el Caribe, November 1997, at 75.

(23) CRLP and DEMUS, at 79.

(24) PROFAMILIA, La penalización del aborto en Colombia: una forma de violencia estatal (report provided to the IACHR during its on-site visit to Colombia in December 1997).

(25) Lucero Zamudio, El aborto en Colombia; dinámica sociodemográfica y tensiones socioculturales, in La justicia en nuestro tiempo, Externado University of Colombia, pp. 13-14.

(26) In this regard, it should be noted that the United Nations Human Rights Committee, in its final observations on Colombia, noted as follows:

The Committee expresses its concern over the situation of women who, despite some improvements, continue to be subject to de jure and de facto discrimination, in all spheres of economic, social and public life. It notes in this regard that violence against women remains a major risk to their right to life which needs to be more effectively addressed. It is also concerned over the high mortality rate of women resulting from clandestine abortions.

Human Rights Committee, CCPR/C/79/Add.76, May 5, 1997, par. 24, at 7.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER XIII

THE RIGHTS OF THE CHILD

A. INTRODUCTION

1. Respect for the rights of the child is a fundamental value in a society that claims to practice social justice and observe human rights. This respect entails offering the child care and protection, basic parameters that guided in the past the theoretical and legal conception of what such rights should embody. It also means recognizing, respecting, and guaranteeing the individual personality of the child as a holder of rights and obligations.

2. A recent analysis on this matter in Colombia noted:

Girls and boys in Colombia suffer from the hardships of social injustice that translate into lack of access to such basic necessities for survival as proper diet, health, housing, and conditions that guarantee integral development, such as the right to education, recreation, and culture, and they find themselves subjected to labor exploitation. The alarming thing about the situation of children in Colombia is that the right to life and personal integrity itself is frequently violated since an increasing number of children suffer violations of these rights as a result of the internal armed conflict as well as social intolerance in the form of "social cleansing." ([1](#))

3. The Colombian authorities themselves acknowledge that "although the situation of children is certainly far from being a quantitative problem, this type of analysis contributes significantly to a visualization of the complex problems relating to abandonment and poverty:

- 7.5 million children, or 41% of the child population, live in poverty, and 3 million children, or 15.6%, live in extreme poverty.
- The number of abused children is approximately 2 million.
- There are 15,000 minors who are street children, and, of this number, 60% have no other alternative.
- There are 2.4 million children and adolescents between the ages of 12 and 17 not enrolled in school.
- Nearly 2 million minors between the ages of 12 and 17 are working, and 90% of these children perform hazardous tasks. Only 1.2% of working children benefit from minimum labor support, guarantees and working conditions.

- It is calculated that one minor is kidnapped every other day.
- Ten percent of the population infected with HIV consists of children between the ages of 10 and 18.
- Arrests are executed in only 1.7% of proceedings for sexual abuse, homicide, and kidnapping of minors, and only 18.3% of trials end in a final verdict. (2)

4. Although the administration of ex-President Samper "in preparing the National Development Plan concentrated its efforts on public and social policies for human development, proposing guidelines that included creating a culture that favored the child," (3) information received by the Inter-American Commission on Human Rights (the "Commission," "IACHR" or "Inter-American Commission") indicates that the situation of children in Colombia, far from improving, or at least remaining stable, seems to have deteriorated in recent years. Of course, the problem cannot be looked at in isolation. The country's social, economic, and political conditions, which have also been examined in other Chapters of this Report, are a determining factor in the problems affecting childhood. The Commission will consider in this Chapter a number of important factors concerning the situation of children in Colombia in light of the norms that exist in this area and taking into account the special obligation of the State to protect the child.

B. LEGAL FRAMEWORK

5. Generally speaking, it can be affirmed that the problems affecting children in Colombia are not due to the absence of proper norms. On the contrary, Colombia has a sound and broad international and national legislative structure that establishes detailed protective measures concerning the rights of the child. The problem is that, in practice, this series of norms is not applied to the actual situation of most children in Colombia.

1. International Norms

6. The American Convention on Human Rights (the "Convention" or the "American Convention") states, at Article 19, that: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state". Since the American Convention first entered into force, the question of the rights of the child has gained in importance and has evolved considerably to the extent that more specific international instruments have been developed in this area that can also be applied in Colombia. (4)

7. The main international instrument that specifically governs the rights of the child is the Convention on the Rights of the Child, adopted by the United Nations in 1989, and ratified by Colombia on January 28, 1991. (5) With respect to this Convention, it has been maintained that:

In its final form, the Convention on the Rights of the Child is a comprehensive treaty on human rights. Following the model of the Universal Declaration of Human Rights, the Convention brings together in one treaty both civil and political rights as well as economic, social, and cultural rights. Moreover, the Convention goes beyond the scope of the Universal Declaration by incorporating standards of humanitarian law and including new rights never before protected by an international treaty on human rights. (6)

8. In accordance with the Convention on the Rights of the Child, the States parties have the obligation to respect and ensure for each child within their jurisdictions the rights established in the Convention without distinction as to race, color, sex, language, region, political opinions, nationality, ethnic or social origin, property, incapacity or any other status of the

child, his parents, or his legal guardians. ([7](#))

9. The Convention on the Rights of the Child establishes that the States parties have the obligation to guarantee the creation of institutions and services for the care of the child ([8](#)) and to adopt legislative, administrative, social, and educational measures to protect children from all forms of physical or mental violence, bodily harm, or abuse, negligent treatment, mistreatment, or exploitation, including sexual abuse, during the time they remain under the care of their parents, legal guardians, or any other person who has them within his/her charge. ([9](#))

2. National Legislation

10. Colombian national legislation on the child has changed over the years, mainly due to the different conceptions that have existed with respect to the principles that should be included in such legislation. Law 7 of 1979 established basic principles for the protection of the child, set up a National Family Welfare System and reorganized the Colombian Family Welfare Institute. At the present time, the main legislation on the child is the Code for Minors passed in 1989, pursuant to Decree Law 2737. This Code reevaluated a number of earlier provisions and consolidated legislation in the areas of health, education, work, social assistance, and reeducation of the child.

11. In 1991, Colombia adopted a new Constitution, "which established the rights of the child as fundamental rights, made the State, society, and the family directly responsible for enforcing them, established integral protection and fully integrated the philosophy and theoretical framework of the International Convention on the Rights of the Child". ([10](#))

12. Article 44 of the Constitution states that:

The fundamental rights of the child include: life, physical integrity, health and social security, a balanced diet, name and nationality, a family and the right not to be separated from it, care and love, education and culture, recreation, and free expression of opinion. The child shall be protected from all forms of abandonment, physical or emotional violence, abduction, sale, sexual abuse, labor or economic exploitation, and hazardous work. The child shall further enjoy all other rights established in the Constitution, the law and the international treaties ratified by Colombia.

The same article declares that "the rights of the child shall prevail over the rights of others".

13. Since 1991, a number of special laws have been enacted for specific situations, such as Law 25 of 1992 regulating dietary obligations, personal care of children and visitation rights, and Law 48, also of 1992, on recruitment in the military and military service. In its observations to this Report, the State named several other laws that have been promulgated in order to better protect the rights of children: Law 294 of 1996 includes provisions designed to prevent, remedy and sanction domestic violence; Law 311 of 1996 creates the National Registry for Family Protection which will include the names of individuals who have failed to pay child support; Law 360 of 1997 makes certain changes to the laws regarding sex crimes.

14. However, the 1989 Code for Minors, currently in force, is based on the theory of "irregular situations," whose principles are at variance with the doctrine of "integral protection", which guides both the Convention on the Rights of the Child and the 1991 Colombian Constitution. In accordance with the theory of irregular situations, the child is conceived as a subject of the law, to whom the State must offer protection, provided that the child has been declared to be in an irregular situation. For the mechanisms of protection provided under the law to function, the child must be outside of the protection of the law. Under this regime, the child "is conceived as a being who is incompetent as an individual and

socially alienated", ([11](#)) who needs protection but not as an individual with full rights.

15. In contrast, the 1991 Constitution opts for the modern theory of "integral protection," since it has granted constitutional scope to the rights of the child, giving them the character of priority rights and has imposed on the family, society, and the State the obligation of guaranteeing the child harmonious and integral development and the full exercise of his rights. Similarly, when Colombia ratified the Convention on the Rights of the Child in 1991, the country assumed responsibility for guaranteeing the enforcement of all rights established therein.

16. A draft Children's Code was recently introduced to the Colombian Congress to replace the present Code of Minors. The new draft Code is conceived under the parameters of the theory of integral protection of the child. According to the rationale for this bill:

To assume integral protection involves the commitment to offer the child population effective access to public services that guarantee the fundamental rights through a focus on the basic needs of each citizen. With respect to children, it means guaranteeing the necessary conditions for the integral development of each child. ([12](#))

17. The Commission expresses its concern regarding the information provided by the State which indicates that the Colombian Congress decided to terminate its consideration of the draft Children's Code.

C. STREET CHILDREN

1. The Situation of Street Children

18. One of the most serious problems that has come to the Commission's attention affecting children in Colombia concerns street children, who are adversely affected by extremely serious circumstances of different kinds.

19. There are a large number of children in Colombia who make the streets their permanent home, and many more who roam the streets by day and return home at night. In examining this phenomenon, one must first try to identify some of the immediate causes of the problem.

20. Some authors have divided these causes into four basic types: Socio-cultural - the social differences and the inequitable distribution of wealth produces a great number of poor people who fight for survival. These people include boys and girls who pursue productive activities to ensure their survival and to help their families; Violence - many street children are forced out of their homes by the violence that prevails in the countryside and in poor neighborhoods in cities; Family - the street child's family is usually a highly dysfunctional one pervaded by physical and verbal aggression. Such a family easily expels the child from its nucleus; and Educational - schools in poor neighborhoods are unable to adjust to the demands and expectations of children. They are exclusive and intolerant and unable to understand the reality surrounding the children and their families. ([13](#))

21. Apart from the proximate and immediate causes of the complex problem of Colombian street children, it must be understood that, as some authors have correctly pointed out:

The problems affecting street children go beyond isolated pathological situations. They reflect a total economic imbalance and a breakdown in the structure of society that could be compared to a time bomb if preventive and corrective measures are not soon taken. ([14](#))

22. Street children in Colombia have been divided into five distinct groups: Workers -

forming the largest group, they are engaged in informal economic activities such as selling cigarettes and candy; Delinquents - the members of this group engage in theft and armed robbery. They are extremely aggressive and generally return to their homes after committing their illegal activities; Beggars - this group accounts for a significant number of street children, who beg for money. They are often pressured into doing so by their families as a means of supplementing household income; Sexually exploited - although some members of this group are boys, by far the majority are girls, who adapt to this livelihood as a means of survival in the street. Their decision to do so is based on the need for money and protection; The typical street urchin - the members of this group are distinguished by their rags, their tendency to live in the most depressed parts of the city, and the use of psychedelic drugs, particularly hash, marijuana, and cocaine. (15) Many children exhibit characteristics that could apply to one or more groups, such as, for example, delinquents and the typical street urchin. (16)

23. Many street children take drugs regularly and are not the least aware of the harm being done to them. The drug becomes part of their subculture. Of course, there are different factors that characterize the problem. To be admitted to the group, the child needs to take drugs as a kind of act of brotherhood with the other members of the group. The drugs also function as an escape to bear the hard world of the street: drugs help the child to "forget" that he is hungry, cold, and afraid. (17) By day, the drug also fulfills the function of pastime since drug use gives the child the idea that time is passing more quickly; and by night it helps the child to sleep in the street.

2. Obligations of the State

24. The right of the child to the measures of protection that his condition as a minor calls for places on the State an obligation to take steps to prevent children from being compelled to become street children. In this sense, the Convention on the Rights of the Child recognizes the right of the child "to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development". (18) As noted earlier, poverty and the inability to satisfy basic needs are often reasons why children turn to the street.

25. The American Convention and the Convention on the Rights of the Child provide that the family is responsible for guaranteeing the child's living condition. Nevertheless, these instruments also set out a role for the State in protecting the child. According to the Convention on the Rights of the Child, the States parties "shall take appropriate measures to assist parents . . . to implement this right [to an appropriate standard of living] and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing." (19)

26. Accordingly, the Colombian State has the obligation to intervene to satisfy the basic needs of the child, when his family is not in a condition to do so, before the child is forced to go out into the street because he does not have a roof over his head or to seek money, through work, theft, or begging in order to feed himself.

27. The Commission recognizes that the duty of the State is one of making every effort to afford full protection, in accordance with its possibilities. Thus, the Convention on the Rights of the Child outlines the measures that must be taken by the State to guarantee the best possible nutrition and housing "in accordance with national conditions and within their means." (20) Moreover, with respect to economic and social rights in general, the American Convention commits the States to taking measures "with a view to achieving progressively . . . the full realization of [those] rights." (21)

28. The nature of the State's duty explained in the preceding paragraph does not imply that a specific obligation does not exist. Given that children are in need of special protection in view of their conditions as minors, the duty of guaranteeing them a suitable living standard

must be accorded priority in State programs and public spending. Based on the information received by the Commission on the seriousness of the problem of street children, recognized by the State authorities themselves, and the status of State resources, it cannot be concluded that the State of Colombia is discharging fully its responsibilities in this regard.

29. In addition to guaranteeing a suitable living standard for the child, the Colombian State has the obligation to fight against the other causes of the phenomenon of street children. For instance, the Convention on the Rights of the Child requires that the State guarantee compulsory primary education free of charge, make higher learning accessible to all and take steps to promote regular attendance at school. ([22](#)) The Convention also establishes that the State must take the necessary steps to "protect the child against any form of harm or physical or mental abuse, neglect or negligent treatment... so long as the child is in the custody of his parents, a legal representative, or any other person who has the child in his charge". ([23](#)) The Commission is of the view that the Colombian State can stop the migration of children to the streets through the strict application of these obligations.

30. The Commission notes that, in addition to preventing children from taking to the streets, the State also has the obligation to provide special protection to minors who have already become street children. For children in the streets, living conditions are even more precarious, underscoring the evident need for intervention and assistance by the State. Furthermore, street children are exposed to numerous dangers. For instance, as explained before, street children tend to take narcotics and other drugs. ([24](#)) It is the State's duty to prevent these dangers, particularly through measures that take children off the streets.

31. According to information received by the Commission, the State of Colombia has not taken effective measures to guarantee the rights of children now in the streets. Most shelters and other establishments that provide services to street children are private. Far from receiving protection from the Colombian State with a view to improving their situation, many street children are victimized, mistreated, and even murdered, sometimes by agents of the State itself.

3. Violence against Street Children

32. Street children are continually subjected to verbal, physical, and sexual abuse. During its visit to Medellín, in the Department of Antioquia, the Commission interviewed minors who had lived and/or worked in the streets. These minors described to the Commission numerous incidents of violence, most of which had been at the hands of the Colombian National Police. For instance, the Commission learned of cases in which teenage prostitutes on the street had been beaten and raped by members of the police force.

33. In addition to violence and mistreatment, street children face the threat of being murdered through a deplorable practice known as "social cleansing", a euphemism for extermination by extrajudicial killing sometimes attributed to the police. ([25](#)) The magnitude of the problem makes it even more alarming: it is estimated that every day seven children are murdered in Colombia. ([26](#)) Some experts have calculated that street children account for 44% of this figure.

34. Many of the murders of street children are committed by private individuals. These cases, for which the State is not originally responsible, frequently may become human rights violations, since the State apparatus does not investigate or punish those responsible.

35. In other cases, paramilitary groups or paid "social cleansing" groups commit the murders. The Commission has been informed that, in many cases, agents of the State collaborate in these murders or incur in omission by failing to act to prevent them. ([27](#)) Some of the groups involved in "social cleansing" hire children as bands of assassins in order

to carry out their deathly task, thereby producing a situation in which children are killing other children.([28](#))

36. The Commission has been informed that investigations of the extrajudicial killing of minors attributed to members of the National Police are usually conducted by military rather than civilian courts, thus denying due process and judicial protection to the victims and their families.([29](#)) Hence, Court 89 of the Military Criminal Justice System took jurisdiction over the investigation of the death of Rummenigge Perea, a child of 12, whose murder was alleged to have been committed by members of the National Police of the city of Cali. Military courts are not independent courts that carry out serious and impartial investigations of flagrant human rights violations committed by members of the military or the police, such as the extrajudicial killing of street children.

D. CHILD LABOR

37. According to the statistics provided by the Colombian State, from 15% to 20% of children between the ages of 5 and 18 work.([30](#)) According to the information provided by the State, the most recent governmental statistics, published in November 1998, place the number of working children between 12 and 17 years of age at more than 1 million. These governmental statistics show that there was an overall decrease between 1992 and 1996 in the number of children who work.

38. Reports received by the Commission from non-governmental sources indicate that approximately 2.5 million children in Colombia between the ages of 6 and 17 are victims of labor exploitation. One half of these children are not paid any wages and the remainder receive less than the minimum wage, or say, less than 85,000 pesos per month (equivalent to approximately US\$80). Twenty percent of child workers carry out high risk activities, some of which are legal (mining, construction, rock and sand extraction, garbage collection, etc.),([31](#)) and others illegal, such as work as hired killers.

39. A study conducted by the Ministry of Labor and Social Security asserts that:

The conditions of extreme poverty in which a very high percentage of our population lives is one of the principal causes of child labor. In addition, we find other factors such as the breakdown of the family unit, which causes the child at a very early age to assume responsibility for supporting himself and his family, because he has been abandoned by his parents or is a victim of domestic violence and because of instability or breakdown of the family. There is also another factor of a social and cultural nature, namely poverty, which causes child labor to become a question of survival.([32](#))

40. Poverty and hunger suffered by the child himself and his family are reasons that force the child, rather than going to school and learning to prepare to perform his role as an adult in a dignified way and rather than being with his family, which should also be the appropriate space for the child's personal, emotional, and intellectual growth, to carry out for the most part informal work, in a situation characterized by:

- Work days that are longer than what is permitted by law;
- Wages below the statutory minimum;
- Without access to transport;
- Without permission to work;
- Without social security, with risks to his physical, mental, and social health;
- Without access to formal education;
- Exploited by his parents themselves or other adults;
- Without social benefits: severance, interest on severance, services, work clothes and shoes, death benefits, vacations.

- o Without maternity benefits;
- o Without suitable conditions in which to perform his work;
- o Faced with risks to life and health.([33](#))

41. The Commission agrees with the conclusion of UNICEF's Regional Office that child labor is the greatest risk to well-being and normal development of the child.([34](#))

42. The Commission notes that the Convention on the Rights of the Child does not establish a minimum age for work, requiring only that the State set a minimum age in their internal legislation. However, the international community tends to suggest that child labor should be eliminated completely, for children under the age of 12.([35](#)) For example, the 1973 Minimum Age Convention 138 of the International Labour Organization provides that the minimum age for admission to employment established in domestic legislation "shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years."([36](#)) The Convention establishes several exceptions to this general rule but absolutely prohibits the incorporation into the work force of children under twelve years of age.([37](#))

43. The Children's Code of Colombia follows this tendency, and prohibits, in general, work by children under 14. The Code provides that, in special cases, children between the ages of 12 and 14 may be given permission to work.

44. However, there is no effective control in practice to ensure that children under 14 years of age do not work. The new government statistics indicate that, for children between the ages of 7 and 11, one out of every 55 children in the city works and one out of every 11 in the country works.

45. The Convention on the Rights of the Child does guarantee the right of the child to be protected from economic exploitation and the performance of any work that may be hazardous or may interfere with his education or that is harmful to his health or development.([38](#)) Similarly, institutions such as UNICEF have insisted on the need to totally eliminate child labor, regardless of age, in the case of illegal or dangerous work.([39](#))

46. Colombian legislation seeks to guarantee the right of the child to be free from economic exploitation and hazardous work. The Code of Minors establishes, for example, limits on work schedules for children, and prohibits children from engaging in certain kinds of work considered hazardous, etc. Nonetheless, the Commission has also learned from reliable sources that many minors work protracted hours, with compensation below the legal minimum wage, in conditions that are unsafe and hazardous.([40](#)) The State has recognized that the number of hours worked by minors has decreased but that a significant number of children under the age of 18 continue to work longer hours than those permitted by the law.

47. The Commission shares the view of the Regional Office of UNICEF that the two institutions that can effectively reduce the incidence of child labor in the region are schools and the family.([41](#)) Accordingly, measures taken by the State to provide protection should not be limited to legislation and punishment of child labor, but also to efforts to improve quantitatively, but qualitatively as well, the educational system and to provide economic support for families.

E. CHILD VICTIMS OF THE ARMED CONFLICT

48. Another serious problem affecting children in Colombia has to do with the internal armed conflict. This conflict and the resulting forced displacement of entire families have a direct impact on young boys and girls. Some of the most serious of these effects are migration, since children and their families are often forced to leave the areas of conflict, and the

recruitment of children, which forces the child to become directly involved in the conflict, often leading to his death.

1. Displaced Children

49. Although the Commission examines forced displacement more extensively in the pertinent Chapter of this Report, it is important to note here that the armed conflict in Colombia and the resulting situation of displacement has a direct and serious impact on the situation of children. According to a study performed by UNICEF, there are approximately 520,000 displaced children as a result of the armed conflict. (42) Although it has been said that there is no way to understand the psychological and moral devastation that the war causes to children, at the social level, the abandonment of the home and the (usually peasant) family's regular economic activities means that the children must leave their friends, their loved ones, their school, their customs, and the traditional values of their milieu and must begin to establish themselves as social beings in a new environment, that is socially, culturally, and economically different from the one they are used to. (43)

50. As to the family structure, the armed conflict and the resulting situation of displacement has the effect of eventually disrupting or destroying the family. It has been estimated that 60% of displaced children were forced to flee with other members of their families whereas 63% confirm that at least one member of their family was murdered or was a victim of an attempt on his life. With respect to the quality of life, the displaced child is usually in extremely needy conditions, because his parents are unemployed or because of malnutrition, disease, and other factors that can cause the quality of life of children to deteriorate radically in these circumstances. (44)

51. Although in July 1997, the Congress of Colombia passed Law 387 for the prevention and care of the displaced population, critics of this law state that:

It gives no consideration to care for displaced children and to guarantee their rights, and does not take any steps in this regard. Matters such as health care, proper diet, return to school, psychological recovery or recreation are not dealt with in the law and are not part of State policy on care, which increases the factors of emotional disturbance coincident and subsequent to displacement for children and child victims of this serious human rights violation. (45)

2. Recruitment of Children

52. It has been asserted rightly that "one would have to be blind not to see that children are physically and psychologically unprepared to participate directly or indirectly in armed conflicts." Many children are involved, however, in the war "as active members of one or other group, as human shields, messengers, spies, or carriers in the transport of arms and placement of bombs". (46)

53. The recruitment of children under 15 years of age is prohibited under international law, although minors between the ages of 15 and 18 may be inducted into the armed forces. In accordance with Protocol II of international humanitarian law, children under 15 may not be recruited into the armed forces. (47) The Convention on the Rights of the Child favors recruitment of persons over 18 although it stipulates that 15 is the minimum age for recruitment to the armed forces. (48)

54. The Commission notes that, upon ratification of the Convention on the Rights of the Child in 1991, the Colombian State formulated a reservation to the article permitting the recruitment of all minors over 15 years of age, and established 18 as the minimum age for recruitment in Colombia. The Colombian Army continued, however, to recruit minors under

18 years of age and on August 2, 1996, the reservation was withdrawn.

55. At the present time, the Colombian Army permits the recruitment of minors. Article 10 of Law 48 of 1993 specifies that "all Colombian males are required to define their military status (i.e. register to be called to service) upon attaining the age of majority, with the exception of secondary school students, who become eligible upon graduation." Hence, Law 48 permits the recruitment of minors who complete their secondary school studies before the age of 18. Recently, the Colombian State decided to restrict the recruitment of minors and enacted new legislation, whereby grade 11 secondary school students that had not yet reached the age of 18 and who are selected for military service, may postpone such service until the age of 18. The new law nonetheless provides for the possibility that minors, who wish to do so voluntarily, may carry out their military service immediately, even before the age of 18 with the written authorization of their parents. ([49](#))

56. The legality of the recruitment of minors between the ages of 15 and 18 notwithstanding, the guarantee of special protection for minors still applies. Accordingly, minors who are recruited are not to receive the same treatment as recruits over the age of 18. The Convention on the Rights of the Child establishes that for recruits between the ages of 15 and 18 the States Parties shall give preference to those who are older. ([50](#)) The Commission understands, also, that the obligation to provide special protection to minors calls for precautions to be taken to ensure that recruits under the age of 18 are not assigned to combat duty.

57. Colombian law does not stipulate that, for purposes of recruitment, individuals over the age of 18 should be given preference over minors. Accordingly, minors under the age of 18 who have completed their secondary school studies are just as likely to be recruited as individuals over the age of 18. The 1997 legislation seeks to remedy this situation by allowing minors who are drafted to postpone their military service. However, it is probable that many minors choose to perform their military service immediately upon completing secondary school, without postponing their recruitment, so as not to subsequently interrupt their university studies after they have reached the age of 18.

58. In theory, Colombian law sets limits on the type of work that minors who are recruited for military service may perform. According to the legislation in force, minors must be assigned to areas of support services, logistics, administrative services, and social services. The Constitutional Court of Colombia has also held that "soldiers who are minors, as a general rule may not be allowed to participate in combat." ([51](#)) However, the Commission has learned from reliable sources that, in practice, minors are assigned in certain cases to combat zones.

59. It has also been reported that some units of the army use minors who have deserted from the guerrillas to obtain information leading to the capture of guerrillas, the seizure of arms, etc. ([52](#)) These minors are inducted into the armed forces instead of being taken to court for trial. Sometimes, they remain in uniform on military bases.

60. Also, the Commission has been informed that paramilitary and armed dissident groups include young girls and boys, many of whom are under the age of 15, in their ranks. These minors are often recruited under duress.

61. Although the armed dissident groups publicly deny the recruitment of minors, this practice becomes evident when children are reported captured or killed in action. It was reported that between October 1995 and September 1996, 17 minors took part in guerrilla actions in the armed conflict. ([53](#))

62. With respect to recruitment of minors by paramilitary groups, a report by the Office of

the Human Rights Ombudsman estimates that approximately 15% of the members of these groups are minors. The report further affirms that, in some areas, the percentage rises to as much as 50%. (54) The Commission has also been informed that paramilitary groups go to low-income areas or camps of displaced persons, offering sums of money to attract children to their ranks. For instance, in a single day in September 1997, members of the Peasant Self'-Defense Organizations of Córdoba and Urabá (Autodefensas Campesinas de Córdoba and Urabá - "ACCU") paramilitary group recruited, with offers of money, 50 minors from the Policarpa neighborhood of Apartadó. According to information received by the Commission, in other cases, the paramilitary groups simply carry off the children by force.

63. When groups of armed dissidents and paramilitary groups induct children under 15 into their units, they are violating the principles of international humanitarian law. Both paramilitary groups and armed dissidents have suggested that they are prepared to negotiate the possibility of excluding minors from the armed conflict. On July 15, 1998, the National Liberation Army (Ejército de Liberación Nacional - "ELN") signed a humanitarian agreement, whereby the dissident organization undertook to refrain from inducting children under 16 years of age for permanent military service. However, neither the paramilitary groups nor the armed dissidents have yet taken definitive concrete steps to exclude minors from their ranks.

64. It should be added that the fact that parents give their consent for their children to join the armed forces of the different parties in the internal conflict in Colombia does not absolve the participants from responsibility when the provisions of international human rights law and international humanitarian law on the recruitment of minors are violated.

65. The practice of the participants in the armed conflict of inducting children into military ranks causes the parties in the conflict to treat these children as combatants subject to attack, with the result that children die in combat every year. The practice also has an adverse effect on the lives of children who have not participated directly in the armed conflict. These children are often threatened, abducted, or murdered by armed groups who believe that they have collaborated with the enemy. These groups justify their acts against children on grounds that there do exist children in the ranks of the armed groups.

F. PROTECTION OF CHILDREN

66. Major studies conducted recently by non-governmental organizations concerning protection of children conclude that in Colombia there is no organized system of family welfare and that family service agencies are not very efficient, and they do not coordinate their efforts with one another. It was also concluded that there are no policies or procedures specifically directed at children. (55) An analysis of the administration of justice in relation to children also concluded, after studying Police Stations, Defenders' Offices, and Family Courts, that the family jurisdiction is chaotic and therefore in need of immediate reform. (56)

67. For its part, the State has recognized that the system of family welfare in Colombia has not yet been consolidated, even though it was first legally established by Law 7 in 1979. The State points out that there nonetheless exist a number of strategies and institutions dedicated to improving the situation which children face. In this regard, the State emphasizes the work of the Colombian Family Welfare Institute, the government entity that heads the family welfare system. All of the various organisms and entities that provide assistance to minors form part of the Institute. According to the State, the laws which govern the activities of the Institute establish clearly the functions of this agency, which relate to the development of policies for protecting children and guaranteeing their rights. The State also provided information regarding the attention that the Colombian Family Welfare Institute provides each year to close to 200 youths who have renounced their involvement in the armed conflict. Finally, the State made reference to the work of the Delegate Procurator for Minors and the Family. The work of the Delegate Procurator includes the creation of Networks for

Prevention and Attention for Abused Children throughout the country. The Commission is grateful for this information and will continue to analyze the administrative and judicial attention given to the rights of children.

G. RECOMMENDATIONS

On the basis of the foregoing, the Commission makes the following recommendations to the State of Colombia, some of which are based on those made by the United Nations Committee on the Rights of the Child: ([57](#))

1. The State should accord due importance and priority to the issue of the rights of the child. To this end, it needs to be considered that many of the measures needed for children do not require substantial financial investment so much as a sincere acknowledgement of the problem and a serious political and social commitment to resolve it by means of concerted policies for the short, medium, and long term.
2. The State should take steps to disseminate broadly the rights of the child, particularly amongst children themselves, parents, the defenders of children, teachers, judges, the police, the military, professional groups that work with or for children, and in general all officials concerned with this matter.
3. The State should establish a system to coordinate children's programs and to consolidate the National System of Family Welfare, with a view to achieving effective coordination between the institutions involved with the rights of the child. To this end, it is important that quantitative and qualitative information be gathered and analyzed systematically to evaluate the progress that has been made.
4. The State should grant due importance to the efforts being pursued by non-governmental human rights organizations and other members of civil society on behalf of the rights of the child and should support and recognize this work. State agencies should be encouraged to listen to these organizations and to allow them, insofar as is possible, to participate in designing, preparing, and implementing State policies for the rights of the child.
5. The State should take strong steps to guarantee the right to life of all children in Colombia. Such steps should include measures that guarantee effective protection of the rights of the child against acts of murder and violations of physical integrity, and assurances that such acts will be investigated in a serious, impartial and effective manner by civilian courts and severely sanctioned.
6. The State should carefully study its system of recruitment for the Military Forces, taking into account the special protection that must be accorded to minors.
7. The State should take appropriate steps, as available resources permit, to allocate sufficient funding from the budget to services for children, particularly in the areas of education and health.
8. The State should incorporate children currently not receiving school instruction into the education system and should reevaluate the objectives, methods, and other parameters for education that is being imparted to children.
9. The State should ensure observance of the legal provisions for the protection of the working child.
10. The State should strengthen the programs established to protect children from the internal armed conflict and should design new programs to protect these children.
11. The State should adopt and implement the necessary reforms to the family jurisdiction.

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(1) Humanidad Vigente, Situation of the human rights of children in Colombia, 1997, at 1.

(2) Minister of Justice and Law, General Directorate for Prevention and Conciliation. Brief on the Rationale of Draft Legislation for a New Children's Code to Replace Decree 2737/89, Code of Minors, 1997, at 1 [hereinafter Brief on Draft Legislation]. The Commission should stress that the figures given by nongovernmental organizations are different. For

instance, Humanidad Vigente estimates that 30,000 children between the ages of 7 and 14 live in the streets.

(3) Id. at 3-4.

(4) The need to focus special attention on the situation of children was originally acknowledged in the 1924 Geneva Declaration of the Rights of the Child, and subsequently in the Declaration on the Rights of the Child adopted by the United Nations General Assembly in 1959. The general instruments on human rights, as well as certain instruments emanating from specialized agencies, such as the International Labor Organization ("ILO"), contain provisions on the rights of the child. The most important ILO instrument on this issue is the Minimum Age Convention 138 of 1973. That instrument provides that the States Parties undertake "to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons."

(5) The Convention on the Rights of the Child defines a child as any human being under the age of 18, except where the age of majority is earlier under applicable law. The competence of the Commission to refer to international treaties on human rights other than the American Convention, such as the Convention on the Rights of the Child, is based on the text of the American Convention, specifically article 29(b), and has been confirmed by the Inter-American Court of Human Rights. The Commission explains in depth its competence in this area in Chapter IV of this Report. The Commission has already invoked the Convention on the Rights of the Child in other situations. See, e.g., Annual Report of the Inter-American Commission on Human Rights 1992-1993, OEA/Ser.G, CP/CAJP-894/93, March 29, 1992, at 254.0

(6) Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, in *St. Thomas Law Review*, Volume 6, 1993, at 18.

(7) See Art. 2.

(8) See Art. 18.

(9) See Art. 19. In accordance with this same provision, such measures must include effective procedures to establish social programs to endow the child and those responsible for his care with the necessary support in identifying, reporting, investigating, treating, and monitoring the forms of violence described above, and for judicial intervention.

(10) Brief on Draft Legislation, at 8.

(11) Id. at 10.

(12) Id. at 21.

(13) Jaime Zuluaga Soto, *The Rights of Street Children Also Take Precedence over the Rights of Others*, Ciudad Don Bosco, 1997.

(14) Bermy Grisales and Corporación Primavera Interdisciplinary Team, *La Niña de la Calle*, in *Regional Seminar: Street Children*, Ciudad Don Bosco, 1995, at 46.

(15) Zuluaga Soto, at 3. Although the author is referring specifically to the children of Medellín, these categories are also considered to apply to all other children in Colombia's principal cities.

(16) The State informed the Commission that it uses one general category of "street inhabitants" to refer to all children and youths that live on the streets. The State treats children who work on the streets but who maintain ties to their families and homes as "children at risk of becoming street inhabitants."

(17) Id.

(18) Art. 27(1).

(19) Art. 27(3).

(20) Id.

(21) Art. 26.

(22) See Art. 28. The Commission notes that, pursuant to Article 67 of the Colombian Constitution, education is compulsory and free for children between the ages of five and fifteen years of age. However, the drop out rate is extremely high even during the years that school attendance is compulsory. See Comisión Colombiana de Juristas, Colombia, Human Rights and Humanitarian Rights: 1996, at 172 [hereinafter 1996 Comisión Colombiana Report]. The Colombian State has apparently not adopted important measures to promote attendance at school.

(23) Art. 19(1).

(24) The Convention on the Rights of the Child explicitly states that the States parties "shall take all appropriate measures . . . to protect children from the illicit use of narcotic drugs and psychotropic substances." Art. 33.

(25) Humanidad Vigente, at 3.

(26) "Caos en Amparo Judicial al Menor", *El Tiempo*, March 16, 1998.

(27) The Commission examines in greater detail the relationship between paramilitary groups and State's security forces in Chapter IV of this Report.

(28) Humanidad Vigente, at 3-4.

(29) The Commission studies in greater depth the issue of military criminal justice in Chapter V of this Report.

(30) Application of the International Covenant on Economic, Social, and Cultural Rights, Third Periodic Reports Presented by the States parties, pursuant to Articles 16 and 17 of the Covenant, August 1, 1994, United Nations, No.E/1994/104/Add.2, par. 439, at 115.

(31) Humanidad Vigente, at 3.

(32) Johnny Alberto Jiménez Pinto and Astrid Espinosa Moreno, Ministry of Labor and Social Security, *El Menor de la Calle Trabajador*, in *Regional Seminar: Street Children*, Ciudad Don Bosco, 1995, at 26.

(33) Id. at 27.

(34) Bjorn Pettersson, UNICEF, Regional Office for Latin America and the Caribbean, *State Policies for the Protection of Children in Latin America*, in *Minors under Protection*, Seminar, Memorias, Ciudad Don Bosco, 1996, at 16.

(35) Id.

(36) Art. 2(3).

(37) The Colombian State has not ratified Convention 138. However, the Commission considers that it is nonetheless useful to study the Convention in order to analyze international trends in relation to this issue. The Commission takes note of the fact that the Colombian State has ratified other ILO conventions regarding minimum working age. These conventions include the Minimum Age Convention (Industry) 5 of 1919 and the Minimum Age Convention (Agriculture) 10 of 1921. In this manner, Colombia has shown its interest in the international standards developed in this area.

(38) See Art. 32(1).

(39) See Pettersson.

(40) See, e.g., Report of the United Nations High Commission for Human Rights, E/CN.4/1998/16, March 9, 1998, par. 82.

(41) See Pettersson.

(42) Id. at 11.

- ([43](#)) Jaime Zuluaga Soto, Los Niños, La Guerra, y el Desplazamiento, *in* Menor en Protección, Seminar, Ciudad Don Bosco, 1996, at 3.
- ([44](#)) *Id.* at 73-74.
- ([45](#)) Humanidad Vigente, at 2.
- ([46](#)) *Id.* at 71.
- ([47](#)) *See* Art. 4(3)(c).
- ([48](#)) *See* Art. 38(3).
- ([49](#)) *See* Law 418 of 1997, Art. 13.
- ([50](#)) *See* Art. 38(3).
- (⁵¹) *See* Decision SU-200, February 3, 1997.
- ([52](#)) 1996 Comisión Colombiana Report, at 78.
- ([53](#)) *Id.*
- ([54](#)) *See* Office of the Human Rights Ombudsman, The armed conflict in Colombia and minors, System of follow up and supervision - children and their rights, Bulletin 2, May 1996.
- ([55](#)) *See* "Caos en Amparo Judicial al Menor", El Tiempo, Electronic version of March 16, 1998.
- ([56](#)) *Idem.*
- ([57](#)) These recommendations are contained in the Final Observations of the Committee on Children's Rights with respect to the Report on the Status of Children's Rights in Colombia presented by the State of Colombia to the Committee, in accordance with Article 44 of the Convention on the Rights of the Child. These final observations may be found in: United Nations, Convention on the Rights of the Child, Document CRC/C/15/Add.30, February 15, 1995.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

CHAPTER XIV

THE RIGHTS OF PERSONS DEPRIVED OF THEIR LIBERTY

A. INTRODUCTION AND LEGAL FRAMEWORK

1. Background and Legal Framework

1. Numerous complaints and information from government and private sources required the Inter-American Commission on Human Rights (the "Commission," the "IACHR" or the "Inter-American Commission") to prepare an analysis of the conditions of imprisonment in Colombia. Numerous and serious problems within the prison system led the Commission to characterize, in the press release it published following its on-site visit, "deplorable prison conditions" as one of the most worrisome aspects of the current human rights situation in Colombia. ([1](#))

2. Article 5 of the American Convention on Human Rights (the "Convention" or the "American Convention") applies to people deprived of their freedom and establishes the right of all people to "physical, mental and moral integrity." Torture and cruel, inhumane or degrading punishment or treatment are prohibited. Article 5 establishes additional special guarantees for persons deprived of their liberty, based on the fundamental principle that, "[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." These guarantees include, for example, the obligation to separate accused persons from convicts. Article 7 of the Convention includes provisions regarding the circumstances under which a person may be detained and held. There also exist instruments pertaining to detainees adopted within the context of the universal system for the protection of human rights. For example, the United Nations International Covenant on Civil and Political Rights, Standard Minimum Rules for the Treatment of Prisoners ([2](#)), and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ([3](#)) establish standards and norms for the treatment of detainees.

3. As regards domestic law, the Political Constitution of Colombia establishes the right to freedom and regulates the conditions of imprisonment. ([4](#)) It also prohibits torture and "cruel, inhumane or degrading treatment or punishment". ([5](#)) Parallel provisions exist in the legislation. For example, the Code of Criminal Procedure establishes that all detainees deprived of freedom "shall have the right to treatment which respects their human rights, including the right not to be subjected to cruel, degrading or inhumane treatment." ([6](#))

2. The Current Prison Situation

4. Based on its on-site visit, the Commission was able to determine that the human rights of people detained in Colombia have not been respected. Based on its visit to Cárcel Modelo prison in Bogotá, for example, the Commission concluded that the conditions in said prison

constitute cruel, inhumane and degrading treatment of detainees. ([7](#))

5. A crucial element of these human rights violations is prison overcrowding. By mid-1997, the Colombian prison system housed more than 40,000 detainees in 176 prison facilities designed for 28,000 persons. Approximately half of the detainees had not been sentenced and were awaiting final sentencing. In most cases, contrary to norms in effect at the time, these detainees were housed with people who had already been sentenced. Services and minimum rights (access to medical and legal services, outdoor privileges, access to employment, family visitation, access to sports and libraries) are difficult to obtain and, in many cases, can only be secured by paying prison personnel or the hierarchical chain of prisoners who, through tacit or explicit delegation by the guards, control parts of the prison. Such conditions cause violence and crime within the facilities, lead to frequent riots, destroy motivation for rehabilitation, and push prisoners into a world of violence and unlawfulness.

6. The Colombian authorities acknowledged this situation in meetings with the Commission during its visit to Colombia and have explained the various measures that are being implemented to alleviate it. However, the scope of the problem is such that only decisive judicial, legal and administrative action can produce a qualitative improvement in the general situation. The Commission would like to emphasize that despite the difficulties, there are prison system authorities, guards, and personnel who do implement innovative measures and demonstrate personal initiative, with dedication and altruism, in an attempt to resolve specific situations.

7. At the same time, the Commission received repeated information regarding corruption in Colombian prisons that affects the human rights of the detainees. For example, with respect to the delegation of authority over certain areas to "internal chiefs", complaints were received which indicated that mini-fiefdoms had been created which possessed *de facto* authority and which charged fees for access to services, protection, etc. The Commission also received information regarding corruption in food contracts, which leads to the deterioration of the already minimal food standards. Furthermore, complaints were received regarding systems of illegal charges by unscrupulous government officials for the authorization of statutory detainee rights.

8. An investigative commission of the Congress of the Republic has noted, in relation to the prison crisis, that:

the multiple manifestations of violence and non-conformity present in the country's prisons are a clear demonstration of the Government's lack of preparedness, reflected in a series of factors such as the absence of a clear and appropriate criminal policy, the current socioeconomic, political and institutional crisis affecting the country, and the slow processing and high level of impunity associated with criminal cases handled by the Colombian justice system. ([8](#))

9. In her interview with the Commission, then Minister of Justice Almabeatriz Rengifo acknowledged the serious overcrowding conditions in the prisons and the Government's reluctance to invest resources in sustaining the infrastructure of the common prisons and penitentiaries, favoring instead the construction of high security facilities and special imprisonment centers. At the same time, the Government demonstrated its commitment to promoting integral reform of the Colombian justice system within one year, particularly in the area of criminal law. Other governmental measures are being implemented, as described later in this Chapter.

10. The unequal investment in different categories of prison centers implies that prison conditions vary from one facility to another. The Commission was able to conclude, for example, in its visit to the maximum security prison in Itagúí, that conditions in this facility comply with prevailing international standards. The Commission highlights the effort made by

the Government to guarantee the human rights of all prisoners detained there. Nevertheless, the Commission is concerned with the marked difference which currently exists between the maximum security detention centers--where leaders of criminal groups are detained, including armed dissident groups and drug trafficking cartels--and the centers where the majority of prisoners are detained.([9](#)) The Commission believes that the Itagüí prison should serve as a model for other prison facilities.

B. PRISON OVERCROWDING

11. Overcrowding dominates penal facilities. The average overcrowding rate for the entire system is 142%, but this figure reaches 332% at the Bellavista detention center, where 4,980 people live in a facility designed for 1,500 people; 275% in Villahermosa, where 2,514 detainees live in a facility with a capacity of 914 people; and 222% at the Cárcel Modelo in Bogotá, which houses 4,275 prisoners in a prison designed for 1,920.

12. Statistics demonstrate that this overcrowding is neither chronic nor unsolvable. In fact, although overcrowding was 14.17% in 1990, this situation had ceased to exist by 1992. Since that time, however, overcrowding has again begun to increase.

13. The Commission witnessed horrific examples of overcrowding at the Cárcel Modelo prison and observed the conditions endured by prisoners in four patios and five special pavilions. The Commission viewed 30-square-meter rooms where approximately 80 people lie or sit. The Commission was also shown the spaces between roofs and ventilation ducts used for sleeping. The Commission also noted deficient sanitary services and saw the high-security cells where dozens of individuals are locked away for days without being allowed out.

14. The distortion of the prison investment policy, as mentioned above, aggravates the overcrowding situation. Between 1995 and 1997, investment favored the "high security pavilions," which house 400 "privileged" detainees who received 10 times more prison investment per capita than did the remaining 42,000 detainees.([10](#))

C. PROBLEMS ASSOCIATED WITH PREVENTIVE DETENTION, PRE-TRIAL RELEASE AND PAROLE

15. By the end of 1997, there were 19,812 detainees who had not been sentenced and 23,409 who had been sentenced. In other words, 45.85% of the prison population was comprised of people who had not been sentenced but had been deprived of their freedom.

16. Colombian legislation and practice provide special provisions for preventive detention as a security measure, which makes it difficult to apply alternatives such as house arrest.

17. Article 388 of the Code of Criminal Procedure authorizes prosecutors to apply security measures based on mere suspicion in most cases. When the public prosecutor decides to dictate security measures, these usually consist of pre-trial or "preventive" detention. For cases which are processed by the regional justice system, the only security measure permitted is preventive detention.([11](#))

18. The Commission has also received information indicating that not all defendants receive the same consideration when security measures are being imposed. According to this information, for example, those defendants with more resources or more influence have a greater likelihood of obtaining house arrest instead of preventive detention.

19. Once preventive detention has been ordered, it is extremely difficult for detainees to secure their freedom while awaiting trial. The Code of Criminal Procedure does allow pre-trial release under certain circumstances.([12](#)) However, the Commission has received

information which indicates that there is a "systematic tendency" to not grant requests for liberty even when the objective requirements for such a ruling have been fulfilled. ([13](#))

20. Access to the habeas corpus recourse as a mechanism for questioning the legality of preventive detention and obtaining freedom is also restricted. Colombian law requires that this writ be lodged before the same public official who the detainee believes caused his/her illegal detention. Furthermore, according to various studies, filing a request for habeas corpus is interpreted by some prosecutors as constituting an indication of guilt. ([14](#))

21. The Commission understands, as has been reiterated on many occasions, ([15](#)) that preventive detention is a special measure which should only be applied in cases where reasonable suspicion, and not mere presumption, exists that the defendant may flee from justice or destroy evidence. If preventive detention is utilized without meeting these standards, the principle of innocence and the detainee's right to physical liberty, as protected in Articles 5 and 8 of the Convention, are violated. These rights are frequently violated in Colombian penal proceedings.

22. The violation of the rights of accused persons in detention are compounded, not only by the illegal and immoral physical conditions of confinement, but also by the extensive duration of trials which can easily go on for two or three years before a sentence is reached, in violation all of the time periods set forth in Colombian law. The defendant is usually detained throughout the whole process, even when acquitted in the first instance. ([16](#))

23. Despite the fact that the number of judicial personnel almost doubled between 1985 and 1996, the average trial period is still approximately 1,000 days. ([17](#)) The lack of public prosecutors and the difficult situation of all defense attorneys contribute to the delay. In recent years, more than 200 trial attorneys have been assassinated for exercising their profession. Trials usually last even longer if pressure is not exerted by a defense attorney.

24. The Code of Criminal Procedure guarantees pre-trial release when the established time periods for the penal proceedings have been exceeded. ([18](#)) Nevertheless, pre-trial release has been restricted even in these cases. Faced with collective judicial action by millions of defendants whose legal time periods had been exceeded, prior administrations have declared states of emergency to keep these individuals in prison.

25. Keeping an accused person in pre-trial detention without finalizing the trial for periods "beyond the limits strictly necessary to ensure that he will not impede the efficient development of the investigations and that he will not evade justice," violates the presumption of innocence guaranteed in Article 8(2) of the Convention and the right to trial within a reasonable time period, established in Articles 8(1) and 7(5) of the Convention. ([19](#))

26. According to a May 1997 report by the Superior Council of the Judiciary, another reason for the overcrowding is the difficulty of processing requests for parole by sentenced detainees. Parole is a benefit which sentenced prisoners may request after having served a set portion of their sentence with good behavior. The difficulty is due in part to the fact that, in accordance with the current Code of Criminal Procedure, requests for parole must be made to the Courts for Execution of Sentences.

D. JOINT IMPRISONMENT OF DEFENDANTS AND CONVICTED PRISONERS

27. The Commission received many complaints regarding the fact that accused individuals are usually imprisoned with convicted prisoners. The Commission was able to confirm that this situation exists during its visit. This situation openly violates both the provisions of Colombian domestic law and the provisions of the American Convention.

28. Article 5(4) of the Convention explicitly states that "[a]ccused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons." The Colombian Code of Criminal Procedure also states that "unless a final guilty verdict has been executed, no person shall be detained in premises established as sites for serving prison sentences." ([20](#))

29. According to information received by the Commission, defendants without sentences do not receive treatment corresponding to their status. In fact, in some cases, they receive inferior treatment, as shall be demonstrated later in this Chapter. In these cases, the fact that they are not formal prisoners serving a definitive adjudicated sentence limits their access to available services.

E. DEFICIENCIES IN HEALTH SERVICES AND OTHER PROGRAMS FOR DETAINEES

30. In its visits to the prisons and through testimonies, the Commission received numerous complaints regarding the lack of medical attention and of other programs and services, including social rehabilitation programs in the detention centers in Colombia. On April 15, 1998, then Director of the National Penitentiary and Prison Institute ("INPEC"), Francisco Bernal, testified before Congress and noted that there continues to be a significant deficit of specialized personnel in psychiatric, social, pedagogic, health and legal areas in the prisons. ([21](#))

31. The Minister of Health, María Teresa Forero, declared before Congress that, as far as the provision of health services is concerned, "the floating population" (those who have not been sentenced) have no right to continuous health services. Consequently, these detainees are in a worse situation regarding health services than that of the convicted prisoners. This situation conflicts with Colombian law. Article 408 of the Penal Procedures Code explicitly states that all detainees deprived of their freedom have a right to medical attention. The Minimum Rules for the Treatment of Prisoners also state that all penitentiary centers shall provide the services of physicians who shall care for the health of all detainees. ([22](#))

32. The Commission also received complaints, in the presence of the authorities, regarding a case at the Cárcel Modelo prison wherein convicted prisoners who were ill went without medical attention for 36 hours because the medical provision contracts had not been renewed. The Commission also received credible evidence from different facilities that the infirmaries place 25 to 30 prisoners at a time, including injured and ill persons as well as AIDS-infected and psychiatric patients, in a single cell which measures 4 x 8 meters.

33. The Commission would like to reiterate that it is the State's responsibility to care for the physical and mental health of all persons in its custody. The State, in its capacity as administrator of the detention facilities, is the guarantor of the rights of the detained. ([23](#)) If the State does not fulfill its obligation, by action or omission, it violates Article 5 of the Convention and, in cases of deaths of prisoners, violates Article 4 of the Convention.

34. The Commission received information indicating that the National Plan for Production Projects, which allows detainees to perform tasks in industrial or agricultural facilities, reaches only 4,200 prisoners, less than 10% of the prison population. However, the State has provided information indicating that it has implemented programs and workshops for industrial work, metalworking, baking, handicrafts, etc. which have benefited 10,253 prisoners. At the same time, education programs for detainees include 9,400 prisoners receiving formal education (24%), of which 6,000 are studying at a primary level and 3,400 at a secondary level. Furthermore, 1585 (4.1%) receive informal education at the secondary or higher education level (85 detainees). Another institutional program which has been implemented is related to the prevention of drug addiction.

35. The Commission continues to be concerned by the fact that these programs do not cover a significant percentage of the prison population.. In the case of convicted prisoners, the ultimate objective of sentences which impose deprivation of liberty is "the reform and social readaptation of the prisoners".([24](#)) An important part of this readaptation is ensuring that convicted prisoners have the opportunity to work for pay and to study.([25](#)) According to international standards, people detained in preventive prison must also be given the opportunity to work.([26](#))

36. Colombian prison centers have programs for female detainees, for mothers who are detained, for prisoners who are senior citizens and for indigenous detainees. They also provide access, though limited, to psychiatric treatment and integral drug addiction prevention programs.

F. INADEQUATE NOURISHMENT

37. The Commission received information indicating that the food provided to the prisoners is inadequate. The cost of providing food to the prison population is approximately 70,800,000 Colombian pesos per day, while the annual budget in Colombia for this purpose is only slightly more than 2,400,459,000 pesos.([27](#))

38. This situation infringes international standards and domestic legislation. The Minimum Rules for the Treatment of Prisoners state that every prisoner "shall be provided by the administration . . . with food of nutritional value adequate for health and strength."([28](#)) The Colombian Code of Criminal Procedure also guarantees the detainees' right "to receive adequate nourishment."([29](#))

G. RIGHTS OF DETAINEES TO MAINTAIN TIES WITH THEIR FAMILIES

39. The Commission has previously established the importance of the right of detainees to maintain ties with their families.([30](#)) In this sense, detainees generally have the right to receive visits by family members.([31](#)) This right must be even more encompassing for accused persons, since their separation from society is preventive, not punitive.([32](#))

40. At the Cárcel Modelo prison, the Commission gathered information indicating that the authorities do not allow detainees who have not been sentenced to see their families for time periods of up to a month. This situation appears to violate their rights. Furthermore, many of the prevailing conditions in Colombian prisons infringe upon the right of prisoners to maintain contact with family members. The Commission received reiterated information indicating that in some prisons the detainees or their families must secretly pay for visitation authorization. The security conditions in the detention centers also make family visitation difficult.

41. The Commission was also made aware of the fact that, in order to prevent the surreptitious introduction of drugs, a number of centers have implemented a general vaginal inspection requirement for female visitors. Female family members must consent to this examination in order to enter, often after having waited from 7 to 10 hours for visitation authorization.

42. The Commission has established that such generalized vaginal inspection systems constitute violations and has specified that the need for a vaginal inspection must be evaluated in each specific case. The Commission also established that the following four conditions must be present, in a particular case, for the vaginal inspection to be considered legitimate: (1) the inspection must be absolutely necessary to ensure safety in that particular case; (2) there must not be any other alternatives; (3) the inspection must be authorized by prior court order; (4) the inspection must only be performed by health professionals.([33](#)) Based on the information received, the Commission cannot conclude that the Colombian

State is performing the vaginal inspections in accordance with these criteria.

H. CONSEQUENCES LIKELY TO CAUSE OTHER HUMAN RIGHTS VIOLATIONS

1. Riots

43. The general deplorable situation of Colombian prisons gives rise to consequences with a propensity to lead to additional human rights violations. During the first half of 1997, 60 riots occurred in Colombian prisons, giving rise to 8 inmate deaths and approximately 100 serious injuries. During one of these riots, at the San Isidro National Prison in Popayán, 585 family members joined forces with the prisoners and refused to leave the prison in order to call attention to the demands of the 1,120 detainees from different regions of the country who were serving sentences of more than 10 years. ([34](#)) Fortunately, negotiations were successful, a series of demands were accepted, and the occupation ended peacefully.

44. Recently, following this tragic trend, on December 15, 1997, a guard was killed and three people were hurt in an armed rebellion carried out by the wives of the detainees in the Cárcel La Picota prison. In Popayán, six more deaths occurred and 20 people were hurt during a riot on April 23, 1997. In Bogotá, a riot on June 12, 1997 ended in 5 deaths and 20 injuries.

45. The riots at the Cárcel Modelo prison and the tragedies which occurred during their suppression led the Government to enter into negotiations with the detainees. The negotiations resulted in a series of measures to alleviate the situation, including a change of officials. The Commission, in its visit to said prison, witnessed the labor of the working group comprised of prisoner representatives, formed for the purpose of studying and proposing solutions to the legal and practical problems of life in prison. The Commission also learned about the creation of a Human Rights Committee at the facility. The Commission further learned of measures designed to prevent harassment and abuses and to punish those responsible, including through the administrative retirement of many guards. Finally, the Commission was informed of measures to improve public services and security based on a new directive ordering that revenge measures not be adopted against rioters.

46. Although these measures did not alleviate the overcrowding and its consequences, they had at least temporarily calmed the prevailing climate of tension, explosions of violence, and internal criminal activity. The pacification committees established after the riot had also begun to yield results. According to the prison director, "up until two months ago, it was not uncommon for there to be one or two deaths per day in the prison, but in the last 50 days there has only been one homicide." ([35](#))

47. On April 14, 1998, detainees from two patios of the Cárcel Modelo prison rebelled against the assassination of an internal leader and took "justice" into their own hands, massacring those they believed to be the aggressors. The massacre cost the lives of 15 prisoners. The assassinated internal leader was the coordinator of one of the working groups created to reach agreement with the Government after the riots. In prior weeks, other assassinations had occurred which, according to the director, led up to the revenge killings. The weapons used in these violent acts had been secretly brought into the prison.

2. Internal Violence

48. Not only do Colombian prisons not fulfill basic prisoner rehabilitation and reeducation objectives, but they also serve as schools and recruiting spaces for turning people towards crime, drug trafficking and armed subversion. This situation is aggravated by the fact that there is currently an average of one guard for every eight prisoners; this figure is as high as one guard for every fourteen prisoners in some detention centers. According to INPEC and

Ministry of Justice studies, a ratio of one guard for every five prisoners is needed.([36](#))

49. The overcrowding and lack of services and productive opportunities, coupled with the frustration of the prisoners detained due to simple procedural inefficiency, creates a climate of internal violence which turns prison facilities into centers for crime, increasing the likelihood of creating individuals who will confront the law again after leaving prison. These conditions are also at least partly responsible for "the alarming number of homicides, injuries, crimes against property and escapes from these facilities, aggravated by the problem of drug trafficking and drug consumption inside the prisons."([37](#))

50. According to information received by the Commission, 30 prisoners died and 150 were injured between January and May, 1998. An example of this violence is the attack which occurred at the Cárcel Modelo prison on April 7, 1998, during which prisoners from another part of the prison entered a security pavilion housing 60 detainees who needed special protection from attacks. The detainees in the security pavilion were stripped of their scarce belongings and one of them was hit and bruised.

3. The Lack of Control in the Prisons and its Effects on the Ability of the Government to Suppress Unlawfulness

51. The Commission must express its concern about another of the consequences of the ineffectiveness of the prison system in achieving its objectives. We refer to the inability to maintain a capacity to repress or effectively contain guerrilla groups, drug traffickers and paramilitary activity. The inability of the State to control criminals and detained defendants places the rights of the population in general at risk.

52. The current lack of control in the prison system and the influence that illegal groups can have on this system can be seen in an episode which took place on April 14, 1998 at the San Diego District Prison in Cartagena, where, according to newspaper reports, "seven prisoners escaped in the midst of a party involving drugs and alcohol, including five prisoners under investigation for paramilitary activities."([38](#)) The prison director admitted that every weekend there are parties in both men's and women's cells during which the detainees consume drugs and alcohol before the passive watch of the guards, stating that this irregularity is the product of rampant corruption among guards (in that district).([39](#))

53. The fugitives accused of links to paramilitary groups had been detained since February 28, following a joint operation by the Marines and the Police. According to the Police commander, this escape ruined an investigation of paramilitary groups begun in the Sucre and Bolívar Departments.

54. In another incident, in May 1998, the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia - "FARC") attacked the San Isidro prison in Popayán, enabling the escape of 330 people, many of them guerrillas.([40](#))

I. MEASURES ADOPTED BY THE COLOMBIAN STATE

55. The Colombian State recognized, in its observations regarding this Report, that the principal problems relating to persons deprived of their liberty are prison overcrowding, joint imprisonment of defendants and convicted prisoners, deficiencies in health services and other programs for detainees, and inadequate nourishment of prisoners. The State noted that the Constitutional Court also found these problems to exist in the prison system in its Decision T-153 of April 28, 1998 and ordered the State to eradicate them. The State informed the Commission that the Government of President Pastrana has developed a policy plan for the prison system entitled Institutional Development Plan 1998-2002.

1. Legislation Designed to Alleviate Prison Overcrowding

56. In December 1997, Law 415, known as the alternative sanctions law, was passed to attempt to alleviate the prison crisis, especially overcrowding, through making norms regulating parole more flexible. Generally speaking, parole is available to prisoners once they have served a specific period of their sentence and have demonstrated good behavior. The law allows sentenced detainees who are not eligible for parole to leave the prison without supervision for significant periods of time. Providing certain conditions are met, these prisoners may leave for weekends and for periods of up to 15 continuous days for a total of no more than 60 days per year. These provisions do not apply to prisoners convicted in the regional justice system.

57. This legislation will undoubtedly have a positive effect on prison overcrowding. Nevertheless, it has been the object of harsh criticism for allowing individuals already convicted of serious crimes to go free.

58. Also, new draft legislation introduced in 1998 would shorten the list of crimes punished by imprisonment. Thus, convictions for certain crimes, such as illegal possession of identification cards and incest, would be punished by a monetary fine rather than by deprivation of liberty. This new legislation would also broaden the category of crimes susceptible to early parole and would shorten the maximum sentence available for certain crimes. Finally, the legislation would allow certain convicted individuals to serve prison sentences in the hospital or in their homes.

59. The Commission commends the State for seeking out innovative solutions to the problem of prison overcrowding. Nonetheless, the Commission believes that the Colombian Government should focus its efforts above all on adopting stricter limits and controls on preventive detention and on speeding up criminal trials. These measures would protect the rights of the prisoners and the population in general most effectively.

60. Another priority for the State should be the construction of new prisons and the improvement and expansion of current infrastructure. It is estimated that the Colombian authorities would need more than 100 prisons equal to the size of the Bogotá Cárcel Modelo prison in order to carry out all of the arrest orders that have been issued. (41) In this connection, the State has informed the Commission that three new prisons will be constructed with capacity for 1600 prisoners each. At the same time, the most important existing prisons will be expanded and remodeled to provide an additional 13,122 prison beds in the next four years.

2. Increasing Capacity through Private Concessions

61. One of the strategies for solving the overcrowding problem is the grant of private concessions for prison construction. The concessionaire would receive an advance to be put towards construction and an annual sum thereafter for maintenance and services. The first model to be built in Valledupar would receive 800 prisoners who would reside in cells of at least 30 square meters, with common areas for work and study activities, recreation, eating, legal assistance and visitation. Security within the prison will be INPEC's responsibility. Unfortunately, there have been significant delays in the plans to construct these new prisons as a result of problems and even corruption relating to construction bids. (42) (43)

J. CONCLUSIONS

62. Based on the analysis undertaken by the Commission regarding what it was able to directly identify in its visits to Colombian prisons and the information it received from public authorities and non-governmental organizations, the general conditions of prison

establishments are inhumane and violate the American Convention on Human Rights and other relevant international instruments. In practice, the Colombian prison system is overwhelmed by prison overcrowding. Furthermore, it has demonstrated that it is unable to separate accused individuals from sentenced prisoners, to create the minimum security conditions needed to prevent internal criminal activity in its own facilities and to design and implement effective rehabilitation programs. This situation is aggravated by the rigidity of criminal legislation, lengthy judicial proceedings, and a failure to use security measures other than prison or to provide alternatives to serving complete sentences.

63. The reforms to the criminal legislation that are being implemented are positive. Likewise, measures for alleviating current specific situations do exist. However, the scope of these measures must be broadened and greater political, technical and financial energy must be invested to yield truly significant changes.

K. RECOMMENDATIONS

Based on the foregoing, the Commission makes the following recommendations to the Colombian State:

1. The State should adopt all measures needed to improve the situation in the prison system and the treatment of detainees in order to fully comply with the Political Constitution of Colombia, domestic legislation, and international treaties ratified by Colombia. The Commission also recommends that the Minimum Rules for Treatment of Prisoners and the related United Nations recommendations be effectively applied as guidelines.
2. The State should detain, prior to sentencing, only those persons who truly constitute a danger to society or those whom it is suspected would not comply with the requirements of the legal proceedings. The decision regarding preventive detention should be made, in relation to each individual case, by the appropriate jurisdictional authority, in accordance with legally-established criteria.
3. The State should establish more expedient, less formalistic and more efficient judicial processing mechanisms to speed up intermediate, final and parole-related decisions, as well as decisions regarding other procedural benefits.
4. The State should consider the possibility of reducing the number of crimes included as crimes that lead to preventive detention or sentenced incarceration, excluding from this category those crimes which, by their nature, offer better guarantees of security and rehabilitation without detention.
5. The State should take measures to increase the physical capacity of prison facilities.
6. The State should raise nourishment, living, hygiene, work, education and recreation conditions to acceptable levels in compliance with international standards.
7. The State should grant detainees the benefits and privileges to which they are entitled, especially family visitation, recreation, education and parole, in an efficient and timely manner.
8. The State should separate detainees in preventive prison from sentenced prisoners, who in turn should be grouped according to the type and severity of the crime they have committed, the level of danger they represent, and their age.
9. The State should create and maintain job opportunities and productive education systems for detainees, as well as rehabilitation and social readaptation measures.
10. The State should provide the prison system with the resources necessary to act in accordance with international standards and laws in effect.
11. The State should provide preventive programs, permanent negotiation systems, personnel training, communication and information systems to prevent, minimize or suppress riots and other violent situations while respecting legal rights.

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- (1) IACHR, Press Release 20/97.
- (2) Adopted August 30, 1995 and approved by Economic and Social Council Resolutions 663 C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977 [hereinafter Minimum Rules].
- (3) A/RES/43/173, December 9, 1988.
- (4) See, e.g., Arts. 28, 30.
- (5) See Art. 12.
- (6) See Art. 408.
- (7) IACHR, Press Release 20/97.
- (8) Diagnosis of the Prison Situation, Report of the Official Commission, Second Commission of the Chamber of Representatives, Congressional Gazette, July 22, 1997, Year VI No. 279 [hereinafter Prison Situation Diagnosis].
- (9) The Commission notes that, in accordance with Colombian law, some senior public officials and others are detained in special facilities and not in ordinary prisons. See Code of Criminal Procedure, Art. 403. This difference in treatment is difficult to justify by security reasons alone or other reasons legitimately related to the goals of their detention, due to the existence of regular high security prisons, such as the Itagüí prison.
- (10) "Cuánto demora un proceso judicial?" El Tiempo, April 13, 1997.
- (11) See Code of Criminal Procedure, Art. 388.
- (12) See id., Art. 415. Grounds for pre-trial release are more restricted for cases processed in the regional justice system.
- (13) National University of Colombia, School of Law and Political and Social Sciences, Juridical-Social Investigations Unit, Justicia sin rostro: Estudio sobre la justicia regional.
- (14) See id.
- (15) See IACHR, Report No. 12/96, Case 11.245 (Argentina), March 3, 1996, pars. 48, 49, 50; IACHR, Report No. 2/97, Multiple cases (Argentina), March 11, 1997, par. 51.
- (16) This situation results from the procedure in the regional justice system pursuant to which the sentences of acquittal by regional judges must be revised "in consultation" with the National Tribunal before allowing the detainee to be set free.
- (17) El Nuevo Siglo, April 19, 1997, cited by Prison Situation Diagnosis.
- (18) See Code of Criminal Procedure, Art. 415.
- (19) I/A Court H.R., Suárez Rosero Case, Judgment of November 12, 1997, pars. 75, 77.
- (20) Art. 400.
- (21) El Tiempo, April 15, 1998.
- (22) See Arts. 22-25.
- (23) See I/A Court H.R., Neira Alegría et al. Case, Judgment of January 19, 1995, paragraph 60; IACHR, Report No. 28/96, Case 11.297 (Guatemala), October 16, 1996, paragraphs 58, 59.
- (24) American Convention on Human Rights, Art. 5(6).
- (25) See Minimum Rules, Arts. 71-77.
- (26) Id., Art. 89.
- (27) See "Las cifras del hacinamiento", El Tiempo, August 31, 1998.
- (28) Art. 20.
- (29) Art. 408.
- (30) See IACHR, Report No. 38/96, Case 10.506 (Argentina), October 15, 1996.
- (31) See id.; Minimum Rules, Art. 79.
- (32) See Minimum Rules, Art. 92.
- (33) See IACHR, Report No. 38/96, par. 72.
- (34) El Tiempo, January 12, 1998.
- (35) El Espectador, December 7, 1997; Testimony received during the Commission's visit.
- (36) "Las cifras del hacinamiento," El Tiempo, August 31, 1998.
- (37) Report on the Prison Visits by the Subcommittee of Representatives of the Second Commission, National Congress, 1997, reproduced in Desenrejar, No. 1, April-June 1997, at 7.
- (38) El Tiempo, April 14, 1998.
- (39) Id.
- (40) "Colombia: plan guerrillero para liberar a sus militantes presos", El Tiempo, May 28, 1998.
- (41) "Hay 214.907 sindicados sin capturar", El Tiempo, January 5, 1998.
- (42) See "Bloqueo saqueo de recursos de prisiones", El Tiempo, August 31, 1998.



INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

FINAL CONSIDERATIONS: HUMAN RIGHTS, JUSTICE, AND PEACE IN COLOMBIA

1. On concluding its Report, the Commission would like to acknowledge once again the efforts of the Colombian State and [civil] society to address the complex and challenging reality of an internal armed conflict that has affected the civilian population for almost 40 years, and continues to do so to this day. The armed conflict cannot be viewed in isolation from the human rights situation in Colombia. Nonetheless, the Commission's assessment reveals that the Colombian State's efforts have not been successful in confronting the crisis and the violence, which have a grave, ongoing, and prolonged impact on the population's most fundamental rights.

2. Forging peace is indissolubly linked to investigating, judging, and making reparations for human rights violations, especially those committed by State agents or by those who rely on their support or acquiescence. The search for an authentic peace should be grounded in the observance of human rights. The rule of law should provide the formulas for making a determination as to the truth, to try those who violate the laws in force and make reparation to the victims. To respond lawfully and effectively to violations of fundamental rights, the administration of justice requires laws in line with society's needs, and in line with general principles such as the right of access to justice, the impartiality of the court or judge, the procedural equality of the parties, and the enforceability and effectiveness of court decisions.

3. The Commission is aware of the structural, long-standing shortcomings that beset the State, in particular the administration of justice: excessive caseloads, the limited budget, and the fact that the codes were out of step with practices. The Commission also considers that the State apparatus has been affected negatively by the conflict such that it appears to abdicate its responsibilities as guarantor of the fundamental rights of the population, particularly in certain zones of the country, where it was not able to establish a permanent and effective presence. This situation, however, cannot validate the perverse levels of impunity, which year after year frustrates the diligent and effective trial of violations of the most fundamental human rights. These shortcomings should be addressed by rebuilding the judicial system, particularly the criminal justice system, so that the violations of law that result from the complex situation of violence can be clarified, abiding by the rules of regular procedure, and pursuant to principles that meet the expectations of justice of the victims and of society in general.

4. The Commission trusts that the Colombian State, along with its citizens, shall undertake the task of responding effectively, with justice, to the violence and impunity. This is required by current law, beginning with the 1991 Constitution, which is one of the most advanced in Latin America, and the international obligations assumed via ratification of the instruments of the inter-American system.

5. The approval and publication of this Report is taking place in the context of a complex process of peace negotiations, and of reform to the Colombian Constitution. The Commission is hopeful that the efforts of President Andrés Pastrana Arango to generate conditions

conducive to a settlement of the conflict succeed in achieving true national reconciliation, and that it further hopes that such a process will be accompanied by provisions that strengthen the administration of justice, among other areas. The Commission is aware that these efforts are challenged daily by the fighting between the military forces and the armed dissident groups, attacks by both against civilians, i.e. the non-combatant population, the escalation of paramilitary activities, common crime and drug-trafficking, the harassment of human rights defenders, and the forced displacement of thousands of persons and families.

6. The Commission is always ready to contribute, within its jurisdiction and the purposes and aims of the American Convention, to the strengthening of the peaceful and democratic co-existence of all Colombians. Nonetheless, it should note that while the internal armed conflict and the human rights crisis are closely related and need to be tackled in a coordinated fashion, the concern to seek political peace cannot be brandished as an excuse for delaying or weakening efforts in the struggle against impunity. Impunity also has the harmful effect of feeding the violence and destroying the essence of justice under a constitutional government and the rule of law. The process embarked upon to achieve peace and reconciliation on Colombian soil requires that the competent authorities and civil society direct their efforts to achieving social justice by upholding constitutional government and the rule of law, and by enforcing the law.

7. The Commission is convinced that the process of peace and co-existence of all Colombians should be based on truth, justice, and reparation. Overcoming the violence should be based on clarifying the human rights violations, placing on trial the persons responsible and punishing them pursuant to the law, and making reparation for the damages caused the victims. Only through the law and a shared perception of justice can we break the vicious cycle of impunity, re-establish public order, and guarantee observance of the rules of the political game that allow for the free advocacy of values in a context of tolerance.

8. The Commission would like to conclude this Report by expressing its desire for the Colombian people to realize their longing to live in peace in the framework of respect for and full observance of fundamental human rights.

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